



STATE DEPARTMENT OF EDUCATION
VENDOR SERVICE AGREEMENT
(USING FEDERAL FUNDS)

This agreement ("Agreement") is made this day of <<Date>> by and between the Idaho State Department of Education (the "SDE") and <<Contractor Name>> (the "Contractor").

Whereas, the SDE desires to engage the Contractor to perform certain services, pursuant to the terms and conditions stated in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein contained, the parties agree as follows:

1. Services to be rendered. The SDE desires that the Contractor perform, and the Contractor agrees to perform, in addition to any other work as may be directed by the SDE, the following: in an effort to provide consistency of service across the state, assure compliance to both state and federal law, including Idaho Code, IDAPA, and IDEA, and provide feedback for professional growth to Hearing Officers in a cost effective manner, the Contractor shall serve as the Lead Hearing Officer (LHO) for the SDE Office of Dispute Resolution (ODR). The LHO will provide the following support services as determined by the Hearing Officer of record and the LHO:

- The LHO will offer support in preparing for hearings, conducting prehearing conferences, narrowing issues, determining best practices, and conducting efficient and effective hearings.
- The LHO will identify resources for independently researching issues and identifying training needs.
- The LHO will review decisions in terms of the use of record and the findings of fact, as well as the relationship of the decision to the remedy sought by the requesting party. In this role, the LHO may attend hearings, scheduling conferences and consult with the hearing officer as appropriate.
- The LHO will not serve in any capacity that suggests decision-making authority in a hearing where the LHO is not the hearing officer as assigned by SDE.
- The LHO must disclose any potential conflicts and will recuse himself of LHO responsibilities when appropriate.
- The LHO will work directly with the SDE Dispute Resolution Coordinator to identify training opportunities and create processes for improving Hearing Officer practices, and perform other LHO related services as negotiated with the SDE.

2. Terms of payment. SDE shall pay the Contractor pursuant to this Agreement a total sum not to exceed \$18,000.00 at the rate of \$110.00 per hour for services, \$35.00 per hour for travel time, and \$35.00 per hour for attendance at training meetings required by the SDE. The Contractor shall also be reimbursed for travel expenses which shall include reasonable airfare, transportation, lodging, and meals at the state per diem rate. In order to be paid, Contractor shall submit an invoice within 15 days of the close of the case. Contractor shall submit with each invoice the work performed, documentation of reimbursable expenses as allowed by this contract, along with an itemized description of services rendered. Payment shall be made within a reasonable time after the Contractor's invoice has been received and approved by the SDE. Payment shall be made from index 4013.

3. Contractor's performance. All work done by the Contractor shall be of the highest professional standard and shall be performed to the SDE's reasonable satisfaction. The detailed manner and method of performing the work is under the control of Contractor, with the SDE being interested only in the results obtained. The SDE and Contractor agree that the Contractor is a "Contractor" as defined by law as to all work performed under this Agreement.

4. Contractor's status. The Contractor's status under this Agreement shall be that of an Independent Contractor, and not that of an agent or employee. The Contractor shall be responsible for paying all employment-related taxes and benefits, such as federal and state income tax withholding, social security contributions, worker's compensation and unemployment insurance premiums, health and life insurance premiums, pension contributions and similar items. The Contractor shall indemnify the SDE and State of Idaho and hold them harmless from any and all claims for taxes (including, but not limited to, social security taxes), penalties, attorney's fees and costs that may be made or assessed against the SDE or State of Idaho arising out of the Contractor's failure to pay such taxes, fees or contributions. The Contractor warrants and represents that the Contractor has complied and will comply with all federal, state and local laws regarding business permits and licenses that may be required for the Contractor to perform the work as set forth in this Agreement.

5. Reimbursement of expenses. SDE shall not be liable to the Contractor for any expenses paid or incurred by the Contractor unless otherwise agreed to in writing by the SDE.

6. Equipment, tools, materials, or supplies. The Contractor shall supply all equipment, tools, materials or supplies to accomplish the work to be performed at the Contractor's sole expense.

7. Fringe benefits. Because the Contractor is engaged in a contracting business, the Contractor is not eligible for, nor entitled to, and shall not participate in, any of the SDE's or the State of Idaho's pension, health or other fringe benefit plans.

8. Indemnification. The Contractor agrees to indemnify and hold harmless the State of Idaho, as well as the SDE, its successors and assigns, from and against any and all loss, damage, cost, or expense, including attorneys' fees, by reason of the Contractor's acts or omissions in the performance of services under this Agreement.

9. SDE not responsible for worker's compensation. Because the Contractor is engaged in a contracting business and is not an employee of the SDE, SDE will not obtain worker's compensation insurance for the Contractor or the Contractor's employees. The Contractor agrees to obtain worker's compensation coverage as required by law for the Contractor and the Contractor's employees and to furnish a copy of the Contractor's certificate of worker's compensation insurance to the SDE upon the SDE's demand.

10. Term of agreement. This Agreement's term shall begin on [August 1, 2012], and shall remain in force until [July 31, 2013], or until terminated by the SDE, whichever occurs first. The SDE may terminate this Agreement at any time with or without cause upon ten (10) days of notice to Contractor, specifying the date of termination. Upon termination pursuant to this section, all obligations of the parties shall cease and the Contractor will be entitled to a pro rata payment for all work accomplished and accepted by the SDE.

11. Effect of termination. Upon termination by the SDE, the Contractor shall: (a) promptly discontinue all work, unless the termination notice directs otherwise; (b) promptly return to the SDE any property provided by the SDE pursuant to this Agreement; and (c) deliver or otherwise make available to the SDE all data, reports, estimates, summaries and such other information and materials as may have been prepared or accumulated by the Contractor in performing this Agreement, whether completed or in process. Upon termination by the SDE, the SDE may take over the work and may award another party a contract to complete the work contemplated by this Agreement. Notwithstanding a termination, the Contractor's obligations, if any, to provide follow-up services on work currently in progress shall remain in effect until such services are completed.

12. Notices. Any notice given in connection with the Agreement shall be given in writing and shall be delivered either by hand to the other party or by certified mail, return receipt requested, to the other party at the other party's address. Either party may change its address by giving notice of the change in accordance with this paragraph.

13. No authority to bind SDE. The Contractor has no authority to enter into contracts or agreements on behalf of the SDE. This Agreement does not create a partnership between the parties and nothing contained in this Agreement shall be interpreted to create an employer-employee, master-servant, or principal-agent relationship between the SDE and Contractor in any respect.

14. Confidentiality. Any and all reports, analyses and data, whether statistical or otherwise, transmitted to the SDE by Contractor shall become the property of the SDE for such uses as it shall deem appropriate and shall not be disclosed to any person without prior written consent of the SDE. In addition, except as may be required by applicable law or in any governmental or judicial proceeding or inquiry, and then only upon timely notice to the SDE, Contractor shall maintain strict confidence with respect to the SDE and all of its services under this Agreement. The SDE may require that Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. This obligation shall survive termination of this Agreement.

15. Public records. Pursuant to Idaho Code section 9-335 et seq., information or documents received from the Contractor may be open to public inspection and copying unless exempt from disclosure. The Contractor shall clearly designate individual documents as "exempt" and shall

indicate the basis for such exemption. The Contractor agrees to indemnify and defend the SDE for honoring such a designation. The failure to designate any document that is released by the SDE shall constitute a complete waiver of any and all claims for damages caused by any such release. If a Public Records Law request is made for materials claimed exempt, the Contractor claiming the exemption shall provide the legal defense for such claim.

16. Records and audits.

(a) The Contractor shall maintain a complete file of all records, documents, communications and other written materials that pertain to the delivery of goods or services under this Agreement and shall maintain such records for a period of three (3) years after termination of this Agreement or final payment, whichever is later, or for such further period as may be necessary to resolve any matters that may be pending.

(b) The Contractor shall permit the SDE or any duly authorized agent of the SDE, the Comptroller General and/or the Inspector General of any federal agency to audit, inspect, examine, excerpt, copy or transcribe the Contractor's records during the term of this Agreement and for a period of three (3) years following termination of this Agreement or final payment, whichever is later, to assure compliance with the terms of this Agreement or to evaluate Contractor's performance under this Agreement. The Contractor shall also permit the SDE, the Comptroller General and/or the Inspector General of any federal agency or its agent to monitor all activities conducted by it pursuant to this Agreement. As the monitoring agency may determine in its sole discretion, such monitoring may include internal evaluation procedures, examination of data, special analyses, on-site checks or other reasonable procedures. 34 CFR Part 80

17. Assignment. The Contractor may not assign this Agreement without the prior written permission of the SDE.

18. Waiver. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

19. Modification. No change, modification, or waiver of any term of this Agreement shall be valid unless it is in writing and signed by both the SDE and the Contractor.

20. Entire agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between the SDE and the Contractor. This Agreement may not be modified without the written consent of the Parties.

21. Attorneys' fees. In the event a lawsuit of any kind is instituted under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party shall be awarded such additional sums as the court may adjudge for reasonable attorneys' fees and to pay all costs and disbursements incurred therein.

22. Applicable law. This Agreement shall be governed by, construed, and enforced in accordance with, the laws of Idaho without regard to its conflicts of law principles.

23. Legal compliance. The Contractor agrees to comply with all applicable requirements of federal and state statutes, rules, and regulations.

24. Sufficient funding. The source of funding for this Agreement is federal funds. It is understood and agreed that the SDE is a governmental entity, and this Agreement shall in no way or manner be construed so as to bind the SDE or the State of Idaho beyond the term any particular appropriation of funds or award of funds by the United States Congress or the United States Department of Education [as may exist from time to time, or beyond the term of any particular approval of spending authority of federal funds by the Legislature of the Executive Department of the State of Idaho as may exist from time to time. The SDE reserves the right to terminate this Agreement if, in its sole judgment, the United States Congress or the United States Department of Education [withdraws or freezes the SDE's federal funding or fails, neglects, or refuses to appropriate or to provided sufficient funds as may be required for the Department to continue payments under this Agreement, or the Legislature or the Executive Department withdraws or freezes the SDE's spending authority regarding the federal funds required for the SDE to continue payments under this Agreement. Any such termination shall take effect on thirty (30) days written notice to the Contractor. In the event of such a termination, the Contractor shall be paid pro rata for all work accomplished and accepted by the SDE.

25. Officials, agents and employees of SDE not personally liable. The Parties agree that in no event shall any official, officer, employee or agent of the SDE or State of Idaho be in any way liable or responsible for any covenant or agreement, whether expressed or implied, nor for any statement, representation or warranty made in or in connection with this Agreement. In particular, and without limitation of the foregoing, no full-time or part-time agent or employee of the SDE shall have any personal liability or responsibility under this Agreement, and the sole responsibility and liability for the performance of this Agreement and all of the provisions and covenants contained in this Agreement shall rest in and be vested with the State of Idaho.

26. Force Majeure. Neither party to this Agreement shall be liable for or deemed to be in default for any delay or failure to perform under this Agreement if such delay or failure to perform results from act of God, civil or military authority, act of war, riot, insurrection or other occurrence beyond that party's control. In such case, the intervening cause must not be caused by the party asserting it and the excused party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

27. Headings. The headings have been inserted for convenience solely and are not to be considered when interpreting the provisions of this Agreement.

28. Criminal Background Check. This Agreement is contingent upon Contractor, its employees, agents or representatives, that may come into contact with Idaho public school children when performing any duty required by this contract, submit to a criminal background check. Contractor, its employees, agents or representative shall bear the cost of the criminal background check. Said criminal background check results shall be submitted to the SDE prior to performance of this contract. Failure of the Contractor, its employees, agents or representatives to submit to a criminal background or failure to pass a criminal background check shall constitute a material

breach of the Agreement and the SDE reserves the right to terminate this contract without incurring any liability for payment to Contractor.

29. Whistleblower Protection. Pursuant to Section 1533 of the Act, an employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate for misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

- (1) gross mismanagement of an agency contract or grant relating to covered funds;
- (2) a gross waste of covered funds;
- (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (4) an abuse of authority related to the implementation or use of covered funds; or
- (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

30. Kickbacks. Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this agreement. If the Contractor breaches or violates this warranty, Agency may, at its discretion, terminate this agreement without liability to Agency, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

31. Suspension and Debarment. By signing this agreement, the 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 nor from federal financial or non-financial assistance, nor are any of the participants involved in the execution of this agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension) and 34 CFR Part 85, or are on the disbarred vendors list at www.epls.gov. Further, the Contractor agrees to notify Agency by certified mail should it or any of its agents become debarred, suspended, or voluntarily excluded during the term of this agreement.

32. Nondiscrimination. The Contractor shall comply with the Civil Rights Act of 1964, the Americans With Disabilities Act (ADA), 42 U.S.C. ' 12101, et seq., and the Age Discrimination Act of 1975 and/or any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this agreement.

33. Limitations on Lobbying Activities. By signing this agreement, the Contractor certifies and agrees that, in accordance with 34 CFR Part 82, payments made from a federal grant shall not be utilized by the Contractor or its subcontractors in connection with lobbying Congressmen, or any other federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.

34. Assumption of Risk. The Contractor shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to its failure to comply with state or federal requirements. The Agency shall notify the Contractor of any state or federal determination of noncompliance.

35. Publicity. Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Contractor and related to the services and work to be performed under this agreement, shall identify [the SDE] as the sponsoring agency and shall not be released without prior written approval of the SDE.

36. Applicable Standards. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

37. Copyright License and Patent Rights. The Contractor acknowledges in 34 CFR Part 80 that U.S. Department of Education, the State of Idaho, and the SDE reserve a royalty-free, non-exclusive, unlimited, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal and state government purposes: (1) the copyright in any work developed under this agreement; and (2) any rights of copyright to which the Contractor purchases ownership using funds awarded under this agreement. The Contractor must consult with the SDE regarding any patent rights that arise from, or are purchased with, funds awarded under this agreement.

38. Human Trafficking. As required by 22 U.S.C. 7104(g) and 2 C.F.R. Part 175, this agreement may be terminated without penalty if a private entity that receives funds under this agreement: (a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect; (b) Procures a commercial sex act during the period of time that the agreement is in effect; or (c) Uses forced labor in the performance of the agreement.

39. Equal Employment Opportunity. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

40. Reporting. Notice of awarding agency requirements and regulations pertaining to reporting 34 CFR Part 80.

41. Data Rights. The Contractor grants to the SDE the right to use data created in the performance of this Agreement solely for the purpose of and only to the extent required to meet the SDE's obligations to the Federal Government under its Prime Award.

42. Compliance with Statutes, Regulations, and Applications. The contractor shall comply with applicable Federal and state statutes, regulations, and shall use Federal funds in accordance with those statutes, regulations, and federal program specific requirements.

43. Prohibition of Text Messaging and Emailing While Driving. Federal grant recipients, sub recipients and their grant personnel are prohibited from text messaging while driving a government owned vehicle during official grant business or from using government supplied electronic equipment to text or email when driving. Recipients must comply with these conditions under Executive Order 13513, October 1, 2009.

44. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

State Department of Education
650 West State Street
P.O. Box 83720
Boise, ID 83720-0027

By: _____
Title: Superintendent or Chief of Staff
Date: _____

Contractor

Contractor Signature _____
Contractor Tax ID No.: _____
Contractor Address: _____
Date of Signature: _____

Revised 4/2011