

**STATE OF COLORADO  
Colorado Department of Education  
Contract with  
Teaching Strategies, LLC**

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**I. PARTIES**

This contract, is entered into by and between the State of Colorado, for the use and benefit of the Colorado Department of Education, 201 East Colfax, Denver, Colorado 80203, hereinafter referred to as CDE, and Teaching Strategies, LLC, 7101 Wisconsin Avenue, Suite 700, Bethesda, Maryland 20814 hereinafter referred to as the Contractor.

**II. EFFECTIVE DATE AND NOTICE OF NON-LIABILITY**

This Contract shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the Effective Date). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not

limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

### **III. RECITALS**

#### **A. Authority, Appropriation, and Approval**

Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

#### **B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Contract.

### **IV. DEFINITIONS**

The following terms as used herein shall be construed and interpreted as follows:

“Contract” means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

“Contract Funds” means funds available for payment by the State to Contractor pursuant to this Contract.

“Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in Section VI below.

“Exhibit” means Exhibit A, Contractor’s Privacy and Information Security Policy, attached hereto and incorporated herein by reference.

“Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the Services Contractor renders hereunder. “Party” means the State or Contractor and “Parties” means both the State and Contractor

“Review” means examining Contractor’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in Section VI below.

“Services” means the required services to be performed by Contractor pursuant to this Contract.

“Subcontractor” means third-parties, if any, engaged by Contractor to aid in performance of its obligations.

“Teaching Strategies GOLD online systems” means an assessment tool available to teachers, based on 38 research-based objectives that include predictors of school success and are aligned with the Common Core State Standards, state early learning guidelines, and the Head Start Child Development and Early Learning Framework.

“Work” means the tasks and activities Contractor is required to perform to fulfill its obligations under this Contract, including the performance of the Services and delivery of the Goods.

“Work Product” means the tangible or intangible results of Contractor’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

## **V. TERM AND EARLY TERMINATION**

### **A. Initial Term-Work Commencement**

The Parties’ respective performances under this Contract shall commence on the later of either the Effective Date or July 1, 2014. This Contract shall terminate on June 30, 2015, unless sooner terminated or further extended as specified elsewhere herein.

### **B. Two Month Extension**

The State, at its sole discretion upon written notice to Contractor, may unilaterally extend the term of this Contract for a period not to exceed two months if the Parties are negotiating a replacement Contract (and not merely seeking a term extension) at or near the end of any initial term or renewal term. The provisions of this Contract in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two-month extension. The two-month extension shall immediately terminate when and if a replacement Contract is approved and signed by the Colorado State Controller.

### **C. State’s Option to Extend**

The State may require continued performance for a period of three years at the same rates and same terms specified in the Contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed three additional years.

## **VI. STATEMENT OF WORK**

### **A. Contractor shall provide:**

1. Complete authorized access to the local program subscriptions to Teaching Strategies GOLD online systems to allow for monitoring of assessment completion and quality, data analyses and report generation related to classroom-level, school-level, and district level data.

2. Ten webinars to be used as needed to support principals and teachers with the implementation of the Teaching Strategies GOLD assessment system.
3. Ongoing customizations in the online system to align with state academic standards and kindergarten program needs.
4. Unlimited Teaching Strategies GOLD child archive records to assure continued access to the custom reports and analyses for student assessment data obtained each year.
5. Thirteen, one-day face-to-face in-service training sessions for teachers, administrators, and related service providers on the use of the Teaching Strategies GOLD assessment system.
  - a. The session must include best practices for safeguarding and maintaining data security informed by CDE's information on security and privacy policies.
  - b. Ten sessions shall be provided between July 1, 2014 and August 1, 2014.
  - c. Three sessions shall be provided in June of 2015.
  - d. CDE is responsible for providing the facilities, equipment and all materials and supplies for the training sessions.
  - e. The workshops shall be limited to a maximum of 50 participants, not inclusive of CDE staff.
6. Accreditation Program for Trainers for up to eight persons to be contracted through and paid by the school districts directly to Teaching Strategies GOLD, LLC.

**B. Employees**

All persons employed by Contractor or Subcontractors to perform Work under this Contract shall be Contractor's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Contract.

**VII. PAYMENTS TO CONTRACTOR**

The State shall, in accordance with the provisions of this section, pay Contractor in the amounts and using the methods set forth below:

ITEM	COST	TOTAL
Implementation Data Access Package Fee (which includes the online access to the local program subscriptions, webinars, customization of the records and unlimited Teaching Strategies GOLD child archive records set forth in Paragraphs VI. A.1. to 4 above).	\$25,000	\$25,000
Thirteen One Day Face-to-Face Regional Assessment Workshops for Kindergarten Teachers and Related Service Providers	\$2,225 each	\$28,925
<b>TOTAL</b>		<b>\$53,925.00</b>

A. Maximum Amount

The maximum amount payable under this Contract to Contractor by the State is \$53,925.00 as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract.

B. Payment

1. Advance, Interim and Final Payments

Any advance payment allowed under this Contract shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. Contractor shall initiate any payment requests by submitting invoices to the State in the form and manner set forth in approved by the State.

2. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

3. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Contractor's compensation beyond the

State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. If federal funds are used to fund this Contract, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

4. Erroneous Payments

At the State's sole discretion, payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

## **VIII. REPORTING – NOTIFICATION**

Reports, Evaluations, and Reviews required under this Section VIII. shall be in accordance with the procedures of and in such form as prescribed by the State.

A. Performance, Progress, Personnel, and Funds

Contractor shall submit a report to the State upon expiration or sooner termination of this Contract, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Deputy Commissioner of CDE.

C. Noncompliance

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this Section may result in the delay of payment of funds and/or termination as provided under this Contract.

D. Subcontracts

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

**IX. CONTRACTOR RECORDS**

A. Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: (i) a period of three years after the date this Contract expires or is sooner terminated, or (ii) final payment is made hereunder, or (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the Record Retention Period).

B. Inspection

Contractor shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period for a period of three years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the State may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

C. Monitoring

Contractor shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that

shall not unduly interfere with Contractor's performance hereunder.

D. Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report as it relates only to information relevant to this Contract to the State or its principal representative at the address specified herein.

**X. CONFIDENTIAL INFORMATION-STATE RECORDS**

Contractor shall comply with the provisions of this Section if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, C.R.S. Section 24-72-101, *et seq.*

A. Confidentiality

Contractor shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Contractor shall be immediately forwarded to the State's principal representative.

B. Notification

Contractor shall notify its agent, employees, Subcontractors and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

C. Use, Security, and Retention

1. Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Contract or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Contract or approved in writing by the State.
2. The privacy and information security policy followed by Contractor to keep data secure is attached hereto as Exhibit A.



D. Disclosure-Liability

Disclosure of State records or other confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Section.

E. Protection

If Contractor provides physical or logical storage, processing or transmission of confidential or sensitive State data, Contractor shall provide, and shall cause its Subcontractors to provide, physical and logical protection for State hardware, software, applications and data that meet or exceed industry standards and requirements as set forth in the Contract. Contractor shall provide the State with access, subject to Contractor's reasonable access security requirements, seven days a week, 24 hours a day, for the purpose of inspecting and monitoring access and use of State data, maintaining State systems, and evaluating physical and logical security control effectiveness. Contractor, if it retains, stores, or is given protected or confidential information, at all times shall maintain, and shall cause its Subcontractor's to maintain, network, system, and application security, which includes network firewalls, intrusion detection, and annual security testing. Contractor, if it retains, stores, or is given protected or confidential information, shall comply and shall cause its Subcontractors to comply, with State and federal regulations and guidelines related to security, confidentiality and auditing, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and 34 C.F.R. Part 99.

Contractor, if it retains, stores, or is given protected or confidential information shall ensure, and shall cause its Subcontractors to ensure, that security is not compromised by unauthorized access to computers, program, software, databases, or other electronic environments and shall promptly report all breaches or attempted breaches to a representative of the OIS. Neither Contractor nor its Subcontractors shall have any rights to use or access any OIT or other State agency data or information, except with the prior approval of the State. Contractor shall review, on a semi-annual basis, the Colorado Cyber Security Program (CCSP), posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>, and its related documents, including its policies and procedures to ensure compliance with the standards and guidelines published therein. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS. Contractor shall follow, and shall cause its Subcontractors to follow, the State's Data Handling and Disposal policy, which can be found at [www.colorado.gov/oit/security\\_policies](http://www.colorado.gov/oit/security_policies). Contractor shall perform, and shall cause its Subcontractor's to perform, in a form reasonably acceptable to the State, current background checks on all of its respective employees and agents performing services or having access to State confidential information provided under the Contract. A

background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access shall be deemed to be current.

Contractor shall comply with the guidelines included in NIST Special Publication 800-53, Security and Privacy Controls for Federal Information Systems and Organizations.

F. Security-Notice

Contractor is responsible for the security of all information provided to it by the State. If information is provided to Contractor or any Subcontractor by the State, Contractor shall comply with and shall cause its Subcontractors to comply with the State's Cyber Security Policies, which the OIS has promulgated pursuant to C.R.S. Sections 24-37.5-401 through 406 and 8 C.C.R. Section 1501-5. The Policies are posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>.

G. Security Breach Remediation

If Contractor becomes aware of a data security breach, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the breach, Contractor shall be responsible for the cost of notifying each Colorado resident and residents of other states whose personal information may have been compromised. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of the State. Contractor shall be responsible for performing an analysis to determine the cause of the breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present such analysis and remediation plan to the State within ten (10) days of notifying the State of the data security breach. The State reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce the required analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis, produce a remediation plan, and Contractor shall reimburse the State for the reasonable costs thereof. A breach of Personal Identity Information (PII) shall have occurred when there has been unauthorized acquisition of unencrypted PII data (electronic or otherwise) used in performance of the Contract, or any subcontract from the Contractor's or any Subcontractors possession which compromises security, confidentiality, or integrity of such PII. Contractor agrees to be liable for any unauthorized disclosure of PII in its possession or in the possession of its Subcontractors as if Contractor was the owner of the data. Contractor acknowledges that any breach of PII is a material breach of the Contract. Contractor shall notify the State immediately of any breach or suspected breach, but in no event later than twenty-four (24) hours after Contractor learns of suspected breach. The State may establish required remediation procedures and Contractor shall comply without limitation as directed by the State. Contractor shall bear all costs of such remediation.

#### H. End of Agreement Data Handling

Upon request by the State made before or within sixty (60) days after the effective date of termination of the Contract, Contractor will make available to the State a complete and secure (i.e. encrypted and appropriately authenticated), download file of all system data in XML format, including all schema and transformation definitions, and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. The Parties agree that on the termination of the provision of data processing services, the Contractor shall, at the choice of the State, return all the personal data transferred, and the copies thereof to the State, or shall destroy all the personal data and certify to the State that it has done so, unless legislation imposed upon the Contractor prevents it from returning or destroying all or part of the data transferred. In that case, the Contractor warrants that it will guarantee the confidentiality of the data transferred and will not actively process the data transferred anymore.

#### I. Disposition of Data

The State retains the right to use the established operational services to access and retrieve State data content stored on Contractor's infrastructure at its sole discretion. The Contractor and Subcontractor warrant that upon request of the State and/or of the supervisory authority, the Contractor will submit its data processing facilities for an audit of the measures referred to in Paragraph IX.D. The State reserves all right, title and interest, including all intellectual property and proprietary rights, in and to system data and content.

#### J. Safeguarding Personal Identifiable Information (PII)

If Contractor or any of its Subcontractors will or may receive PII under the Contract, Contractor shall provide for the security of such PII, in a form acceptable to the State, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits. Contractor shall take full responsibility for the security of all data in its possession or in the possession of its Subcontractors, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure of loss thereof.

### XI. CONFLICTS OF INTEREST

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the State hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure

statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Contract.

## **XII. INDEMNIFICATION**

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, as applicable, as now or hereafter amended.

## **XIII. REPRESENTATIONS AND WARRANTIES**

Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Contract.

### **A. Standard and Manner of Performance**

Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession and in the sequence and manner set forth in this Contract.

### **B. Legal Authority – Contractor Signatory**

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this Contract within 15 days of receiving such request.

### **C. Licenses, Permits, Etc.**

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it

currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Contract is a material breach by Contractor and constitutes grounds for termination of this Contract.

#### **XIV. INSURANCE**

Contractor and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

##### **A. Contractor**

###### **1. Public Entities**

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, *et seq.*, as amended (the GIA), then Contractor shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

###### **2. Non-Public Entities**

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Contract insurance coverage and policies meeting the same requirements set forth in Section XIII.B with respect to subcontractors that are not "public entities".

##### **B. Contractors – Subcontractors**

Contractor shall require each contract with subcontractors other than those that are public entities, providing Goods or Services in connection with this Contract, to include insurance requirements substantially similar to the following:

###### **1. Worker's Compensation**

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Contractor or subcontractor employees acting within the course and scope of their employment.

###### **2. General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

3. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

4. Privacy Insurance

Such insurance shall include, at a minimum, coverage for claims and losses with respect to network or data risks (such as data breaches, release of confidential information, unauthorized access/use of information, identity theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) Minimum limit of coverage of \$1,000,000.00 per occurrence and \$2,000,000 aggregate.

5. Technology Errors & Omissions

Such insurance shall cover any and all acts, errors, omissions or negligence in the delivery, performance or non-performance of products and/or services under this Contract. Such Technology Errors & Omissions insurance shall include, at a minimum, coverage for claims and losses with respect to network or data risks and intellectual property infringement, such as copyrights, trademarks, services marks and trade dress. Minimum coverage shall be \$1,000,000.00.

6. Additional Insured

The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any subcontractors hereunder.

7. Primacy of Coverage

Coverage required of Contractor and subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

8. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with Section XVII (Notices and Representatives) within seven days of Contractor's receipt of such notice.

9. Subrogation Waiver

All insurance policies in any way related to this Contract and secured and maintained by Contractor or its subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

10. Certificates

Contractor and all subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Contract. No later than 15 days prior to the expiration date of any such coverage, Contractor and each subcontractors shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Contract or any sub-contract, Contractor and each subcontractors shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this Section.

## **XV. BREACH**

In addition to any breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in Section XVI. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

## **XVI. REMEDIES**

If Contractor is in breach under any provision of this Contract, the State shall have all of the remedies listed in this Section in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in Section XV. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

### **A. Termination for Cause and/or Breach**

The State may terminate this entire Contract or any part of this Contract. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

#### **1. Obligations and Rights**

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Contractor to the State and shall become the State's property.

#### **2. Payments**

The State shall reimburse Contractor only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

#### **3. Damages and Withholding**

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Contract by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss, including loss as a result of outstanding



liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

**B. Early Termination in the Public Interest**

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by Section XV.A or as otherwise specifically provided for herein.

**1. Method and Content**

The State shall notify Contractor of such termination. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

**2. Obligations and Rights**

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in Section XV.A.1.

**3. Payments**

If this Contract is terminated by the State pursuant to this Section XV.B, Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, the State may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

**C. Remedies Not Involving Termination**

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**1. Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

2. Withhold Payment

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

3. Deny Payment

Deny payment for those obligations not performed, that due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

4. Removal

Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees, agents, or subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the State's best interest.

5. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the State's option (a) obtain for the State or Contractor the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

## **XVII. NOTICES AND REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State:

Sharon Triolo-Moloney  
Department of Education  
201 East Colfax  
Denver, Colorado 80203  
303.866.6781  
[triolo-moloney\\_s@cde.state.co.us](mailto:triolo-moloney_s@cde.state.co.us)

Contractor:

Suzanne Scheel  
Teaching StrategiesLLC  
7101 Wisconsin Avenue, Suite 700,  
Bethesda, Maryland 20814  
800.637.3652 x1756  
[suzannes@teachingstrategies.com](mailto:suzannes@teachingstrategies.com)

#### **XVIII. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations solely and exclusively for this Contract shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Contractor upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, and transfer Work Product.

#### **XIX. GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act Section 24-10-101, *et seq.* and the risk management statutes, C.R.S. Section 24-30-1501, *et seq.*, as amended.

#### **XX. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this Section applies.

Contractor agrees to be governed, and to abide, by the provisions of C.R.S. Section 24-102-205, Section 24-102-206, Section 24-103-601, Section 24-103.5-101 and Section 24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including C.R.S. Section 24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDE, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (C.R.S. Section 24-105-102(6)), or (b) under C.R.S. Section-105-102(6), exercising the debarment protest and appeal rights provided in C.R.S. Sections 24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

## **XXI. GENERAL PROVISIONS**

### **A. Assignment and Subcontracts**

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Such written consent shall not be unreasonable withheld. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

### **B. Binding Effect**

Except as otherwise provided in Section XXI.A, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### **C. Captions**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Jurisdiction and Venue

All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. Modification

1. By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by both parties in an amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules.

2. By Operation of Law

This Contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

H. Order of Precedence

The provisions of this Contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions.
2. The provisions of the main body of this Contract.\
3. Exhibit A, Contractor's Privacy and Information Security Policy.

I. Severability

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Contract in accordance with its intent.

J. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Contractor fails to perform or comply as required.

K. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under C.R.S. Sections 39-26-101 and 201 *et seq.* Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

L. Third Party Beneficiaries

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

M. Waiver

Waiver of any breach under a term, provision, or requirement of this Contract, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

N. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards under C.R.S. Section 24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, C.R.S. Sections 24-72-101, *et seq.*

O. Debarment and Suspension

1. Contractor shall not enter into any contract or subcontract in connection with this

Contract with a party that has been debarred or suspended from contracting with the Federal Government or the State of Colorado. See Excluded Parties List System at <https://www.epls.gov>

2. If this is a covered transaction or the Contract amount exceeds \$100,000, the Contractor certifies to the best of its knowledge and belief that it and its principals and Subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency.
3. This certification is a material representation of fact upon which reliance was placed when the State determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available at law or by contract, the State may terminate this Contract for default.
4. The Contractor shall provide immediate written notice to the State if it has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency.
5. The terms "covered transaction," "debarment," "suspension," "ineligible," "lower tier covered transaction," "principal," and "voluntarily excluded," as used in this paragraph, have the meanings set out in 2 CFR Parts 180 and 376.
6. The Contractor agrees that it will include this certification in all lower tier covered transactions and subcontracts that exceed \$100,000.

P. Lobbying

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

No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.



## **COLORADO SPECIAL PROVISIONS**

The Special Provisions apply to all Contracts except where noted in italics.

### **1. CONTROLLER'S APPROVAL. C.R.S. Section 24-30-202 (1).**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

### **2. FUND AVAILABILITY. C.R.S. Section 24-30-202(5.5).**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### **3. GOVERNMENTAL IMMUNITY.**

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. Section 1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

### **4. INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any contract, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

### **5. COMPLIANCE WITH LAW.**

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

### **6. CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

## **7. BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

## **8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

## **9. EMPLOYEE FINANCIAL INTEREST. C.R.S. Sections 24-18-201 and 24-50-507.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

## **10. VENDOR OFFSET. C.R.S. Sections 24-30-202 (1) and 24-30-202.4.**

[*Not Applicable to intergovernmental agreements*] Subject to C.R.S. Section 24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in C.R.S. Section 39-21-101, *et seq.*; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

## **11. PUBLIC CONTRACTS FOR SERVICES. C.R.S. Section 8-17.5-101.**

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Contract and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State program established pursuant to C.R.S. Section 8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. Section 8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or C.R.S. Section 8-17.5-101 *et seq.*, the contracting State agency, institution of higher education or political

subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. Section 24-76.5-101.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of C.R.S. Section 24-76.5-101 *et seq.*, and (c) has produced one form of identification required by C.R.S. Section 24-76.5-103 prior to the effective date of this Contract.

SPs Effective 1/1/09

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

**CONTRACTOR:**

Teaching Strategies, LLC

By: Andrea Valentine

Title: President & COO

Awacento

\*Signature

Date: 7/7/14

**STATE OF COLORADO**

John W. Hickenlooper, GOVERNOR

**Department of Education**

Robert Hammond, Commissioner

[Signature]  
Robert Hammond, Commissioner

Date: 7/16/14

**LEGAL REVIEW**

John W. Suthers, Attorney General

By: \_\_\_\_\_  
Signature - Assistant Attorney General

Date: \_\_\_\_\_

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER**

Robert Jaros, CPA, MBA, JD

By: [Signature]  
Dave Grier, CDE Controller

Date: 7-17-14

## TEACHING STRATEGIES' PRIVACY AND INFORMATION SECURITY POLICY

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### I. PRIVACY AND INFORMATION SECURITY COMMITMENT

At Teaching Strategies, we are fully committed to safeguarding and protecting the privacy of our customers and the children and families they serve. Specifically, we understand that our customers have an obligation to protect the privacy of students and parents under the Family Educational Rights and Privacy Act of 1974 (FERPA), which provides certain privacy protections for student and family information belonging to institutions receiving federal funding. Accordingly, we continually assess our own practices to ensure that they meet or exceed industry standards and are in compliance with all federal and state requirements, including state data protection laws. Our commitment includes

- adhering to FERPA and its associated regulations;
- regular staff training and internal policies related to accessing and using customer data, including personally identifiable information (PII);
- safeguarding all customer data, never sharing information with a third party without the data owner's permission (except when required by law), and never selling information to any third party;
- ongoing work with third-party security experts to review and analyze our policies, practices, and infrastructure and provide recommendations for improvement; and
- regular monitoring and penetration testing of our security systems

### II. DEFINITIONS

As used in this Policy,

"Contractor" means a contractor with Teaching Strategies who may be required to handle PII or Customer Data in the course of delivering Teaching Strategies Services. By agreement, Contractors are required to safeguard all Customer Data and to adhere to all requirements set forth in a Customer agreement with Teaching Strategies.

"Customer" means any educational organization, such as a state department of education, Head Start program, school district, or child care provider, using Teaching Strategies Services.

"Customer Authorized User" means a Customer's individual employee or contractor whom the Customer authorizes to access Teaching Strategies Services.

"Customer Data" means any information provided to Teaching Strategies by the Customer for the purpose of using Teaching Strategies Services.

"FERPA" means the Family Educational Rights and Privacy Act of 1974 (codified at 20 U.S.C. § 1232g) and its associated regulations, as they may be amended from time to time. The regulations are issued by the U.S. Department of Education and are available at <http://www2.ed.gov/policy/gen/reg/ferpa/index.html>.

"Subscriber Administrator" means the person designated by the Customer as solely responsible for managing access to Customer Data.

"Personally Identifiable Information" ("PII") means any Customer Data defined as personally identifiable information under FERPA, including, but not limited to, the following: the names, dates of birth, and customer-defined identifiers of students; the names and email addresses of parents, and other family

## TEACHING STRATEGIES' PRIVACY AND INFORMATION SECURITY POLICY

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members; or other information that, alone or in combination, can be linked to a student and would allow the student to be identified with reasonable certainty. Information about teachers and other educators will also be treated as PII under this Policy.

"Security Officer" means the Teaching Strategies, LLC official responsible for security and privacy compliance.

"Teaching Strategies Authorized Personnel" means any employee or contractor of Teaching Strategies, LLC who may be required to handle Customer Data in the course of delivering Teaching Strategies Services. Such access is determined by Role Based Access Control.

"Teaching Strategies Services" means all products that require Teaching Strategies to store Customer Data, including PII in any form. This includes, but is not limited to, *Teaching Strategies GOLD®*.

### III. PRIVACY OF PERSONAL INFORMATION

#### A. TEACHING STRATEGIES PERSONNEL GUIDELINES

Teaching Strategies Authorized Personnel are required to be aware of and work to protect the confidentiality and security of all Customer Data. The following list provides a general description of policies with which employees of Teaching Strategies, LLC and its Contractors are required to comply.

1. All Personally Identifiable Information (PII) uploaded to Teaching Strategies Services will be handled, processed, stored, transmitted, and protected in accordance with all applicable federal data privacy and security laws.
2. Access PII Only When Required: Teaching Strategies Authorized Personnel shall not access PII unless engaging in activities to support Customers or complying with a legal obligation under federal or state law, regulation, subpoena, or agency action that requires such access.
3. Limit Teaching Strategies Access: Limit internal access to Customer Data to persons with proper authorization and a legitimate need to support Teaching Strategies Customers.
4. Secure Data Repositories: Store PII only within secure data repositories and never on unsecured shared drives.
5. Report Risks: Identify reasonably foreseeable internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper, or other records containing PII and report them promptly to the Security Officer.
6. Secure Deletion: When PII is no longer needed, delete all PII in accordance with Teaching Strategies' Data Retention Policy.
7. Portable Storage: Do not store PII from Teaching Strategies Services to portable devices, such as USB drives, smart phones, tablets, laptops, or compact discs. As a general rule, all PII must be securely stored on Teaching Strategies' network.
8. Wireless Networks: Unencrypted PII may not be transmitted wirelessly or across a public network.
9. Attend Training: Regularly complete training on the proper use and disclosure of Customer Data and the importance of privacy and information security.
10. Aggregate Data: For purposes of ongoing product research and validation, Teaching Strategies, LLC and its Contractors may use Customer Data in aggregate with all PII removed.

#### B. CUSTOMER CONTROL OF DATA

Teaching Strategies, LLC does not share Customer Data with any third party except when explicitly requested by the Customer or when required by law.

## TEACHING STRATEGIES' PRIVACY AND INFORMATION SECURITY POLICY

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1. **Customers Control Access:** Customers who use Teaching Strategies Services have full control of the data and determine who is able to access Customer Data. Customers who elect to use Teaching Strategies Services sign an agreement with Teaching Strategies that includes compliance with this Privacy and Information Security Policy.
2. **Subscriber Administrator:** Each Customer who uses Teaching Strategies Services must designate a Subscriber Administrator. The Subscriber Administrator designates Customer Authorized Users and determines the scope of data to which they have access. The Subscriber Administrator is responsible for making all administrative decisions about the Customer's employees' and contractors' access to and use of Teaching Strategies Services.
3. **Role-Based Access:** Access to Customer Data is determined by the Subscriber Administrator on the basis of the roles of the Customer's employees and their legitimate interest in having access to the PII to perform their educational roles. For example, based on his or her role as it relates to the organizational hierarchy, a school principal in a participating school district would be authorized to view all student data for students in his or her school but not student data for other schools in the school district. The Subscriber Administrator is responsible for ensuring that permissions are kept current with roles. When a teacher's access is disabled by an Administrator, all access to child information, including PII, is terminated.

### IV. INFORMATION SECURITY PROGRAM

The security of Customer Data is of paramount importance to Teaching Strategies, LLC. Teaching Strategies' IT Security Program consists of technical, physical, and administrative safeguards designed to protect the privacy of all Customer Data. The program is designed to identify, manage, and control the risks to system and data availability, integrity, and confidentiality, and to ensure accountability. The program includes the following key general processes:

#### A. ADMINISTRATIVE SAFEGUARDS

1. **System Monitoring:** Regularly review records of information systems activity and maintain access logs, access reports, security incident tracking reports, and periodic access audits.
2. **Appropriate Access:** Regularly review records to determine that all access to PII is appropriate and meets a legitimate need to support users' roles in business operations.
3. **Access Termination:** Terminate access to Teaching Strategies Services and PII when a user's employment ends or when the individual no longer has a legitimate need for access.
4. **Requests and Disclosures:** Document all third-party requests for Customer Data.

#### B. PHYSICAL SAFEGUARDS

1. **Network Access:** Review and modify network access rights as necessary to ensure appropriate access to Customer Data.
2. **Incident Response Plan:** Maintain and use a set of procedures to respond to, document, mitigate, and resolve suspected or known security incidents.
3. **Physical Access:** Limit physical access to Customer Data and the facilities in which they are housed while ensuring that properly authorized access is allowed, including limitation by physical barriers that require electronic control validation (e.g., card access systems).
4. **Physical Identification:** Physically safeguard access in order to prevent tampering and theft, including through procedures that control and validate each person's access to facilities on the basis of his or her role.

## TEACHING STRATEGIES' PRIVACY AND INFORMATION SECURITY POLICY

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5. Operational Environment: Maintain clear policies that specify the proper functions to be performed, the manner in which they are to be performed, and the physical attributes of the facilities where Customer Data are stored.
6. Media Movement: Follow procedures that govern the receipt and removal of hardware and electronic media that contain Customer Data.
7. Disposal of Customer Data: Follow IT security policies for secure deletion and destruction when requested by the Customer or when the terms of an agreement between Teaching Strategies and the Customer require that the Customer Data, including PII, be deleted and destroyed.

### C. TECHNICAL SAFEGUARDS

1. Data Transmission: Employ technical safeguards, including encryption, to ensure that PII transmitted over an electronic communications network is protected from unauthorized persons or groups.
2. Encryption of PII: Encrypt all data at rest and in transit.
3. Data Integrity: Follow procedures to protect PII from improper alteration or destruction, including authenticating records and corroborating that they have not been altered or destroyed in an unauthorized manner.
4. Inactive Users: Automatically terminate inactive electronic sessions after a specified period of time.
5. Disaster Recovery and Business Continuity: Maintain contingency plans and business continuity plans designed to ensure that needed Teaching Strategies Services can continue securely in the event that system breakdowns, natural disasters, or other events destroy or render inoperable Teaching Strategies' online systems. These plans focus on the sensitivity of information and the criticality of the systems involved in providing services to Customers, and they enable Teaching Strategies to provide critical services and secure Customer Data.
6. Firewall: Maintain a firewall to further protect the integrity of Teaching Strategies' network.
7. Virus and Malware Protection: Maintain installed software to protect Teaching Strategies' network from virus and malware attacks and ensure that the software receives the most current security updates on a regular basis.

### D. INFORMATION SECURITY RISK ASSESSMENT

1. Evaluation: Teaching Strategies regularly conducts a thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Customer Data.
2. Analysis: Teaching Strategies gathers and analyzes information about new threats and vulnerabilities and approaches to strengthen management of security risks and incidents.
3. Improvement: Teaching Strategies uses information from security risk assessments and ongoing security monitoring to update and improve risk assessment, strategy, control, and resolution processes.

### E. BREACH REMEDIATION

1. Security Officer: The Security Officer is responsible for maintaining and implementing incident response plans in case of suspected or actual breach.
2. Notification: If Teaching Strategies determines that a data breach has occurred and the Security Officer has determined that there is a reasonable risk that Customer Data or PII was compromised, or where otherwise required by law, Teaching Strategies will notify affected parties as promptly as possible, including the Customer, and will cooperate with the Customer to enable compliance with all State breach of confidentiality laws.



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3. Employee and Contractor Reporting: Teaching Strategies employees and Contractors are required to report promptly to the Teaching Strategies Security Officer any incident or threatened incident involving unauthorized access to or acquisition of Customer Data or PII of which they become aware.
4. Customer Reporting: Customers are responsible for notifying Teaching Strategies promptly when they have any reason to think that Customer Data or PII may have been lost, stolen, compromised, or inappropriately accessed in or through Teaching Strategies Services.

### F. PERSONNEL SECURITY POLICY

1. Background Checks: Perform appropriate background checks and screening of all new employees and contractors assigned as Teaching Strategies Authorized Personnel.
2. Confidentiality and Nondisclosure: Obtain agreements from Teaching Strategies employees and Teaching Strategies Contractors covering confidentiality, nondisclosure, and authorized use of Customer Data and specifically PII.
3. Awareness Training: Provide training to support awareness and policy compliance with new Teaching Strategies employees and annually for all Teaching Strategies and Teaching Strategies Contractor personnel.

## V. ADMINISTRATION AND ENFORCEMENT

- A. Security and Privacy Oversight: The Security Officer is responsible for developing, implementing and maintaining the IT Security Program, under the oversight of the Teaching Strategies CEO and Board.
- B. The Security Officer will evaluate risks and improve, where necessary, the effectiveness of current safeguards for limiting such risks, including but not limited to
  1. ongoing employee and contractor training;
  2. employee compliance with policies and procedures; and
  3. means for detecting and preventing security system failures.
- C. Employee and Contractor Supervision: Procedures for regularly monitoring and supervising Teaching Strategies employees and Contractor personnel who have access to Customer Data.
- D. Enforcement: Teaching Strategies is responsible for consistently enforcing this Policy with appropriate discipline for its own employees and the employees of its Contractors. Teaching Strategies and each Customer, as applicable, will determine whether violations of this Policy have occurred and will determine appropriate disciplinary measures.
- E. Disciplinary Measures: The disciplinary measures may include counseling, oral or written reprimands, warnings, probation or suspension without pay, demotions, reductions in salary, or termination of service or employment, as well as criminal referral to law enforcement agencies when appropriate. Persons subject to disciplinary measures may include, in addition to the violator, others involved in the wrongdoing, such as
  1. persons who fail to use reasonable care to detect a violation;
  2. persons who withhold material information regarding a violation; and
  3. supervisors who approve or condone the violations or attempt to retaliate against employees or agents or representatives of Teaching Strategies or the Contractor for reporting in good faith violations or violators.