

STATE OF COLORADO
Colorado Department of Education
Contract with Amplify Education, Inc.

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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 or State, and Amplify Education, Inc., 55 Washington Street, Suite 900, Brooklyn, NY 11201-1071, 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

Authority to enter into this Contract exists in the School Finance Act, Section 22-2-141, C.R.S and the READ Act, Sections 22-7-1201 through 22-7-1213, C.R.S. 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.

C. Purpose

The purpose of this contract is to implement the use of an early literacy assessment tool that teachers may use to conduct real-time assessments of the reading skill levels of students enrolled in kindergarten through third grades and, based on the assessment results generate intervention plans and materials.

D. References

All references in this Contract to sections, subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

IV. DEFINITIONS

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

“BURST” – means a diagnostic measurement of student skills in areas not covered deeply enough by the DIBELS portion of mCLASS. The measure is comprised of three brief, individually administered assessments: Decoding (DEC); Vocabulary (VOC); and Comprehension (CS).

“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.

“Diagnostic Assessment” means a Colorado State Board of Education approved assessment which schools are required to use for students identified through Screening as possibly having a significant reading deficiency so as to pinpoint a student’s specific area(s) of weakness and provide in-depth information about students’ skills and instructional needs.

“Early Literacy Assessment Tool” means the Early Literacy Assessment Tool required by C.R.S. Section 22-2-141, that allows teachers to obtain real-time assessments of the reading skill levels of students enrolled in kindergarten and first, second, and third grades and based on the assessment results, generate intervention plans and materials. For purposes of this Agreement, the products set forth in Section VII.A.2 herein shall comprise the Early Literacy Assessment Tool.

“Exhibits and other Attachments” means Exhibit A, the School Finance Act and the READ Act, attached hereto and incorporated herein by reference, Exhibit B, List of Devices and Browsers, Exhibit C, Fee and Payment Schedule, and Exhibit D, Contractor’s Security Measures.

"Evidence based" means the instruction or item described is based on reliable, trustworthy, and valid evidence and has demonstrated a record of success in adequately increasing students' reading competency in the areas of phonemic awareness, phonics, vocabulary development, reading fluency, including oral skills, and reading comprehension.

“Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the “Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in Section VI below.

"Interim Assessment" means an assessment that occurs multiple times throughout the academic year through which teachers can determine strengths and weaknesses of students that otherwise may have gone unnoticed and which support teachers in making instructional decisions.

"Local Education Agency (LEA) or Local Education Provider" means a school district or a charter school that enrolls students in kindergarten and first, second, and third grades, and/or a public school operated by a board of cooperative services that enrolls students in kindergarten and first, second, and third grades.

“mCLASS DIBELS Next Assessment” means a set of brief, standardized, individually administered measures of early literacy designed to predict the literacy growth of students from kindergarten through sixth grade. The measures address the key domains: phonological awareness, graphophonemic knowledge, word reading, oral reading accuracy, and comprehension of text.

“mCLASS®:IDEL Assessment” means the Spanish-language equivalent of DIBELS. The IDEL measures, delivered on a mobile computing device as mCLASS:IDEL, are research-based screening and progress monitoring tools, like the DIBELS measures.

“mCLASS®” means a mobile technology system including HTML 5-based reporting that runs on mobile computing devices (no internet connection required for administration); and online aggregation, analysis and reporting software.

“mCLASS Now What Tools” means tools within the software to translate class- and student-level reports into individualized instruction for each student, including the item level advisor, the small group advisor and the home connect tool.

“Party” means the State or Contractor and “Parties” means both the State and Contractor.

“Program management team” means the key Contractor personnel including an executive sponsor, program team advisor, program manager, and program coordinator.

“Progress Monitoring” means an assessment used to determine whether students are making adequate progress and to determine whether instruction needs to be adjusted.

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

“Scientifically based” means that the instruction or item described is based on research that applies rigorous, systematic, and objective procedures to obtain valid knowledge that is relevant to reading development, reading instruction, and reading difficulties.

“Screening” means an assessment that provides a quick sample of critical reading skills that will inform the teacher if the student is on track for grade level reading proficiency by the end of the school year. A screening assessment is a first alert that a student may need extra help to make adequate progress in reading during the year.

“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.

“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 May 27, 2013. This Contract shall terminate on June 30, 2014, 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 four 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 five years.

VI. BACKGROUND

Section 22-7-1204, C.R.S. requires each local education provider that enrolls students in kindergarten or first, second or third grade to provide to the students enrolled in those grades the instructional programming and services necessary to ensure to the greatest extent possible that students as they progress through kindergarten, first, second and third grade, develop the necessary reading skills to enable them to master the academic standards and expectations applicable to the fourth grade-grade curriculum and beyond.

Section 22-7-1205 (1) (a), C.R.S., requires each local education provider that enrolls students in kindergarten or first, second or third grade to ensure that teachers measure each student's reading competency using interim reading assessments and throughout the year in subsequent school years. A local education provider may also administer a summative assessment to measure students' reading competency at the conclusion of kindergarten, first and second grades. Each local education provider must select from the list of approved assessments adopted by rule of the Colorado State Board of Education pursuant to Section 22-7-1209, C.R.S. those assessments it shall use to measure a student's reading competency. A local education provider may choose to use other reading assessments in addition to but not in lieu of the approved assessments.

Section 22-7-1205 (1) (b), C.R.S. states that if a teacher finds, based on a student's score on the approved reading assessments, that the student may have a significant reading deficiency, the teacher shall administer to the student one or more diagnostic assessments to determine the

student's specific reading skill deficient. Each local education provider must select from the list of approved assessments adopted by rule of the Colorado State Board of Education pursuant to Section 22-7-1209 those assessments it shall use to determine a student's specific reading skill deficiencies. A local education provider may choose to use other diagnostic reading assessments in addition to but not in lieu of the approved assessments.

Section 22-2-141, C.R.S. requires CDE to implement an Early Literacy Assessment Tool that teachers may use to conduct real-time assessments of the reading skill levels of students enrolled in kindergarten and first, second, and third grades (K-3) and, based on the assessment results, generate intervention plans and materials. The Bill requires CDE to contract for the purchase software that at a minimum provides individualized assessments with immediate results; stores and analyzes assessments results, recommends activities that are aligned with the assessment results, and assists in tracking student performance and identifying strategies to improve student performance; provides student grouping recommendations based on the assessment scores and provides proposed lesson plans on a short-term cycle; and assists in generating and populating individualized plans to improve students' reading skills. The Bill further requires CDE to contract for training in using the software for teachers or other personnel selected by each local education provider.

Section 22-2-141(3)(a), C.R.S. states that CDE shall notify the local education providers and provide information explaining the software licenses purchased; the availability of training in the use of the software including dates, times, and locations; and the procedures and timelines by which each local education provider may apply to receive the software licenses and training to implement the early literacy assessment tool.

Section 22-2-141(3)(b), C.R.S. states that based on the level of available appropriations, CDE shall select the local education providers who will receive the early literacy assessment tool, including the training, from among those that apply. In selecting among the applicants, CDE must select local education providers from various regions of the state and of varying student population size; give preference to local education providers with the highest percentages of kindergarten and first, second, and third-grade students who are below grade level expectations in reading; and give preference to local education providers with the highest percentages of schools that are eligible to receive moneys under Title I of the federal "Elementary and Secondary Education Act of 1965", 20 U.S.C. sec. 6301 *et seq.*

Consistent with these statutory requirements, CDE selected Contractor pursuant to Request for Proposal, RFP--ER-CDE-13-004, to implement the Early Literacy Assessment Tool project.

VII. STATEMENT OF WORK

A. Contractor shall provide:

1. A detailed project plan including project deliverable timelines and training schedules, as well as outcomes, benchmarks and defined goals for training and reporting. The plan will be reviewed and approved by CDE. All changes on the timelines or project schedules must be communicated to and approved by the appropriate personnel at CDE.

2. mCLASS: DIBELS Next, mCLASS:IDEL and BURST assessment tools and associated mCLASS Now What? Tools (collectively, the “Early Literacy Assessment Tool” or the “Products”). The Early Literacy Assessment Tool includes an approach that incorporates phonemic awareness (including phonological awareness), phonics, oral reading fluency, vocabulary (including oral language), and comprehension for all students in grades K-3.
 3. Training and technical support for each participating district that includes administering Screening, Diagnostic, and Progress Monitoring assessments as well as the use of data associated with these assessments in the delivery of instruction.
 4. A sufficient number of licenses for each kindergarten through third (K-3) grade students whose school districts opt in to the Early Literacy Assessment Tool program for use in school districts / local education providers to be selected by CDE pursuant to Section 22-2-141(3)(b), C.R.S. The number of licenses shall be calculated based on CDE provided K-3 student enrollment numbers for school districts which opt in to the program. For the avoidance of doubt, only K-3 students of school districts participating in the Early Literacy Assessment Tool Program will be licensed (Licensed Students).
- B. The Contractor shall facilitate a kick-off meeting to demonstrate the assessment system's features using a wide range of supported hardware to inform schools, districts, and CDE of all system features. The Contractor shall be responsible for all costs related to this event.
- C. The Early Literacy Assessment Tools and associated technical services shall meet the following requirements:
1. Be aligned with CDE’s policy to promote individualized Screening, Diagnostic, and Progress Monitoring in grades K-3 and be aligned to the reading assessment requirements set forth in Sections 22-7-1203 and 22-7-1205, C.R.S. See Exhibit A, portions of the School Finance Act and the entire READ Act, attached hereto and incorporated herein by reference.
 2. Be aligned to the Colorado Academic Standards for reading, writing and communicating in K-3.
 - a. Each of the following components of reading must be a part of the assessment system. The assessments should be sensitive to the change in instructional focus that occurs as students move from kindergarten through grade 3.
 - 1) Phonemic Awareness (including phonological awareness).
 - 2) Phonics.
 - 3) Fluency.

- 4) Vocabulary.
 - 5) Comprehension.
- b. Assessment components shall include Screening, Diagnostic and Interim assessments in reading which will enable teachers to use individualized assessment results to develop lessons for instruction that are focused on the attainment of skills and concepts necessary for grade level reading competency. These assessments must assist the teacher in identifying specific needs for individual students in their reading development.
- c. The assessment system shall host a data analysis component for the Early Literacy Assessment Tool.
- 1) The data analysis component shall generate electronic information immediately and produce individualized student progress reports, class summaries and class groupings for instruction.
 - 2) These reports shall be able to be generated by the individual teacher, administrators and designated supervisors through a secured password system.
 - 3) This system shall:
 - a) Produce electronic printable reports for parents and administrators.
 - b) Include the capability for principals to monitor usage by the teachers.
 - c) Include the ability to extract 'raw' data in a format that is readable by other systems and usable for authorized research purposes.
 - d) Be hosted in a highly available industry standard data center. The data analysis component shall be available to users 7:00 a.m. - 5:00 p.m. Monday through Friday Mountain Time Zone.
 - (i) Ninety percent (90%) of user requests will be served within 7 seconds from receipt of the report request.
 - (ii) Downtime means unavailability of the software's synching capability, measured over a business day between 7 AM and 5 PM Mountain time, excluding

- (a) pre-scheduled periods of downtime for maintenance; (b) periods of downtime for emergencies resulting from circumstances beyond Contractor's reasonable control; and (c) lack of system responsiveness pursuant to which less than four percent of requested pages return errors to end users.
 - (iii) Contractor shall ensure that Downtime does not exceed five percent over the course of a calendar year.
 - (iv) Scheduled maintenance of the system shall occur outside of business hours, 7:00 AM to 5:00 PM Monday through Friday, Mountain time zone.
 - (v) Emergency maintenance activities shall be performed outside of business hours, 7:00 AM to 5:00 PM Monday through Friday, Mountain time zone.
 - (vi) Data uploaded to the data analysis component shall be backed-up at least daily. In the event the servers that house the data fail, back-up servers should be available and data restored within two hours.
- 3. Provide individualized assessments with immediate results.
- 4. Store and analyze assessment results, recommend instructional activities that are aligned with the assessment results, and assist in tracking student performance and identifying strategies to improve student performance.
- 5. Provide student grouping recommendations based on the assessment scores and provide proposed lesson plans on a short-term cycle. Lesson plans shall be explicit and systematic, aligned to Colorado's Literacy Framework and CDE's Strategic Literacy Plan and shall seek to move students toward mastery of the Colorado Academic Standards.
- 6. Assist in generating and populating individualized student plans (i.e., READ plans pursuant to Section 22-7-1205, C.R.S., inclusive of Individual Education Plans, Individual School Readiness Plans, and/or Response to Intervention plans) to improve students' reading skills.
- 7. Assess reading competency levels of native Spanish speakers in grades K-3.

8. Be compatible with the devices and browsers as indicated on Exhibit B, attached hereto and incorporated herein by referenced. Updates to Exhibit B must be submitted to and approved by CDE
9. Include technical specifications for the 2013-2014 school year for all hardware necessary for a school to implement the assessment system, and a plan for how technical specifications will be updated annually to ensure maximum compatibility within Colorado's current and foreseeable public education technology environment, including broadband specifications or other network technology dependencies such as Wi-Fi access.
10. Be compatible with and respond to advances in technology which may impact its implementation or effectiveness.
11. Be able to be administered using mobile technology software.
 - a. To reduce the time needed to administer paper and pencil assessments, analyze data, group students and plan instruction, the assessments shall be available on mobile technology devices.
 - b. Once downloaded, the device shall have the capability to operate in a stand-alone mode if the internet connection is lost.
 - c. The device shall support stylus or multi-touch input for both selection and text (that is it cannot require a keyboard).
 - d. Once the assessments are completed and uploaded to the data analysis component, all teacher data and reports shall be available for immediate viewing and printing. Aggregate data reports shall be available the following business day due to the need for overnight processing.
 - e. All appropriate teachers, coaches, principals, and district staff must be able to access student data online. Permissions must be able to be established at the state and local level, including whether a teacher can access another teacher's data, or is restricted to access to her class's data only.
 - f. Student and classroom-level data must be immediately available for all stakeholders in the student's learning immediately upon upload and synchronization, with the exception of aggregate data reports. Such aggregate data reports shall be available the following business day due to the need for overnight processing.
 - g. The mCLASS system shall have the following components:
 - 1) HTML 5-based assessment administration that runs on mobile computing devices (no internet connection required for administration); and

- 2) Online aggregation, analysis, and reporting software.

D. Training and Technical Support

1. The Contractor in conjunction with CDE shall develop training and technical support for each participating district that includes administering, screening, diagnostic, and progress monitoring assessments.
2. The Contractor is responsible for ensuring all trainings are Americans with Disabilities Act of 1990 (ADA) compliant. All costs for compliance will be incurred by the Contractor.
3. The Contractor and CDE shall organize ongoing support and professional development that shall be offered to participating districts in effectively using the assessment tool throughout the life of the Contract.
4. CDE may use Dynamic Measurement Group as a consultant / co-trainer in any training deemed necessary by the Office of Literacy at CDE at CDE's cost.
5. The Contractor in conjunction with CDE shall provide a plan for how training and technical support will be provided to all participating Colorado districts.
 - a. The training and support plan must include the following components:
 - 1) A description of the training that will be provided to K-3 teachers, administrators and other users of the Early Literacy Assessment Tool working in participating schools.
 - 2) A description of training materials and relevant professional development deliverables for all aspects of the assessment system, including a complete set of training materials two weeks ahead of any training.
6. Contractor shall provide the training and professional development services as follows, for the period of May 27, 2013 to June 30, 2014.
 - a. A complete set of training materials for each participant.
 - b. A sufficient number of two-day product training sessions to accommodate two participants per school with a maximum of 25 participants per session.
 - c. A sufficient number of "Taking Action w Data (BM focus)" one-day sessions to accommodate two participants per school with a maximum of 25 participants per session.
 - d. A sufficient number of one-day "Principal/LEA and Local Trainer Going Deeper with Data" sessions to accommodate each school principal and one

LEA member in addition to the two local trainers from each participating school.

- e. A “Progress Monitoring” webinar which will be recorded and presented to CDE for posting on a CDE hosted website.
 - f. A “Now What Tools” webinar which will be recorded and presented to CDE for posting on a CDE hosted website.
 - g. Two “check-in and preparation for next round of assessment” webinars which will be recorded and provided to CDE for posting on a CDE hosted website.
 - h. A “Parent Communication” webinar which will be recorded and presented to CDE for posting on a CDE hosted website.
 - i. An “introduction to the project and product” webinar for principals and LEA leaders which will be recorded and provided to CDE for posting on a CDE hosted website.
 - j. A sufficient number of school onsite support and fidelity visits to accommodate 20% of schools, up to 200 in total.
 - k. A “Master Trainer program” to build state capacity for 25 participants.
7. Contractor shall provide hybrid training. Concurrent to the year one training, selected master trainers shall be trained and complete several training sessions and assignments for certification in the assessment system pursuant to the requirements of the Contractor. Once the cadre of master trainers are certified they will be responsible for training the local trainers and providing ongoing support to districts and schools.

E. Reports

- 1. Contractor shall provide annual reports to CDE to report to the legislature pursuant to C.R.S. 22-7-1213 including:
 - a. The percentage of students enrolled in kindergarten, first, second, and third grades throughout the state that are receiving services using the Early Literacy Assessment Tool. This information shall be compiled by CDE.
 - b. A list of the districts that have received the Early Literacy Assessment Tool. This information shall be compiled by CDE.
 - c. The improvements, if any, in the reading skill levels of students who received or are receiving services using the Early Literacy Assessment Tool.

- d. The annual cost of purchasing an adequate number of software licenses to enable the local education providers in Colorado to use the Early Literacy Assessment Tool in all of the kindergarten, first, second, and third grades across the state.
 2. Monthly project implementation progress reports.
- F. Contractor shall ensure that all materials, practices and procedures developed under this Contract meet relevant professional standards such as those contained in the Standards for Educational and Psychological Testing published by The American Education Research Association (1999 or most current version), particularly in terms of privacy, reliability, validity, opportunity to learn, accommodations, scoring, reporting, and documentation.
- G. Data Ownership
1. CDE and its districts are the designated owners of all student assessment data collected within the Early Literacy Assessment Tool.
 2. The Contractor shall not have ownership of CDE's and the district's data at any time.
- H. Allowable Accommodations
1. Upon execution of the contract, the Contractor shall provide a list of allowable assessment accommodations that do not invalidate test scores and alternate assessments provided for students with disabilities and English Language Learners (ELLs).
 2. Accommodated Procedures

Upon execution of the contract, the contractor must provide a draft list of appropriate assessment accommodations separately for students with disabilities and ELLS. Accommodations listed must be supported by the most current research. The list shall describe the test accommodations and supports that allow access for students with disabilities and English learners to most fully participate in each assessment without interfering with the measurement of the constructs. Contractor shall also discuss accommodations which would threaten the validity of the assessment by interfering with the construct being measured.
- I. State and Federal Requirements
1. The Contractor shall ensure that all materials, processes and procedures developed under this contract meet relevant State and Federal Legal requirements, including requirements under the Elementary and Secondary Education Act (ESEA) and peer review, as well as the Individuals with Disabilities Education Act (IDEA).

2. Throughout the life of the Contract, and any extensions, the Contractor shall communicate to CDE when it concludes that the program is no longer meeting State and Federal requirements and shall provide corrective options to the State for consideration.

J. Communication

1. The Contractor shall assist CDE in explaining to the media, the public, stakeholders, the court, and/or other applicable entities why the tests are valid and reliable assessments that are appropriate for their intended purpose.

K. Security

1. Contractor shall comply with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; 34 C.F.R. Part 99, state and industry standard security policies, including the provision of confidentiality agreements for all Contractor staff and educators participating in any aspect of this project.
2. Data and assessments shall be kept secure when transmitted to and from the mobile devices.
3. The security measures employed by Contractor's hosting facility to keep data secure are attached hereto as Exhibit D.
4. The Early Literacy Assessment Tool application shall include the following security measures:
 - a. The login process and all subsequent interactions occur exclusively over SSL using 128-bit encryption.
 - b. An account lockout function shall be triggered after a certain number of failed logins; locked accounts can only be re-enabled by Wireless Generation support staff.
 - c. Contractor shall hire an external computer security company to annually review the security configurations of production systems and the security of source code to identify and resolve potential vulnerabilities.
5. Local Education Providers shall manage account access to their data through an administrative interface allowing them to add or remove individual staff members.
6. The Contractor shall at all times maintain network system and application security that, at minimum, substantially conform to the following:
 - a. The "Policy" sections of each P-CISP 1 through 19 of the State of Colorado Cyber Security Policies as found at: <http://www.colorado.gov/cybersecurity>

- b. Current cyber security standards set forth and maintained by the Center for Internet Security, which can be found at: <http://www.cisecurity.org>
- 7. Upon CDE's request, Contractor will provide attestations of annual application security reviews and vulnerability assessments by independent third parties.

L. Personnel

- 1. Mr. Eric Howey will provide executive support for this project. This executive team member shall be available both during and outside of normal business hours to assist with any urgent situations. Changes to the assigned executive team member, except for those resulting from separation of services, require prior written consent by CDE. The replacement shall have qualifications which meet or exceed the original staff member proposed or the staff member holding the position previously and shall be approved by CDE.
- 2. The Contractor shall assign one person to function as the Program Manager. That person must be responsible for all activities required by the project and will serve as the main contact person between the Contractor and CDE. The Program Manager shall have the authority to make decisions and commitments on behalf of the Contractor, subject to CDE approval.
- 3. Contractor's Program Manager is considered key personnel. A change in key personnel may only be made with prior written approval by the State. The Contractor must submit for CDE's approval, a replacement with the educational and relevant experience qualifications that meet or exceed that of the candidate named in this Contract by the Contractor. CDE shall accept or reject the change within ten (10) business days. The number, classification and qualification of key personnel proposed by the Contractor are considered material elements of the performance required of this Contract. Positions may not be eliminated, combined, or shared among other contractual obligations the Contractor may have without prior written approval of CDE.
- 4. All personnel who will work on-site at CDE or school sites may be required to be pre-approved for site access via a criminal background check paid.

M. Program Management and Communication

- 1. The Contractor shall be responsible for program management including training, workshops, timetables, schedules, invoicing, and communication and coordination with each participating school district and CDE.
- 2. The Contractor shall participate in phone conferences accessible by a toll-free dial-in number, effective ongoing and continual communication via e-mails and phone conversations with both participating schools and CDE and monthly reports of contract activity and events.

3. The program management team shall return calls from CDE staff and respond to email messages within 24 hours. If the program manager is not available to take calls and return messages, CDE shall be notified in advance. In the event that a member of the program management team is not available, the Contractor shall notify CDE as to whom to contact in his or her absence, and shall provide contact information for such individual. The Contractor's program manager shall use multiple means to maintain constant and ongoing communications with CDE: email, cell phones, SFTP sites, faxes, conference calls, WebEx conferences, and other means that support the immediacy or urgency of the communications topic, as well as regularly scheduled communications meetings. The Contractor's program manager shall be responsible for ensuring that the appropriate members of the Contractor's team are available for or participate in such communications. The Contractor's program manager and program team shall maintain records of all meetings, minutes, or summaries, including those with subcontractors, and shall make those available to CDE upon request.
4. At a minimum, the Contractor shall schedule weekly conference calls and reports with CDE at a designated time. Program details shall be discussed, including requirements, the schedule, issues, and work updates. As the need arises, other periodic or ongoing conference calls may be conducted. From each conference call, an updated issue log shall be created noting a discussion summary, action items, information needed for program success, dependencies, and key dates from the schedule. The Contractor shall distribute this report to CDE and throughout its company. This report shall be submitted to CDE within two business days of the conclusion of each meeting.
5. The Contractor shall be responsible for the coordination, support, and the Contractor's expense of regular management meetings with CDE's principal consultant for teaching and learning and team. For the Contract period running through June 2014, the Contractor shall hold monthly planning or work sessions to confirm that all baseline and start-up details are being closely monitored and on-track.
6. Contractor shall be responsible for coordination of one meeting per year at Contractor's headquarters in Brooklyn, NY and the expense of the meeting for up to five CDE personnel, provided that CDE certifies that acceptance of such expense coverage will not conflict with or breach any applicable agreement(s), policies, ethics guidelines and/or conflicts of interest rules to which such CDE personnel are bound. The costs associated with the meeting in Brooklyn, NY are built into the remuneration set forth in Section VIII below.
7. The Contractor's project management team shall collaborate with CDE to identify topics for each meeting. The Contractor shall provide a draft agenda for each meeting to CDE for review. The Contractor's program manager shall work with CDE to develop general formatting and content guidelines for the meeting agendas.

8. In addition to the in person meetings, the Contractor shall coordinate management meetings via WebEx or teleconferencing through a toll-free number. The Contractor shall be responsible for providing written documentation for all meetings with special attention given to deliberate decisions, actions required, and personnel needed for follow-up. This documentation shall be submitted to CDE within two days of the conclusion of each meeting.

N. Customer Service

1. Contractor shall provide the following technical support:
 - a. Toll-free telephone access from 7:00 AM through 5:00 PM Mountain Time, year-round.
 - b. The project lead from the CDE Office of Literacy shall be notified a minimum of 48 hours prior to any maintenance and update releases being sent to the participating districts. In cases of emergency, Contractor will exercise best efforts to provide as much advanced notice to CDE as possible.
 - c. Trained customer service representatives who can clearly articulate spoken English.
 - d. When customer service staff is not available to take a call, a voicemail service system must be available to record the caller's message. Messages must be returned in a timely manner, generally within one hour or less but always within one business day.

O. 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.

VIII. PAYMENTS TO CONTRACTOR

A. Maximum Amount

The maximum amount payable under this Contract to Contractor by the State is \$3,000,000 for the period from May 27, 2013 through June 30, 2014, as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract.

- B. The State shall, in accordance with the provisions of this section, pay Contractor in the amounts and using the schedule set forth in Paragraph VIII.C. below:

Total Fees = (number of licensed students) x (per-student cost), as set forth in Exhibit C, attached hereto and incorporated herein by reference.

C. Payment Schedule:

1. June 30, 2013: Contractor may invoice for fifty percent (50%) of Total Fees
2. September 30, 2013: Contractor may invoice for twenty percent (20%) of Total Fees.
3. December 31, 2013: Contractor may invoice for ten percent (10%) of Total Fees.
4. March 31, 2014: Contractor may invoice for ten percent (10%) of Total Fees (performance holdback 1). Payment shall be made based on successful completion of the professional development and support metrics set forth in paragraphs VIII.C.6.a.1)a) and b) below.
5. June 30, 2014: Contractor may invoice for remaining ten percent (10%) of Total Fees (performance holdback 2). Payment shall be made based on successful completion of the metrics set forth in paragraphs VIII.C.6.a.2)a) through d) below
6. Performance Measures
 - a. Pursuant to Section 22-2-141, C.R.S., CDE must include performance measures as conditions affecting the amounts payable under the Contract. Twenty (20%) of the amount payable under the Contract and/or continuation of a contract is contingent upon the quality of the professional development, quality of support as indicated by improving student reading achievement, and implementation of an ongoing, iterative performance improvement cycle as determined by and in partnership with the CDE.
 - 1) Ten percent (10%) of the total Contract amount will be paid in March 2014, based on successful completion of the following professional development and support metrics:
 - a) Five percent (5%) of the total Contract will be paid based on the delivery of an annual project plan, monthly status reports, assessment kit delivery and the implementation of participating schools
 - b) Five percent (5%) of the total Contract will be paid based on delivery of the professional development sessions outlined in Paragraph VII.D.5. above.
 - 2) Ten percent (10%) of the total Contract amount will be paid in June 2014, based on successful completion of the following metrics:
 - a) Four percent (4%) of the total Contract will be paid based on an end of year one (2013-14) customer satisfaction rate of at least seventy five percent (75%) satisfactory rating

from teachers and administrators on a survey developed by CDE and the Contractor.

- b) Four percent (4%) of the total Contract will be paid based on the end of year one (2013-14 school year) schools using the assessment achieving ninety percent (90%) benchmark fidelity as measured by M-class: DIBELS next assessment.
- c) Two percent (2%) of the total Contract will be based on student outcome results, using DIBELS Next End of Year Benchmark 2013-14. Contractor shall achieve a ten percent (10%) reduction in the percentage of students categorized as “high risk” by the DIBELS Next End of the Year Benchmark 2012-13 in matched schools.

D. Provide, Distribute and Collect the Assessment Materials

The cost includes all necessary assessment materials and the delivery to the participating schools and/or districts. Materials will be delivered directly to the participating schools. Respondents are asked to specify the recommended delivery destination and any other options. The delivery of assessment materials must be secure and tracked from the point of origination to the point of delivery.

E. Provide Assessment Administration Manuals and Student Materials

The cost includes assessment administration manuals and student materials needed to perform the assessments. Assessment administration manuals must include directions for administering the assessments and any information necessary to ensure valid administrations. One kit containing administration manuals and student materials will be provided per grade-level for each participating school.

F. Scoring and Reports (Student, Classroom, School, and District)

The cost includes the scoring of the assessments and the on-demand availability of reports at the student, classroom, school, parent and district levels.

G. Technical Report

The cost includes interpretative guides and a technical report for the reading assessments and an interpretative guide (for the score reports) for teachers and principals. Interpretative information for parents located on the individual student score report must be included and specified. The technical report must be accessible to the CDE.

H. All Contractor travel expenses are included.

I. 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. 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.

5. Use of Funds

Contract Funds shall be used only for eligible costs identified herein and/or in the Budget.

IX. 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.

X. CONTRACTOR RECORDS

A. Maintenance

Contractor shall make, keep and maintain 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 (collectively, the Record Retention Period). State may require that Contractor provide attestations of annual security audits and vulnerability assessments by industry-recognized third parties.

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 Product at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work Product fails to conform with the requirements of this Contract, the State may require Contractor promptly to bring the Work Product into conformity with Contract requirements, at Contractor's sole expense. If the Work Product 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 to the State or its principal representative at the address specified herein.

XI. 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

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.

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. CDE acknowledges that, in connection with this Contract, Contractor has provided and will provide to CDE and its Authorized Users certain sensitive and/or proprietary information, including without limitation, software, source code, assessment instruments, research, designs, methods, processes, customer lists, training materials, product documentation, know-how and trade secrets, in whatever form (Confidential Information). CDE agrees (a) not to use Confidential Information for any purpose other than use of the Products in accordance with the license granted hereunder; and (b) to take all steps reasonably necessary to maintain and protect Contractor's Confidential Information. Confidential Information shall not include information which: (i) is as of the time of its disclosure or thereafter becomes publicly available through no fault of the Customer; (ii) is rightfully known to CDE prior to the time of its disclosure; (iii) has been independently developed by CDE without use of the Confidential Information; or (iv) is subsequently learned from a third party not under a confidentiality obligation.

F. Contractor understands and agrees that CDE is subject to federal and local rules relating to the protection of personally identifiable information (PII) of students and parents, including without limitation, the Family Educational Rights and Privacy Act (FERPA). Contractor shall not take any action to cause CDE to be out of compliance with FERPA or other applicable rules relating to PII.

- G. For research and development purposes, whether or not related to performance of the Contract, Contractor may review or share with researchers' non-PII data collected hereunder, including without limitation data that has been de-identified in accordance with FERPA. Notwithstanding the foregoing, Contractor will not use any PII for any purpose other than performance of this Agreement or as otherwise expressly agreed by the parties.

XII. 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.

XIII. INDEMNIFICATION

- A. 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.
- B. Contractor shall indemnify and hold CDE harmless from third party claims against CDE of the nature set forth in this Section XIII, provided that CDE notifies Contractor of such proceeding promptly after CDE receives notice thereof, Contractor has primary control over the defense and settlement of the proceeding, CDE provides such assistance in the defense and settlement of the proceeding as Contractor may reasonably request, and CDE complies with any settlement or court order made in connection with such proceeding.
- C. With respect to infringement, Contractor's obligations under this Section will not apply to any infringement to the extent arising out of:
 - 1. Any use or combination of Contractor products and services with any other products, goods, services or other items furnished by anyone other than Contractor;

2. Any modification or change not made by Contractor;
 3. The use of an infringing version of the products or services when a comparable non-infringing version has been made available to CDE; or
 4. Any software developed to specifications which CDE has supplied or required of Contractor.
- D. In the event that Contractor reasonably believes it will be required to discontinue use of the products and/or services, Contractor will, at its option, either obtain for CDE the right to continue use of the products and/or services, or modify the relevant product and/or service to make it non-infringing. If Contractor is not reasonably able to accomplish the foregoing, Contractor may terminate the license of the infringing product and/or service and refund CDE a pro rata portion of any pre-paid fees CDE paid for such product and/or service.
- E. This section states the entire liability of Contractor with respect to infringement by any Contractor product or resulting from the performance of services by Contractor.

XIV. 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.

- D. Other than as set forth in this Section XIV., the products, services and work product are provided "as is" and without warranty of any kind by Contractor, its parents, subsidiaries, or affiliates (collectively Contractor parties). The Contractor parties expressly disclaim all warranties, express or implied, including without limitation any warranty as to title, non-infringement, merchantability or fitness for a particular purpose or use with respect to the products, services, or work product. CDE assumes responsibility for selecting the products and services to achieve CDE's intended results, and for the installation of, use of, and results obtained from the products and services. Without limiting the foregoing, the Contractor makes no warranty that the products, Services or work product will be error-free or free from interruptions or other failures or that the products, services, and work product will meet CDE's requirements.

XV. 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. 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.

4. 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.

5. 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.

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.

XVI. 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.

XVII. 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 XVI. 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, only pursuant to a good faith need of the State. 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 XVII.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 XVII.A.1.

3. Payments

If this Contract is terminated by the State pursuant to this Section XVII.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.

XVIII. 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:

Pati Montgomery
Executive Director
Department of Education
201 East Colfax, Room 405
Denver, Colorado 80203
montgomery_p@cde.state.co.us
303.866.6016

Contractor:

Laszlo Kopits, General Counsel
Amplify Education, Inc.
55 Washington Street, Suite 900
Brooklyn, NY 11201-1071
lkopits@wgen.net
212.796.2317

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 any time 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. LICENSES

- A. Subject to the terms and conditions of this Contract, and the payment of all fees due to Contractor, Contractor grants to CDE a limited non-exclusive, non-transferable, non-sublicensable license for the term to install and use the Contractor's software and related materials and services (collectively, the product) solely for instructional and administrative use by individual teachers or other personnel employed by CDE (authorized users) at the schools. Individual authorized users' shall agree to the terms of Contractor's standard end user license agreement.
- B. CDE may use and install only that number of copies of the product on the handheld devices, workstations or other platforms. Each authorized user may make or download a reasonable number of copies of the accompanying media, printed materials and/or electronic documentation of the product as necessary for the internal educational use of CDE and its authorized users. CDE shall not: (a) reproduce, distribute, disclose or create derivative works based on the contents of, or sell, the product, or any part thereof; (b) decompose, disassemble or reverse engineer the product or otherwise use the product to develop functionally similar products or services; (c) modify, alter or delete any of the copyright, trademark, or other proprietary notices in or on the product; (d) use the product for the benefit of any third party, including without limitation, in an outsourcing, service bureau or timesharing arrangement; (e) rent, lease or lend the product; (f) port any data from the handheld devices onto another device (except where any authorized user syncs the handheld device to a web-connected workstation in order to generate assessment reports consistent with the terms of this Contract); (g) avoid, circumvent or disable any security device, procedure, protocol or mechanism in the product; or (h) permit any

authorized user or third party to do any of the foregoing. CDE shall notify Contractor of any violation of Contractor's proprietary rights in the product. CDE shall reasonably assist Contractor as necessary to remedy any such violation.

- C. To use the Product, each authorized user must provide certain information, including a user name, password and valid email address. CDE agrees to notify Contractor immediately if it becomes aware of any unauthorized use of its authorized users' passwords and/or accounts. Contractor shall not be responsible for any losses arising out of the unauthorized use of user names, passwords and/or accounts created by or for CDE and its authorized users.
- D. THE PRODUCT IS LICENSED, NOT SOLD. All right, title and interest in and to the product throughout the world, including the look and feel thereof, and all associated intellectual property rights, are and shall remain the sole and exclusive property of Contractor or its third-party licensors. The term "intellectual property rights" means, collectively, rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide, including, without limitation, moral rights and similar rights.

XXII. LIMITATION OF LIABILITY

In no event shall Contractor be liable to CDE or to any authorized user for any indirect, consequential, incidental, special, punitive, reliance or cover damages, including without limitation damages related to lost data, arising out of the use or inability to use the product or the provision of or failure to provide services, even if the Contractor has been advised of the possibility of such damages. Contractor's liability shall be limited in the aggregate to CDE's or any authorized user's direct damages up to the fees paid by CDE to contractor for the affected portion of the product or support services. Under no circumstances shall Contractor be liable for any consequences of any unauthorized use of the product that violates any applicable law or regulation. The limitation of liability described in this paragraph shall not limit Contractor's liability for claims or damages arising out of bodily injury (including death) or damage to tangible property, if such claims or damages arise from Work performed by the Contractor in which risk of such tangible injuries is inherent in the nature of the Work

XXIII. 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. 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. CDE's consent to assignment of this Contract shall not be unreasonably withheld.

B. Binding Effect

Except as otherwise provided in Section XXIII.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.

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. Force Majeure

Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this Contract, "force majeure" means acts of God; acts of the public enemy; acts of the state and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

P. Federal Audit Provisions

Office of Management and Budget (OMB) Circular No. A-133 Audits of States, Local Governments, and Non-Profit Organizations defines audit requirements under the Single Audit Act of 1996 (Public Law 104-156). All state and local governments and non-profit organizations expending \$500,000 or more from all sources (direct or from pass-through entities) are required to comply with the provisions of Circular No. A-133. The Circular also requires pass-through entities to monitor the activities of subrecipients and ensure that subrecipients meet the audit requirements. To identify its pass-through responsibilities, the State of Colorado requires all subrecipients to notify the State when expected or actual expenditures of federal assistance from all sources equal or exceed \$500,000.

Q. 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 C.F.R. 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.

R. 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.

This certification is a material representation of fact upon which reliance was placed when the transaction was made or entered into. Submission of the certification is a requisite for making or entering into transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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:

Amplify Education, Inc.

By: Krista Curran.

Title: VP + GM

*Signature

Date: 5/24/13

STATE OF COLORADO

John W. Hickenlooper, GOVERNOR

Department of Education

Robert Hammond, Commissioner

Robert Hammond
Robert Hammond, Commissioner

Date: 5-28-13

OFFICE OF INFORMATION TECHNOLOGY

Kristen D. Russell, Secretary of Technology and State Chief
Information Officer

By: [Signature]
Signature - Authorized OIT Representative

Date: 5-29-13

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]

Date: 6/3/13

EXHIBIT A

Portions of the School Finance Act, Section 22-2-141, C.R.S. and the Colorado READ Act, Sections 22-7-1201 through 22-7-1213, C.R.S.

TITLE 22. EDUCATION
GENERAL AND ADMINISTRATIVE
ARTICLE 2. DEPARTMENT - COMMISSIONER
PART 1. DEPARTMENT OF EDUCATION - COMMISSIONER

C.R.S. 22-2-141 (2012)

22-2-141. Early literacy assessment tool - request for proposals - software - hardware - training - distribution - legislative declaration

(1) (a) By October 1, 2012, the department shall issue a request for proposals for the purchase of an early literacy assessment tool that teachers may use to obtain real-time assessments of the reading skill levels of students enrolled in kindergarten and first, second, and third grades and, based on the assessment results, generate intervention plans and materials.

(b) At a minimum, the request for proposals shall include the purchase of:

(I) Software that, at a minimum:

(A) Provides individualized assessments with immediate results;

(B) Stores and analyzes assessments results, recommends activities that are aligned with the assessment results, and assists in tracking student performance and identifying strategies to improve student performance;

(C) Provides student grouping recommendations based on the assessment scores and provides proposed lesson plans on a short-term cycle; and

(D) Assists in generating and populating individualized plans to improve students' reading skills; and

(II) Training in using the software for teachers or other personnel selected by each local education provider.

(c) The request for proposals shall include the purchase of a sufficient number of software licenses for each local education provider in the state to use the early literacy assessment tool in all of its kindergarten and first-, second-, and third-grade classes; except that the department may draft the contract to phase in the requirements of this paragraph (c) over multiple budget years based on available appropriations.

(2) The department shall select from among the responses received and enter into a contract for the purchase of software licenses and training no later than March 1, 2013. In negotiating the terms of the contract, the department shall include performance measures, which may include student outcomes, as conditions affecting the amounts payable under the contract.

(3) (a) As soon as practicable after entering into the contract, the department shall notify the local education providers and provide information explaining:

(I) The software licenses purchased;

(II) The availability of training in the use of the software including dates, times, and locations; and

(III) The procedures and timelines by which each local education provider may apply to receive the software licenses and training to implement the early literacy assessment tool.

(b) Based on the level of available appropriations, the department shall select the local education providers who will receive the early literacy assessment tool, including the training, from among those that apply. In selecting among the applicants, the department shall:

(I) Select local education providers from various regions of the state and of varying student population size;

(II) Give preference to local education providers with the highest percentages of kindergarten and first-, second-, and third-grade students who are below grade level expectations in reading; and

(III) Give preference to local education providers with the highest percentages of schools that are eligible to receive moneys under Title I of the federal "Elementary and Secondary Education Act of 1965", 20 U.S.C. sec. 6301 et seq.

(c) A local education provider that is selected to receive the early literacy assessment tool in one budget year is not required to reapply in subsequent budget years. The department shall, to the extent possible within available appropriations, annually increase the number of local education providers that receive the early literacy assessment tool.

(d) The department may choose to provide the early literacy assessment tool only to those schools of a selected school district that are eligible to receive moneys under Title I of the federal "Elementary and Secondary Education Act of 1965", 20 U.S.C. sec. 6301 et seq.

(4) During the 2014 regular legislative session and during the 2016 regular legislative session, the department shall submit to the governor's office, the joint budget committee, and the education committees of the house of representatives and the senate, or any successor committees, a report that includes, but need not be limited to, the following information:

(a) The percentage of students enrolled in kindergarten and first, second, and third grades throughout the state that are receiving services using the early literacy assessment tool;

(b) The local education providers that have received the early literacy assessment tool;

(c) The improvements, if any, in the reading skill levels of students who received or are receiving services using the early literacy assessment tool; and

(d) The amount of appropriations required to purchase an adequate number of software licenses to enable the local education providers in the state to use the early literacy assessment tool in all of the kindergarten and first-, second-, and third-grade classes in the state.

(5) As used in this section, "local education provider" means a school district; a charter school that enrolls students in kindergarten and first, second, and third grades; and a public school operated by a board of cooperative services that enrolls students in kindergarten and first, second, and third grades.

(6) The general assembly finds and declares that, for purposes of [section 17 of article IX of the state constitution](#), purchasing an early literacy assessment tool as described in this section for the use of local education providers is an important element of accountable education reform and may therefore receive funding from the state education fund created in [section 17 \(4\) of article IX of the state constitution](#).

TITLE 22. EDUCATION
GENERAL AND ADMINISTRATIVE
ARTICLE 7. EDUCATIONAL ACCOUNTABILITY
PART 12. COLORADO READ ACT

C.R.S. 22-7-1201 (2012)

22-7-1201. Short title

This part 12 is known and may be cited as the "Colorado Reading to Ensure Academic Development Act" or "Colorado READ Act".

22-7-1202. Legislative declaration

(1) The general assembly finds that:

(a) All students can succeed in school if they have the foundational skills necessary for academic success. While foundational skills go beyond academic skills to include such skills as social competence and self-discipline, they must also include the ability to read, understand, interpret, and apply information.

(b) Colorado has prioritized early learning through its investments in the Colorado preschool program, established in 1988, and full-day kindergarten, and the general assembly recognizes that these investments can best be leveraged by adopting policies that support a continuum of learning from preschool through third grade and beyond;

(c) It is more cost-effective to invest in effective early literacy education rather than to absorb costs for remediation in middle school, high school, and beyond;

(d) A comprehensive approach to early literacy education can improve student achievement, reduce the need for costly special education services, and produce a better educated, more skilled, and more competitive workforce;

(e) An important partnership between a parent and child begins before the child enters kindergarten, when the parent helps the child develop rich linguistic experiences, including listening comprehension and speaking, that help form the foundation for reading and writing, which are the main vehicles for content acquisition;

(f) The greatest impact for ensuring student success lies in a productive collaboration among parents, teachers, and schools in providing a child's education, so it is paramount that parents are informed about the status of their children's educational progress and that teachers and schools receive the financial resources and other resources and support they need, including valid assessments, instructional programming that is proven to be effective, and training and professional development programs, to effectively teach the science of reading, assess students' achievement, and enable each student to achieve the grade level expectations for reading; and

(g) The state recognizes that the provisions of this part 12 are not a comprehensive solution to ensuring that all students graduate from high school ready to enter the workforce or postsecondary education, but they assist local education providers in setting a solid foundation for students' academic success and will require the ongoing commitment of financial and other resources from both the state and local levels.

(2) It is therefore the intent of the general assembly that each local education provider that enrolls students in kindergarten or first, second, or third grade will work closely with the parents and teachers of these students to provide the students the instructional programming, intervention instruction, and support, at home and in school, necessary to ensure that students, by the completion of third grade, can demonstrate a level of competency in reading skills that is necessary to support them in achieving the academic standards and expectations applicable to the fourth-grade curriculum. It is further the intent of the general assembly that each local education provider adopt a policy whereby, if a student has a significant reading deficiency at the end of any school year prior to fourth grade, the student's parent and teacher and other personnel of the local education provider decide whether the student should or should not advance to the next grade level based on whether the student, despite having a significant reading deficiency, is able to maintain adequate academic progress at the next grade level.

22-7-1203. Definitions

As used in this part 12, unless the context otherwise requires:

(1) "Body of evidence" means a collection of information about a student's academic performance which, when considered in its entirety, documents the level of a student's academic performance. A body of evidence, at a minimum, shall include scores on formative or interim assessments and work that a student independently produces in a classroom, including but not limited to the school readiness assessments adopted pursuant to [section 22-7-1004 \(2\) \(a\)](#). A body of evidence may include scores on summative assessments if a local education provider decides that summative assessments are appropriate and useful in measuring students' literacy skills.

(2) "Department" means the department of education created and existing pursuant to [section 24-1-115](#), C.R.S.

(3) "District charter school" means a charter school authorized by a school district pursuant to part 1 of article 30.5 of this title.

(4) "Evidence based" means the instruction or item described is based on reliable, trustworthy, and valid evidence and has demonstrated a record of success in adequately increasing students' reading competency in the areas of phonemic awareness, phonics, vocabulary development, reading fluency, including oral skills, and reading comprehension.

(5) "Institute charter school" means a charter school authorized by the state charter school institute pursuant to part 5 of article 30.5 of this title.

(6) "Local education provider" means a school district, a board of cooperative services, a district charter school, or an institute charter school.

(7) "Master settlement agreement" means the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown Williamson Tobacco Corp.; Liggett Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc., Case No. 97 CV 3432, in the district court for the city and county of Denver.

(8) (a) "Parent" means a student's biological or adoptive parent, stepparent, foster parent, or legal guardian.

(b) As provided in [section 2-4-102](#), C.R.S., the singular use of "parent" includes the plural, and local education providers shall, to the extent practicable, involve both of a student's parents, as defined in this subsection (8), in implementing the provisions of this part 12.

(9) "Per-pupil intervention moneys" means the moneys calculated and distributed to local education providers pursuant to [section 22-7-1210 \(5\)](#).

(10) "Reading competency" means a student meets the grade level expectations in reading adopted by the state board.

(11) "Reading to ensure academic development plan" or "READ plan" means an intervention plan created pursuant to [section 22-7-1206](#) to remediate a student's significant reading deficiency.

(12) "Response to intervention framework" means a systemic preventive approach that addresses the academic and social-emotional needs of all students at the universal, targeted, and intensive levels. Through the response to intervention framework, a teacher provides high-quality, scientifically based or evidence-based instruction and intervention that is matched to student needs; uses a method of monitoring progress frequently to inform decisions about instruction and goals; and applies the student's response data to important educational decisions.

(13) "School district" means a school district, other than a junior college district, organized and existing pursuant to law.

(14) "Scientifically based" means that the instruction or item described is based on research that applies rigorous, systematic, and objective procedures to obtain valid knowledge that is relevant to reading development, reading instruction, and reading difficulties.

(15) "Significant reading deficiency" means that a student does not meet the minimum skill levels for reading competency in the areas of phonemic awareness, phonics, vocabulary development, reading fluency, including oral skills, and reading comprehension established by the state board pursuant to [section 22-7-1209](#) for the student's grade level.

(16) "State board" means the state board of education created pursuant to [section 1 of article IX of the state constitution](#).

(17) "Teacher" means the educator who is the main instructor for a class of students or an educator who provides specific literacy instruction to selected students.

22-7-1204. Early literacy education

Each local education provider that enrolls students in kindergarten or first, second, or third grade shall provide to the students enrolled in said grades the instructional programming and services necessary to ensure to the greatest extent possible that students, as they progress through kindergarten, first, second, and third grade, develop the necessary reading skills to enable them to master the academic standards and expectations applicable to the fourth-grade curriculum and beyond.

22-7-1205. Reading competency - assessments - READ plan creation - parental involvement

(1) (a) Each local education provider that enrolls students in kindergarten or first, second, or third grade shall ensure that teachers measure each student's reading competency using interim reading assessments at least once during the spring semester of the 2012-13 school year and throughout the year in subsequent school years. A local education provider may also administer a summative assessment to measure students' reading competency at the conclusion of kindergarten, first, and second grades. Each local education provider shall select from the list of approved assessments adopted by rule of the state board pursuant to [section 22-7-1209 \(1\)](#) those assessments it shall use to measure a student's reading competency. A local education provider may choose to use other reading assessments in addition to but not in lieu of the approved assessments.

(b) If a teacher finds, based on a student's scores on the approved reading assessments, that the student may have a significant reading deficiency, the teacher shall administer to the student one or more diagnostic assessments to determine the student's specific reading skill deficiencies. Each local education provider shall select from the list of approved assessments adopted by rule of the state board pursuant to [section 22-7-1209 \(1\)](#) those assessments it shall use to determine a student's specific reading skill deficiencies. A local education provider may choose to use other diagnostic reading assessments in addition to but not in lieu of the approved assessments.

(c) Beginning with the 2012-13 school year, each local education provider shall annually report to the department the state-assigned student identifier for each student who is identified pursuant to this subsection (1) as having a significant reading deficiency.

(2) (a) Beginning no later than the 2013-14 school year, upon finding that a student has a significant reading deficiency, the local education provider shall ensure that the student receives a READ plan, as described in [section 22-7-1206](#). The teacher and any other skilled school professionals the local education provider may choose to select shall, if possible, meet with the student's parent to communicate and discuss the information specified in paragraph (b) of this

subsection (2) and jointly create the student's READ plan. Upon completion of the meeting or as soon as possible thereafter, the teacher or other personnel of the local education provider shall give the parent a written explanation of the information specified in paragraph (b) of this subsection (2) and a copy of the student's READ plan. To the extent practicable, the teacher and other personnel shall communicate with the parent, orally and in writing, in a language the parent understands.

(b) The teacher and the other personnel shall communicate and discuss with the parent the following information:

(I) The state's goal is for all children in Colorado to graduate from high school having attained skill levels that adequately prepare them for postsecondary studies or for the workforce, and research demonstrates that achieving reading competency by third grade is a critical milestone in achieving this goal;

(II) The nature of the student's significant reading deficiency, including a clear explanation of what the significant reading deficiency is and the basis upon which the teacher identified the significant reading deficiency;

(III) If the student enters fourth grade without achieving reading competency, he or she is significantly more likely to fall behind in all subject areas beginning in fourth grade and continuing in later grades. If the student's reading skill deficiencies are not remediated, it is likely that the student will not have the skills necessary to complete the course work required to graduate from high school.

(IV) Reading skills are critical to success in school. Under state law, the student qualifies for and the local education provider is required to provide targeted, scientifically based or evidence-based interventions to remediate the student's specific, diagnosed reading skill deficiencies, which interventions are designed to enable the student to achieve reading competency and attain the skills necessary to achieve the state's academic achievement goals;

(V) The student's READ plan will include targeted, scientifically based or evidence-based intervention instruction to address and remediate the student's specific, diagnosed reading skill deficiencies;

(VI) The parent plays a central role in supporting the student's efforts to achieve reading competency, the parent is strongly encouraged to work with the student's teacher in implementing the READ plan, and, to supplement the intervention instruction the student receives in school, the READ plan will include strategies the parent is encouraged to use at home to support the student's reading success; and

(VII) There are serious implications to a student entering fourth grade with a significant reading deficiency and, therefore, if the student continues to have a significant reading deficiency at the end of the school year, under state law, the parent, the student's teacher, and other personnel of the local education provider are required to meet and consider retention as an intervention

strategy and determine whether the student, despite having a significant reading deficiency, is able to maintain adequate academic progress at the next grade level.

(c) In addition to the information specified in paragraph (b) of this subsection (2), the teacher and the other personnel of the local education provider are encouraged to communicate and discuss information concerning resources that are available through the local education provider or through other entities within the community that may support the student in achieving reading competency.

(3) (a) If, after making documented attempts, the teacher is unable to meet with the student's parent to create the READ plan, the teacher and any other skilled school professionals the local education provider may choose to select shall create the student's READ plan and ensure that the student's parent receives the following information in a language the parent understands, if practicable:

(I) A written copy of the READ plan with a clear, written explanation of the scientifically based or evidence-based reading instructional programming and other reading-related services the student will receive under the plan and the strategies that the parent is encouraged to apply in assisting the student in achieving reading competency; and

(II) A written explanation of the information specified in paragraph (b) of subsection (2) of this section.

(b) At a parent's request, the teacher and any other skilled school professionals the local education provider may choose to select shall meet with the parent to provide a verbal explanation of the elements of the READ plan.

(4) The local education provider shall ensure that the parent of each student who has a READ plan receives ongoing, regular updates from the student's teacher, which may occur through existing methods of communication, concerning the results of the intervention instruction described in the plan and the student's progress in achieving reading competency. The student's teacher is encouraged to communicate with the parent concerning the parent's progress in implementing the home reading strategies identified in the student's READ plan. To the extent practicable, the teacher shall communicate with the parent in a language the parent understands.

22-7-1206. Reading to ensure academic development plan - contents – implementation

(1) (a) A teacher, and other skilled school professionals that the local education provider may choose to select, shall create a READ plan for each student who has a significant reading deficiency. The teacher and any other personnel shall create the plan in collaboration with the student's parent, if possible, and as soon as possible after the student's significant reading deficiency is identified. The student, the student's teacher, and the student's parent shall continue implementing the student's READ plan until the student demonstrates reading competency. The student's teacher shall review the student's READ plan at least annually and update or revise the READ plan as appropriate to facilitate the student's progress in demonstrating reading competency.

(b) Each local education provider shall ensure that a student's current READ plan, any earlier versions of the READ plan, and any supporting documentation for the plan and the body of evidence that demonstrates a student's progress in implementing the plan are included in the student's permanent academic record and are transferred if the student subsequently enrolls in another school.

(2) (a) If a student's reading skills are below grade level expectations, as adopted by the state board, but the student does not have a significant reading deficiency, the local education provider shall ensure that the student receives appropriate interventions through the response to intervention framework or a comparable intervention system implemented by the local education provider.

(b) If a student has a significant reading deficiency, the student's READ plan shall include the intervention instruction that the local education provider provides through the response to intervention framework or a comparable intervention system implemented by the local education provider.

(3) Notwithstanding any provision of this part 12 to the contrary, if a student is identified as having a disability that impacts the student's progress in developing reading skills, the local education provider shall, as appropriate, integrate into the student's individualized education program created pursuant to [section 22-20-108](#) intervention instruction and strategies to address the student's reading issues in lieu of a READ plan.

(4) If a student enrolled in kindergarten is identified as having a significant reading deficiency, the local education provider shall create the student's READ plan as a component of the student's individualized readiness plan created pursuant to [section 22-7-1014](#).

(5) Each READ plan shall include, at a minimum:

(a) The student's specific, diagnosed reading skill deficiencies that need to be remediated in order for the student to attain reading competency;

(b) The goals and benchmarks for the student's growth in attaining reading competency;

(c) The type of additional instructional services and interventions the student will receive in reading;

(d) The scientifically based or evidence-based reading instructional programming the teacher will use to provide to the student daily reading approaches, strategies, interventions, and instruction, which programs at a minimum shall address the areas of phonemic awareness, phonics, vocabulary development, reading fluency, including oral skills, and reading comprehension. The local education provider may choose to select the programs from among those included on the advisory list prepared by the department pursuant to [section 22-7-1209](#);

(e) The manner in which the local education provider will monitor and evaluate the student's progress;

(f) The strategies the student's parent is encouraged to use in assisting the student to achieve reading competency that are designed to supplement the programming described in paragraph (d) of this subsection (5); and

(g) Any additional services the teacher deems available and appropriate to accelerate the student's reading skill development.

(6) Each local education provider shall ensure that a teacher continues to revise and implement a student's READ plan until the student attains reading competency, regardless of the student's grade level and regardless of whether the student was enrolled with the local education provider when the READ plan was originally created or the student transferred enrollment to the local education provider after the READ plan was created.

(7) (a) If a student is identified as having a significant reading deficiency for a second or subsequent consecutive school year, the local education provider shall ensure that, in the second or subsequent consecutive school year:

(I) The student's teacher revises the student's READ plan to include additional, more rigorous strategies and intervention instruction to assist the student in attaining reading competency, including increased daily time in school for reading instruction;

(II) The principal of the school in which the student is enrolled ensures that the student receives reading instruction in conjunction with and supported through the other subjects in which the student receives instruction during the school day; and

(III) If practicable, the student receives reading instruction from a teacher who is identified as effective or highly effective in his or her most recent performance evaluation and has expertise in teaching reading.

(b) In addition, with the approval of the student's parent, the local education provider may provide to the student mental health support from the school psychologist, school social worker, or school counselor.

22-7-1207. Advancement - decision - parental involvement

(1) Beginning no later than the 2013-14 school year, if, within forty-five days before the end of any school year prior to a student's fourth-grade year, a teacher finds that a student has a significant reading deficiency, personnel of the local education provider shall provide to the student's parent the written notice described in subsection (2) of this section; except that the provisions of this section shall not apply if:

(a) The student is a student with a disability who is eligible to take the alternative statewide assessment, or the student is identified as having a disability that substantially impacts the

student's progress in developing reading skills, resulting in the student's significant reading deficiency;

(b) The student is a student with limited English proficiency, as defined in [section 22-24-103](#), and the student's significant reading deficiency is due primarily to the student's language skills; or

(c) The student is completing the second school year at the same grade level.

(2) The written notice that the personnel provides to a parent pursuant to subsection (1) of this section at a minimum shall state that:

(a) There are serious implications to a student entering fourth grade with a significant reading deficiency and, therefore, under state law, the parent, the student's teacher, and other personnel of the local education provider are required to meet and consider retention as an intervention strategy and determine whether the student, despite having a significant reading deficiency, is able to maintain adequate academic progress at the next grade level;

(b) Personnel of the student's school will work with the parent to schedule a date, time, and place for the meeting; and

(c) If the parent does not attend the meeting, the teacher and personnel of the local education provider will decide whether the student will advance to the next grade level in the next school year.

(3) After sending the written notice, personnel of the student's school shall contact the parent to schedule the meeting to decide whether the student will advance to the next grade level. If, after making documented attempts to schedule the meeting with the parent, personnel of the student's school are unable to schedule the meeting, or if the parent does not attend the scheduled meeting, the teacher and personnel selected by the local education provider shall decide, based on the student's body of evidence, whether the student will advance to the next grade level for the next school year.

(4) (a) At the meeting required by this section, the teacher and any other personnel selected by the local education provider shall, at a minimum, communicate to and discuss with the parent the following information:

(I) That there are serious implications to a student entering fourth grade with a significant reading deficiency and, therefore, under state law, the parent, the student's teacher, and other personnel of the local education provider are required to meet and consider retention as an intervention strategy and determine whether the student, despite having a significant reading deficiency, is able to maintain adequate academic progress at the next grade level;

(II) The importance of achieving reading competency by the end of third grade, because students who achieve reading competency by the end of third grade are more likely to graduate from high school and attain a postsecondary credential;

(III) The student's body of evidence and the likelihood that the student, despite having a significant reading deficiency, will be able to maintain adequate academic progress at the next grade level;

(IV) The increased level of intervention instruction the student will receive in the next school year regardless of whether the student advances to the next grade level; and

(V) The potential effects on the student if he or she does not advance to the next grade level.

(b) After discussing the issues specified in paragraph (a) of this subsection (4), the parent, the teacher, and the other personnel shall decide whether the student will advance to the next grade level in the next school year. If the parent, teacher, and other personnel are not in agreement, the parent shall decide whether the student will advance to the next grade level unless otherwise specified in the policy adopted by the local education provider.

(5) As soon as possible after the decision is made pursuant to subsection (3) of this section or at the conclusion of the meeting described in subsection (4) of this section, the personnel of the local education provider shall provide to the parent a written statement that the student will or will not advance to the next grade level in the next school year and the basis for the decision. The personnel shall also provide a copy of the statement to the school district superintendent, if the student is enrolled in a public school of a school district that is not a charter school, or to the school principal, if the student is enrolled in a district charter school, an institute charter school, or a public school operated by a board of cooperative services. The local education provider shall include the statement in the student's permanent academic record and shall remove the statement from the student's permanent academic record when the student achieves reading competency.

(6) Notwithstanding any provision of paragraph (b) of subsection (4) of this section to the contrary, beginning with the 2016-17 school year, if a student is completing third grade and the student's teacher and other personnel decide pursuant to subsection (3) of this section or the student's parent decides pursuant to subsection (4) of this section that the student will advance to fourth grade even though the student has a significant reading deficiency, the decision to advance the student is subject to approval of the school district superintendent or the superintendent's designee, if the student is enrolled in a public school of a school district that is not a charter school, or subject to approval of the school principal, if the student is enrolled in a district charter school, an institute charter school, or a public school operated by a board of cooperative services. If the superintendent, or his or her designee, or the principal, whichever is applicable, does not approve the decision to advance the student, the student shall not advance to fourth grade in the next school year. As soon as possible, the local education provider shall provide a written statement to the parent concerning the decision of the superintendent or designee or the principal and the basis for the decision. The local education provider shall include the statement in the student's permanent academic record and shall remove the statement from the student's permanent academic record when the student achieves reading competency.

(7) Each local education provider shall ensure that, to the extent practicable, all of the oral and written communications to a parent that are required in this section are delivered in a language the parent understands.

(8) The provisions of this section specify the circumstances under which a local education provider, in collaboration with a student's teacher and parent, is required to decide whether a student who has a significant reading deficiency should advance to the next grade level. The provisions of this part 12 do not limit the ability of a local education provider to decide, in accordance with policies and procedures of the local education provider, that a student at any grade level should not advance to the next grade level for any reason deemed sufficient by the local education provider.

22-7-1208. Local education providers – procedures

(1) Each local education provider shall adopt the procedures necessary to comply with the requirements specified in this part 12. In adopting procedures, a local education provider shall comply with and may exceed the requirements of this part 12. Procedures may include, but need not be limited to, procedures for:

(a) Creating a READ plan and the contents of a READ plan;

(b) Effectively communicating with parents concerning the creation, contents, and implementation of READ plans; and

(c) Determining whether a student who has a significant reading deficiency will advance to the next grade level.

(2) A local education provider is not required to start a READ plan or convert an individual literacy plan to a READ plan for a student who is enrolled in fourth grade or higher as of the 2013-14 school year.

(3) Each local education provider is encouraged to report to the department the strategies and intervention instruction that the local education provider finds effective in assisting students to attain reading competency and to provide copies of effective materials to the department to assist the department in sharing with local education providers best practices in assisting students to attain reading competency.

(4) Local education providers are encouraged to provide parents opportunities to participate in parent reading workshops throughout the school year to assist parents in developing their own reading skills and in developing the skills necessary to assist their children in reading.

22-7-1209. State board - rules - department – duties

(1) The state board shall promulgate rules in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., as necessary to implement the provisions of this part 12, which rules shall include, but need not be limited to:

(a) The minimum reading competency skill levels in the areas of phonemic awareness, phonics, vocabulary development, reading fluency, including oral skills, and reading comprehension for kindergarten and first, second, and third grades. The state board shall base the minimum skill levels for second and third grades primarily on scores attained on the assessments approved by the state board pursuant to paragraph (b) of this subsection (1). The state board shall describe the minimum skill levels for students as they complete kindergarten and first grade using matrices of appropriate indicators, which indicators may include measures of students' social and emotional development, physical development, language and comprehension development, and cognition and general knowledge. The state board shall adopt the rules described in this paragraph (a) by March 31, 2013.

(b) The list of approved reading assessments, based on the recommendations of the department, that local education providers may use to meet the requirements specified in [section 22-7-1205](#). The state board shall adopt the list of approved reading assessments by March 31, 2013.

(c) Rules for approving one or more independent third-party evaluators to review reading assessments for inclusion on the approved list of assessments and to review instructional programming and professional development programs for inclusion on the advisory lists created by the department pursuant to subsections (2) and (3) of this section;

(d) Rules to provide notice and an appeals process, which may be a process for written appeals, for publishers who submit materials for inclusion on the list of approved assessments and the advisory lists of instructional programming and professional development programs;

(e) The time frames and procedures for reporting information concerning students' reading skills as described in [section 22-7-1213](#); and

(f) Rules for implementing the early literacy grant program pursuant to [section 22-7-1211](#).

(2) (a) (I) Using the procedure developed pursuant to subsection (3) of this section, the department shall review and recommend to the state board reading assessments, including interim, summative, and diagnostic assessments, for kindergarten and first, second, and third grades that, at a minimum, meet the criteria specified in subparagraph (II) of this paragraph (a). Following action by the state board to approve reading assessments pursuant to paragraph (b) of subsection (1) of this section, the department shall create a list of the approved reading assessments for kindergarten and first, second, and third grades for use by local education providers.

(II) The department shall ensure that:

(A) Each of the recommended reading assessments is scientifically based; except that the department may recommend and the state board may, until July 1, 2016, include on the approved list of assessments any reading assessment approved by the state board prior to July 1, 2012, regardless of whether it is scientifically based;

(B) Each of the recommended reading assessments is valid and reliable and proven to effectively and accurately measure students' reading skills in the areas of phonemic awareness; phonics; vocabulary development; reading fluency, including oral skills; and reading comprehension;

(C) Each of the recommended reading diagnostics is proven to accurately identify students' specific reading skill deficiencies; and

(D) At least one of the recommended reading assessments for kindergarten and first, second, and third grades is normed for the performance of students who speak Spanish as their native language, which assessment is available in both English and Spanish.

(b) Using the procedure developed pursuant to subsection (3) of this section, the department shall create an advisory list of scientifically based or evidence-based instructional programming in reading that local education providers are encouraged to use. The advisory list shall include only programming that, at a minimum:

(I) Has been proven to accelerate student progress in attaining reading competency;

(II) Provides explicit and systematic skill development in the areas of phonemic awareness; phonics; vocabulary development; reading fluency, including oral skills; and reading comprehension;

(III) Includes scientifically based and reliable assessments;

(IV) Provides initial and ongoing analysis of the student's progress in attaining reading competency; and

(V) Includes texts on core academic content to assist the student in maintaining or meeting grade-appropriate proficiency levels in academic subjects in addition to reading.

(c) Using the procedure developed pursuant to subsection (3) of this section, the department shall create an advisory list of professional development programs that are related to addressing significant reading deficiencies and to applying intervention instruction and strategies, in addition to programs related to teaching general literacy, that local education providers are encouraged to use.

(d) The department shall make the approved list of assessments available on the department web site on or before April 1, 2013, and the advisory lists of instructional programming and professional development programs available on the department web site on or before July 1, 2013. The department is not required to provide copies of any reading assessments, instructional programming, or professional development programs that are included on the lists. If the department does provide copies of any materials that it acquires by purchase of a license for use by local education providers, said materials may be used only in accordance with the license.

(e) Each local education provider shall select from the list of approved reading assessments those reading assessments that it will administer to students in kindergarten and first, second, and third

grades. Each local education provider is encouraged to use the instructional programming in reading and professional development programs included on the advisory lists. The department and each local education provider, in using the assessments, instructional programming in reading, and professional development programs that are included on the lists shall comply with the federal copyright laws, 17 U.S.C. sec. 101 et seq.

(3) The department shall develop and implement a procedure for identifying the reading assessments it recommends to the state board for the approved list of reading assessments described in paragraph (a) of subsection (2) of this section and for creating the advisory lists of instructional programming and professional development programs described in paragraphs (b) and (c) of subsection (2) of this section. At a minimum, the procedure shall include:

(a) Periodically soliciting through public notice, accepting, and promptly reviewing assessments, instructional programming, and professional development programs from each local education provider and from publishers;

(b) Evaluating the assessments, instructional programming, and professional development programs that the department identifies or receives, which evaluation is based on the criteria specified in subsection (2) of this section and any additional criteria the state board may adopt by rule. The department may contract with an independent, third-party evaluator approved by the state board to evaluate the materials. The department shall recommend to the state board the reading assessments that meet the requirements specified in paragraph (a) of subsection (2) of this section.

(c) Periodically reviewing the list of approved assessments and the advisory lists to update the lists and add additional items, when appropriate; and

(d) Publishing on the department's web site the initial and updated approved list of reading assessments and advisory lists of instructional programming and professional development programs.

(4) The department shall specify the information that local education providers shall submit pursuant to [section 22-7-1213](#) and shall analyze the information as necessary to make the determinations specified in [section 22-7-1213](#). If another rule or statute requires local education providers to submit any portion of the specified information, the department shall not require local education providers to resubmit the information, but shall apply the information received pursuant to the other rule or statute in preparing the analysis required in [section 22-7-1213](#).

(5) The department shall make available to local education providers any information and materials it receives pursuant to [section 22-7-1208 \(3\)](#) concerning strategies and intervention instruction that local education providers find effective in assisting students to achieve reading competency, including copies of any effective materials that the department receives.

(6) The department, upon request, may provide technical assistance to a local education provider in implementing the provisions of this part 12.

22-7-1210. Early literacy fund - created – repeal

(1) The early literacy fund is hereby created in the state treasury and is referred to in this section as the "fund". The fund shall consist of:

- (a) Any moneys remaining in the read-to-achieve cash fund as of June 30, 2012;
- (b) Moneys transferred to the fund pursuant to subsection (3) of this section;
- (c) Moneys transferred to the fund pursuant to [section 22-41-102 \(3\) \(c\)](#); and
- (d) Any other moneys that the general assembly may appropriate or transfer to the fund.

(2) The state treasurer may invest any moneys in the fund not expended for the purposes specified in subsection (4) of this section as provided by law. The state treasurer shall credit all interest and income derived from the investment and deposit of moneys in the fund to the fund. Any amount remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or to any other fund.

(3) Except as otherwise provided in [section 24-75-1104.5 \(1\) \(h\)](#) and (5), C.R.S., beginning with the 2012-13 fiscal year, and for each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the state treasurer shall annually transfer to the fund five percent of the amount of moneys received by the state in accordance with the master settlement agreement, other than attorney fees and costs, for the preceding fiscal year; except that the amount so transferred to the fund in any fiscal year shall not exceed eight million dollars. The state treasurer shall transfer the amount specified in this subsection (3) from moneys credited to the tobacco litigation settlement cash fund created in [section 24-22-115](#), C.R.S.

(4) The moneys in the fund are subject to annual appropriation by the general assembly to the department. The department shall annually expend the moneys in the fund as follows:

(a) (I) For the 2012-13 budget year:

(A) The department shall use the moneys in the fund to pay the grants that were awarded from the read-to-achieve cash fund pursuant to part 9 of this article as it existed prior to July 1, 2012, and are not fully distributed as of June 30, 2012; except that any portion of any of said grants that the grantee is required to use in payment for department consultants is rescinded, effective July 1, 2012; and

(B) The department may use any amount remaining after the payments described in sub-subparagraph (A) of this subparagraph (I) to provide literacy support on a regional basis to local education providers to assist them in implementing the requirements of this part 12.

(II) This paragraph (a) is repealed, effective July 1, 2013.

(b) Beginning in the 2013-14 budget year and for budget years thereafter:

(I) The department shall use one million dollars to provide literacy support in the form of professional development delivered by experts in literacy on a regional basis to local education providers to assist them in implementing the requirements of this part 12;

(II) The department shall use four million dollars for grants awarded through the early literacy grant program created in [section 22-7-1211](#);

(III) The department may use up to one percent of the moneys annually appropriated from the fund to offset the costs of administering this part 12; and

(IV) The department shall allocate the remaining moneys annually credited to the fund to the local education providers as per-pupil intervention moneys calculated pursuant to subsection (5) of this section.

(5) (a) (I) The department shall allocate the per-pupil intervention moneys to the local education providers as required in subparagraph (IV) of paragraph (b) of subsection (4) of this section by first dividing the amount of moneys available by the total number of students enrolled in kindergarten and first, second, and third grades in public schools in the state who were identified as having significant reading deficiencies and received instructional services pursuant to READ plans in the budget year preceding the year in which the moneys are allocated. The department shall then allocate to each local education provider an amount equal to said per-pupil amount multiplied by the number of students enrolled in kindergarten and first, second, and third grades in public schools operated by the local education provider who were identified as having significant reading deficiencies and received instructional services pursuant to READ plans in the budget year preceding the year in which the moneys are allocated.

(II) (A) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), for the 2013-14 budget year, the department shall allocate the per-pupil intervention moneys to the local education providers as required in subparagraph (IV) of paragraph (b) of subsection (4) of this section by first dividing the amount of moneys available by the total number of students enrolled in kindergarten and first, second, and third grades in public schools in the state who are identified as having significant reading deficiencies in the 2012-13 budget year. The department shall then allocate to each local education provider an amount equal to said per-pupil amount multiplied by the number of students enrolled in kindergarten and first, second, and third grades in public schools operated by the local education provider who are identified as having significant reading deficiencies in the 2012-13 budget year.

(B) This subparagraph (II) is repealed, effective July 1, 2014.

(b) A local education provider may use the per-pupil intervention moneys only as follows:

(I) To provide full-day kindergarten services to students enrolled in one or more of the public schools operated by the local education provider;

(II) To operate a summer school literacy program as described in [section 22-7-1212](#);

(III) To purchase tutoring services in reading for students with significant reading deficiencies; or

(IV) To provide other targeted, scientifically based or evidence-based intervention services to students with significant reading deficiencies, which services are approved by the department.

(c) Each budget year, prior to receiving per-pupil intervention moneys, each local education provider shall submit to the department, for informational purposes, an explanation of the manner in which it will use the moneys in the coming budget year and the number of students for which the local education provider may receive per-pupil intervention moneys. If the local education provider intends to provide a service described in subparagraph (IV) of paragraph (b) of this subsection (5), the department shall review the service and provide the per-pupil intervention moneys for the service only if the service meets the requirements specified in said subparagraph (IV).

(d) In using the per-pupil intervention moneys allocated pursuant to this subsection (5), each local education provider shall ensure that some type of intervention, as described in paragraph (b) of this subsection (5), is available to each student who is identified as having a significant reading deficiency and who is enrolled in kindergarten or first, second, or third grade in a school operated by the local education provider.

22-7-1211. Early literacy grant program – created

(1) There is hereby created in the department the early literacy grant program to provide moneys to local education providers to implement literacy support and intervention instruction programs, including but not limited to related professional development programs, to assist students in kindergarten and first, second, and third grades to achieve reading competency. The state board by rule shall establish the application timelines and the information to be included in each grant application. A local education provider may apply individually or as part of a group of local education providers. A rural school district that is a member of a board of cooperative services may seek assistance in writing the grant application from the board of cooperative services.

(2) The department shall review each grant application received and recommend to the state board whether to award the grant and the duration and amount of each grant. In making recommendations, the department shall consider the following factors:

(a) The percentage of kindergarten and first-, second-, and third-grade students enrolled by the applying local education provider or group of local education providers who have significant reading deficiencies;

(b) The instructional program that the applying local education provider or group of local education providers plans to implement using the grant moneys and whether it is an evidence-based program that is proven to be successful in other public schools in the country;

(c) The cost of the instructional program that the applying local education provider or group of local education providers plans to implement using the grant moneys; and

(d) Any additional factors the state board may require by rule.

(3) Based on the recommendations of the department, the state board shall award grants to applying local education providers or groups of local education providers, which grants are paid from moneys in the early literacy fund created in [section 22-7-1210](#).

22-7-1212. Summer school literacy programs

(1) A local education provider may choose to use per-pupil intervention moneys to provide an evidence-based summer school literacy program to assist students who are enrolled in kindergarten or first, second, or third grade and who have significant reading deficiencies to achieve reading competency. A local education provider may allow students who are below grade level expectations in reading, but who do not have significant reading deficiencies, to participate in a summer school literacy program operated pursuant to this section if capacity remains after serving all of the students with significant reading deficiencies who choose to participate.

(2) A local education provider that intends to use per-pupil intervention moneys to operate a summer school literacy program shall annually provide to the department information concerning the summer school literacy program the local education provider intends to operate. The local education provider shall ensure that the program:

(a) Serves only students enrolled in kindergarten or first, second, or third grade who have significant reading deficiencies, except as specifically allowed in subsection (1) of this section for students who are below grade level expectations in reading; and

(b) Uses scientifically based or evidence-based instructional programming in reading that:

(I) Has been proven to accelerate student progress in attaining reading competency;

(II) Provides explicit and systematic skill development in the areas of phonemic awareness; phonics; vocabulary development; reading fluency, including oral skills; and reading comprehension;

(III) Includes scientifically based and reliable assessments; and

(IV) Provides initial and ongoing analysis of the student's progress in attaining reading competency.

22-7-1213. Reporting requirements

(1) Each local education provider shall annually report to the department information necessary to determine:

(a) The prevalence of significant reading deficiencies among students in kindergarten and first through third grades;

(b) Whether students who have significant reading deficiencies and who advance to the next grade level attain reading competency and, if so, at what grade level;

(c) Whether students who have significant reading deficiencies and who do not advance to the next grade level attain reading competency within the school year during which they do not advance;

(d) Whether students who have significant reading deficiencies and who do not advance to the next grade level attain reading competency at a lower grade level than students who do advance; and

(e) Whether students who have significant reading deficiencies continue to advance to the next grade level despite having a continuing significant reading deficiency and the degree to which local education providers are recommending that said students do not advance.

(2) Each local education provider that receives an early literacy grant pursuant to [section 22-7-1211](#) or per-pupil intervention moneys shall, at the conclusion of each budget year in which it receives the grant or per-pupil intervention moneys, submit to the department information describing:

(a) The instructional programs, full-day kindergarten program, summer school literacy program, tutoring services, or other intervention services for which the local education provider used the grant or per-pupil intervention moneys;

(b) The number and grade levels of students who participated in each of the types of programs or services provided; and

(c) The progress made by participating students in achieving reading competency.

(3) (a) The department shall annually analyze the information received pursuant to subsection (1) of this section and make the determinations described in subsection (1) of this section.

(b) The department shall annually submit to the state board, the governor, the president of the senate, the speaker of the house of representatives, and the education committees of the house of representatives and the senate, or any successor committees, and shall post on the department web site a report that summarizes:

(I) The information received pursuant to subsection (1) of this section and the determinations made by the department based on the information;

(II) The implementation of the early literacy grant program in the preceding budget year, including the number of grants, the local education providers that received grants, and the amount of each grant; and

(III) The information received by the department pursuant to subsection (2) of this section.

(c) The department may provide the report described in paragraph (b) of this subsection (3) to committees of the general assembly in conjunction with the report required in [section 2-7-203](#), C.R.S.

(4) The information provided in the report described in this section is intended to assist the department, the state board, the governor, the general assembly, and the public in monitoring the implementation of and identifying the results achieved in implementing this part 12.

EXHIBIT B
LIST OF DEVICES AND BROWSERS

EXHIBIT C FEE AND PAYMENT SCHEDULE

	Year 1	Year 2	Year 3	Year 4	Year 5
License, if separate from per-student costs	n/a	n/a	n/a	n/a	n/a
Per Licensed Student cost up to 20,000 Licensed Students	R* \$22.50 N* \$23.25	\$19.50 \$20.25	\$19.25 \$20.00	\$19.25 \$20.00	\$19.25 \$20.00
Per Licensed Student cost 20,001-50,000 Licensed Students	R* \$22.50 N* \$23.25	\$19.50 \$20.25	\$19.25 \$20.00	\$19.25 \$20.00	\$19.25 \$20.00
Per Licensed Student cost 50,001-80,000 Licensed Students	R* \$22.50 N* \$23.25	\$19.50 \$20.25	\$19.25 \$20.00	\$19.25 \$20.00	\$19.25 \$20.00
Per Licensed Student cost over 80,000 Licensed Students	R* \$21.50 N* \$22.25	\$18.50 \$19.25	\$18.25 \$19.00	\$18.25 \$19.00	\$18.25 \$19.00

Notes:

* N = new schools, and R* = returning schools; the rationale for this distinction is that assessment materials are a one-time purchase in the first year of a school's implementation; professional services are included in new and returning cost.

Cost Component Response Hybrid Model: In the Hybrid Model, Contractor shall provide the professional development services to LEAs in year 1 and to a cadre of CDE master trainers.

Pricing does NOT include teacher mobile devices utilized for assessment administration. Contractor advises that LEAs or Schools bear this cost. LEAs and schools would then have the flexibility to choose hardware that meets local technology requirements and bear the responsibility to adequately maintain, secure, and repair hardware.

Pricing assumes once student enrollment reaches a given volume, the per-student cost for that volume tier applies to all students. By way of example, if, under the Hybrid Cost Component, in year 1, enrollment reaches over 80,000 students, Returning price would be \$21.50 per student for any returning students and New price would be \$22.25 for any new students.

Assessment Kits include DIBELS Next Kit, 1 per grade per school in first year of adoption.

EXHIBIT D

CONTRACTOR'S SECURITY MEASURES



Somerset, New Jersey

**Report on Datapipe's Description of its
Physical and Environmental Control System for
the Data Centers and on the Suitability of
Design and Operating Effectiveness of Its
Controls**

For the period July 16, 2011 through July 15, 2012

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SECTION ONE

INDEPENDENT SERVICE AUDITOR'S REPORT

INDEPENDENT SERVICE AUDITOR'S REPORT

To the Management
Datapipe, Inc.
Jersey City, NJ

Scope

We have examined Datapipe, Inc.'s description of its physical and environmental control system for the data centers located in Somerset, New Jersey throughout the period July 16, 2011 to July 15, 2012 (description), and the suitability of the design and operating effectiveness of controls to achieve the related control objectives stated in the description.

The description indicates that certain control objectives specified in the description can be achieved only if complementary user entity controls contemplated in the design of Datapipe, Inc.'s controls are suitably designed and operating effectively, along with related controls at the service organization. We have not evaluated the suitability of the design and operating effectiveness of such complementary user entity controls.

Service organization's responsibilities

In section 2 of this report, Datapipe, Inc. has provided an assertion about the fairness of the presentation of the description and suitability of the design and operating effectiveness of the controls to achieve the related control objectives stated in the description. Datapipe, Inc. is responsible for preparing the description and for the assertion, including the completeness, accuracy, and method of presentation of the description and the assertion, providing the services covered by the description, specifying the control objectives and stating them in the description, identifying the risks that threaten the achievement of the control objectives, selecting the criteria, and designing, implementing, and documenting controls to achieve the related control objectives stated in the description.

Service auditor's responsibilities

Our responsibility is to express an opinion on the fairness of the presentation of the description and on the suitability of the design and operating effectiveness of the controls to achieve the related control objectives stated in the description, based on our examination. We conducted our examination in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform our examination to obtain reasonable assurance about whether, in all material respects, the description is fairly presented and the controls

were suitably designed and operating effectively to achieve the related control objectives stated in the description throughout the period July 16, 2011 to July 15, 2012.

An examination of a description of a service organization's system and the suitability of the design and operating effectiveness of the service organization's controls to achieve the related control objectives stated in the description involves performing procedures to obtain evidence about the fairness of the presentation of the description and the suitability of the design and operating effectiveness of those controls to achieve the related control objectives stated in the description. Our procedures included assessing the risks that the description is not fairly presented and that the controls were not suitably designed or operating effectively to achieve the related control objectives stated in the description. Our procedures also included testing the operating effectiveness of those controls that we consider necessary to provide reasonable assurance that the related control objectives stated in the description were achieved. An examination engagement of this type also includes evaluating the overall presentation of the description and the suitability of the control objectives stated therein, and the suitability of the criteria specified by the service organization and described in management's assertion in section 2 of this report. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Inherent limitations

Because of their nature, controls at a service organization may not prevent, or detect and correct, all errors or omissions in the physical and environmental control systems. Also, the projection to the future of any evaluation of the fairness of the presentation of the description, or conclusions about the suitability of the design or operating effectiveness of the controls to achieve the related control objectives is subject to the risk that controls at a service organization may become inadequate or fail.

Opinion

In our opinion, in all material respects, based on the criteria described in Datapipe, Inc.'s assertion in section 2 of this report

- a. The description fairly presents the physical and environmental control system for the data center that was designed and implemented throughout the period July 16, 2011 to July 15, 2012.
- b. The controls related to the control objectives stated in the description were suitably designed to provide reasonable assurance that the control objectives would be achieved if the controls operated effectively throughout the period July 16, 2011 to July 15, 2012, and user entities applied the complementary user entity controls contemplated in the design of Datapipe's controls throughout the period July 16, 2011 to July 15, 2012.
- c. The controls tested, which together with the complementary user entity controls referred to in the scope paragraph of this report, if operating effectively, were those necessary to provide reasonable assurance that the control objectives stated in the description were achieved, operated effectively throughout the period July 16, 2011 to July 15, 2012.

Description of tests of controls

The specific controls tested and the nature, timing, and results of those tests are listed in section 4 of this report.

Restricted use

This report, including the description of tests of controls and results thereof in section 4 of this report, is intended solely for the information and use of Datapipe, Inc., user entities of Datapipe, Inc.'s physical and environmental control system for the data center during some or all of the period July 16, 2011 to July 15, 2012, and the independent auditors of such user entities, who have a sufficient understanding to consider it, along with other information including information about controls implemented by user entities themselves, when assessing the risks of material misstatements of user entities' financial statements. This report is not intended to be and should not be used by anyone other than these specified parties.

Gaffey Deane & Talley PLLC

Reston, Virginia
August 6, 2012

SECTION TWO

MANAGEMENT ASSERTION

Datapipe Management Assertion

We have prepared the description of Datapipe's physical and environmental control system for user entities of the data centers located in Somerset, New Jersey during some or all of the period 07/16/2011 to 07/15/2012, and their user auditors who have a sufficient understanding to consider it, along with other information, including information about controls implemented by user entities of the system themselves, when assessing the risks of material misstatements of user entities' financial statements. We confirm, to the best of our knowledge and belief, that:

1. the description fairly presents the physical and environmental control system for the data centers located in Somerset, New Jersey during some or all of the period 07/16/2011 to 07/15/2012 for providing colocation hosting services. The criteria we used in making this assertion were that the description:
 - a. presents how the system made available to user entities of the system was designed and implemented to provide colocation hosting services, including
 - i. the types of services provided.
 - ii. the procedures within both automated and manual systems by which those services are provided.
 - iii. how the system captures and addresses significant events and conditions.
 - iv. specified control objectives and controls designed to achieve those objectives, including as applicable, complementary user entity controls contemplated in the design of our controls.
 - v. other aspects of our control environment, risk assessment process, information and communication systems (including the related business processes), control activities, and monitoring controls that are relevant to user entities of the system.
 - b. does not omit or distort information relevant to the scope of the infrastructure hosting and physical security system, while acknowledging that the description is prepared to meet the common needs of a broad range of user entities of the system and the independent auditors of those user entities, and may not, therefore, include every aspect of the infrastructure hosting and physical security system that each individual user entity of the system and its auditor may consider important in its own particular environment.
2. the description includes relevant details of changes to our system during the period covered by the description.
3. the controls related to the control objectives stated in the description were suitably designed and operated effectively throughout the period 07/16/2011 to 07/15/2012 to achieve those control objectives. The criteria we used in making this assertion were that:
 - a. the risks that threaten the achievement of the control objectives stated in the description have been identified by management;
 - b. the controls identified in the description would, if operating as described, provide reasonable assurance that those risks would not prevent the control objectives stated in the description from being achieved; and
 - c. the controls were consistently applied as designed, including whether manual controls were applied by individuals who have the appropriate competence and authority.

SECTION THREE

SYSTEM DESCRIPTION

Scope / Purpose of this Report

The following description is intended to provide user organizations (also referred to as “clients” or “customers”) and independent auditors of clients with information about the information technology general control activities of Datapipe, Inc. headquartered in Jersey City, NJ and specifically over the related services provided as part of Datapipe’s Managed Services offering in the New Jersey One (NJ 1) and New Jersey Two (NJ 2) data centers located in Somerset, NJ. It has been prepared in accordance with the guidance contained in the Statement on Standards for Attestation Engagements (SSAE) No. 16, “Reporting on Controls at a Service Organization,” and its interpretations.

A. Description of Business

Company Overview

Datapipe, Inc., headquartered in Jersey City, NJ, is a global provider of managed hosting services offering custom managed IT infrastructure solutions for the enterprise. Datapipe has over 300 employees and 2011 revenues of approximately \$95 million. Datapipe’s key infrastructure consists of nine data center facilities (New Jersey One and New Jersey Two, Somerset, NJ; Ashburn, VA; San Jose, CA; Iceland; London One, London Two, UK; Hong Kong, CN; Shanghai, CN). Datapipe’s seasoned executive leadership team includes founder and CEO Robb Allen.

Since 2005, Datapipe has been at the forefront of managed hosting and security services and is now one of the fastest growing IT service groups in the world, with a network of data centers and offices in North America, Europe, and Asia. Datapipe offers complete IT hosting solutions built on a comprehensive range of best of breed products and services.

Core Business and Areas of Specialization within Information Security

Datapipe provides service in the following categories as part of its core business:

- Enterprise Hosting
- Enterprise Cloud Computing
- Managed Security
- Compliance Services
- Database Management
- Managed Storage
- Application Management
- Colocation

Datapipe develops custom solutions based on each client’s unique requirements. A broad range of experience and capabilities enable Datapipe to design, implement and manage complex, demanding, and highly available solutions.

Datapipe’s managed hosting services provide:

- 24x7x365 live customer support with immediate access to certified experts
- Flexible and customized service offerings
- Predictable, transparent pricing
- Enterprise-grade data centers featuring fully redundant networks and power infrastructure

Sector Expertise

Datapipe is a global company that provides managed services to enterprise clients, creating custom managed hosting solutions for a range of vertical industries with complex internet-facing infrastructures including:

- Financial Services
- Healthcare And Pharmaceutical
- Manufacturing And Distribution
- State And Federal Governments
- Publishing, Media And Communications
- Social Networking
- Retail
- Business Services
- Public Sector
- Technology/Software

B. Description of Services Offered

The scope of this report on controls placed in operations and tests of operating effectiveness (SSAE 16) is the Infrastructure Hosting and Physical Security Services (Colocation Services) provided at the NJ 1 and NJ 2, NJ data center locations.

Colocation Services

Colocation is a Datapipe service to host equipment and supporting infrastructure at the Datapipe data center in a shared or private server room while customers manage the system software (i.e. operating system and all applications). This service is typically provided in a server room that is shared by multiple clients' systems and is available to a client by one rack unit. A client may purchase a private suite if space is available. This service includes 24 x 7 x 365 monitoring of environmental controls. Additional on-site technical support is available as a separate service (Remote Hands). The following chart identifies what is included and available:

Colocation Services	Included	Available
100% Network Uptime Guarantee		X
24/7/365 Immediate Live Phone Support	X	
Assigned Project Manager		X
Certified, Experienced Support Engineers	X	
DNS Services		X
Remote Reboot Capability		X
Standard Server Monitoring		X
The Best Routes From Multiple Tier 1 Providers		X
Full Server Admin Services		X
Complete Security Services		X
Enhanced Monitoring		X
Advanced SLA		X
Data Backup and Restoration		X
Advanced Network Speed & Reliability		X

Network Availability

Datapipe provides colocation clients with direct connectivity to the Datapipe network, backed by a Service Level Agreement (SLA) that guarantees a round-trip transmission speed of, on average, 90 milliseconds or less between Datapipe-designated inter-regional transit backbone network routers in North America, and round-trip transmission of 120 milliseconds or less between a Datapipe-designated hub router in the New York metropolitan area and a Datapipe-designated hub router in the London metropolitan area.

Additionally, the Somerset facilities provide the following networking capabilities:

- Connections to all geographically available Tier 1 providers (Carrier-neutral facility)
- Peering connections with over 200+ providers at major telco hotels
- Dedicated Dark Fiber Ring with diverse paths and full redundancy
- Additional Bandwidth Wave from Ashburn, Virginia
- Encrypted MPLS connectivity to other Datapipe data centers
- Direct fiber connectivity to primary New York City POP
- Full support for Fiber channel, SONET, and Ethernet handoffs

Environment

Server rooms are maintained at a controlled temperature (72 degrees Fahrenheit, plus or minus 7.5° in NJ 1 and NJ 2), and relative humidity is maintained at 45% plus or minus 10%, as measured at the intake of Datapipe's computer room cooling units and, if installed by clients, on sensors installed in the colocation area.

The environment is maintained by utilizing the following:

- Liebert CRAC units, N+2 implementation
- Hot/cold aisles with hot aisle containment
- Raised floor cold plenum supply, ceiling warm return plenum to provide uniform cooling distribution

Security

Facility security is maintained by utilizing three-factor authentication for entrance, multiple mantraps with reinforced walls, 24/7 facility and network monitoring, and 24/7 security staff. The facilities are also under 24 hour internal and external video surveillance, and video is retained for a minimum of 90 days. Visitors are escorted by authorized personnel at all times.

The colocation cages in NJ 2 are outfitted with card readers to restrict access to clients with colo_access rights granted by the designated client superuser.

Power Conditioning

The NJ 1 facility has been designed to provide redundant and reliable power by utilizing:

- Redundant 2500kva transformers
- N+N backup generator infrastructure with 5,000 gallons of diesel per generator
- Two contracted fuel suppliers, on call 24/7
- Fully redundant Eaton Powerware UPS Systems with N+N implementation

This facility is capable of providing, at minimum, 145 watts per square foot.

The NJ 2 facility has been designed to provide redundant and reliable power by utilizing:

- Separate, redundant 13.2Kv data center entrance feeds with N+N design
- N+N backup generator infrastructure with 40,000 gallons of diesel onsite
- Two contracted fuel suppliers, on call 24/7
- Dual A+B circuit feeds to each rack, with 30AMP/208VAC N+N implementation
- Fully redundant Eaton Powerware UPS Systems with N+N implementation

This facility is capable of providing, at minimum, 200 watts per square foot.

Both facilities are powered by 100% renewable wind energy.

Managed Services

Datapipe also makes available its full suite of managed services to colocation clients on an as-needed basis. The company refers to this offering as "Molo", or Managed Colocation.

Cloud Computing and Virtualization Services

Stratosphere™

Stratosphere™, is Datapipe's globally available, high-performance managed cloud computing platform, designed to meet enterprise requirements for governance, usability, compliance and interoperability with traditional computer platforms. Stratosphere™ enables self-service cloud environments, seamless integration with AWS and RightScale ecosystems, and hybrid cloud options that include Datapipe's managed hosting, compliance and security services.

Built on Datapipe's world-class network, and available as a secure public or hosted private cloud, the Stratosphere™ platform is fully managed up to the application layer.

Datapipe Managed Amazon Web Services

Datapipe Managed Amazon Web Services are a unique offering that provides the flexibility, scalability and power of the world's leading cloud platform. Datapipe works with its clients to engineer unique solutions that deliver the unlimited power and flexibility of AWS combined with Datapipe's award winning managed services, tailored to meet the shape and scale of client needs. The service has been recognized by Gartner in its 2011 Magic Quadrant for Public Cloud Infrastructure as a Service and the 2012 Magic Quadrant for Managed Hosting.

The core of the service is an all-inclusive suite of managed services that provides the tools for architecture and design, fork lifting, continuous technician-based monitoring and management, patching and operating system management, and change management. For enhanced cloud infrastructure design, these services include a suite of cloud accelerators. The accelerator components comprise a server access manager for Lightweight Directory Access Protocol (LDAP), an email relay, a global load balancer for multi-site Domain Name Systems (DNS), and a Web application accelerator for dynamic content caching.

Amazon Web Services Direct Connect Enabled Services

Datapipe has established a dedicated network connection at AWS Direct Connect locations, providing clients with low-latency private connectivity between AWS and Datapipe's enterprise-class secure data center. This dedicated network connection to Amazon's Web Services platform allows clients to use the same connection to access public and private resources, while maintaining network separation between public and private environments.

There are several use cases for which AWS Direct Connect is desirable, including:

- High Performance Database as a Service
- SharePoint as a Service
- AWS Off-Site Data Backup

Content Delivery Network

Datapipe's Content Delivery Network (CDN) is a proven and robust platform for delivering static and streaming multi-media content. Access to 25 global edge locations allows for a fast, low-latency connection to ensure that content is delivered with the best possible performance.

Automatic Edge Routing routes data to the end-user's closest location, reducing the traffic and load on the client's web infrastructure and increasing the speed of data transmission.

Datapipe provides support services, file management services, file monitoring services, and full integration with Datapipe-based solutions. A simplified billing system provides predictable pricing, helping clients easily budget for their cloud solutions. Pricing is based on a tiered model derived from the locations requested (per region), the amount of storage, HTTP/HTTPS requests, and overall expected data transfer rate.

Disaster Recovery as a Service

Datapipe's Disaster Recovery as a Service (DRaaS) is a cloud-based, on-demand continuity service that ensures the availability of data and applications during an unplanned outage or disaster. Servers, storage, and other infrastructure components are managed by Datapipe as part of the offering. This cloud-based model provides a method for site and/or application recovery by providing a cost-efficient and automated disaster protection service. Datapipe has a predefined 4-tier model based on a combination of Recovery Point Objective (RPO) and Recovery Time Objective (RTO) measurements. A client is provided a customized solution that meets their needs within the context of their SLA-backed, 4-tiered offering structure.

Compliance Services

Datapipe provides services that enable clients to meet the compliance requirements for Sarbanes-Oxley (SOX), HIPAA and PCI DSS certification. Datapipe addresses SOX by providing financial data retention and recall solutions. Datapipe addresses HIPAA privacy requirements in the layers of perimeter, network and host security protection. In addition, Datapipe was one of the first network providers to achieve PCI DSS Level 1 Service Provider certification.

Database Management Services

Datapipe's Database Management service encompasses all setup, management, and maintenance activities for clients' database servers, and includes OS and database application support. Certified Database Administrators (DBAs) improve performance through optimized database design, tuning, and troubleshooting services. Additionally, this service includes proactive monitoring, reporting, and support for environments on approved systems.

Datapipe's Database Management Services include:

- | | |
|---------------------------------------|-------------------------------|
| • Storage Architecture | • Data Warehouse Architecture |
| • Software Installation/Configuration | • Lifecycle Management |
| • Administration and Maintenance | • Backups and Export |
| • Capacity Planning | • Restoration and Recovery |

- Security Management
- Database Clustering (High Availability)
- Replication
- Auditing
- End-to-End Onboarding
- Data Rescue
- Modification and Configuration
- Connectivity Management
- Event Notification
- Database Reporting

Disaster Recovery

Datapipe customizes disaster recovery solutions to meet unique business and compliance requirements, using a consultative approach to recommend the most appropriate data replication/restoration methodologies and technologies. Working collaboratively with clients, Datapipe engineers identify critical services, applications, and data in order to architect a suitable solution.

Disaster recovery solutions are available for:

- Production environments within Datapipe data centers
- Production environments in-house
- Production environments with another hosting provider

Datapipe offers services for businesses to ensure uninterrupted workflow. These services include Hot, Warm, and Cold Site solutions, which provide various levels of infrastructure, data, and applications recovery. Recovery solutions are hosted off-site, in a data center that is geographically diverse from the production data center.

Work Recovery solutions enable relocation of critical staff to a preconfigured work environment in Datapipe's Business Continuity Facility. Telephony and Network recovery solutions ensure a backup and recovery environment will include all the telephony and network components required to run operations. Email Recovery Solutions enable near real-time email communication recovery in the event of any form of outage of the primary email system.

Managed Backup and Restoration Services and Migration Services are also offered to ensure business continuity.

Managed Applications

Datapipe's Managed Applications service provides clients with access to time-saving solutions and infrastructure dedicated to monitoring, escalation, issue tracking, joint resolution of issues, and analytics. Datapipe supports a number of enterprise applications, maintains a stable computing environment, and provides templates for core processes and procedures based on ITIL best practices.

Managed Messaging Services

Managed Messaging delivers a secure, consistent and efficiently managed messaging infrastructure configured to meet client needs and enhance their communication capabilities. Built on Microsoft Exchange, the solution provides fully managed administration services, including 24x7x365 monitoring and support, diagnostics, problem resolution, patching, and upgrades for critical messaging applications.

The solution also offers the benefits of flexible implementation, delivering services that enable clients to customize email size limits and retention periods, and provides additional security settings to help prevent data leaks and maintain compliance with government and/or regulatory requirements.

Managed Hosting Services

Datapipe's core business function is providing smart, scalable secure managed hosting solutions optimized through a deep understanding of clients' technical requirements. Backed by a team of

experienced, certified professionals, each solution is developed, supported, and enhanced to address unique business goals and objectives.

All of Datapipe's Enterprise Hosting Solutions include management and administration services to ensure client systems are always up and working. Datapipe collaborates with clients to determine how managed systems can work best for the needs of client enterprises. Datapipe's experience provides assurance that operations run smoothly, productively and efficiently.

Hardware Management

Hardware Management services provide clients with Datapipe's personnel, facilities, and expertise to manage/maintain all equipment, hardware, and firmware on a 24x7x365 basis. Datapipe tests, approves, installs, and configures all components as a part of this service. Monitoring services are available to Hardware Management clients.

Operating System Management

Datapipe provides clients with a scalable and customizable operating system (OS) featuring simplified deployment and management capabilities. Clients save time, reduce costs, and receive a platform for a dynamic, efficiently managed solution through the use of online resources, management enhancements, integration features, and virtualization tools. OS Management services are available for both Windows and UNIX operating systems.

Network Management

Datapipe will manage all network equipment including firewalls, switches, and load-balancers 24x7x365. Network Engineers possess extensive experience in multi-vendor environments, and will provide direct support for all networking aspects.

Monitoring Services

Datapipe's Monitoring Services continuously verify the viability of critical resources, processes and services essential to client hosting solutions. Internal software engineers continually develop and deploy enhancements allowing Datapipe to offer the same level of advanced monitoring services across all platforms. This ensures that service capabilities will continue to evolve to meet the needs of clients and support engineers. Using dashboard and tactical network summary views, engineers monitor the status of servers within the network and pinpoint problematic servers and/or services quickly and efficiently. Engineers issue alerts when monitored service states change.

Managed Security Services

Managed Security Services address logical and physical security for client solutions. The security community typically recognizes three foundational pillars: people, technology and operations. Datapipe utilizes a defense in-depth approach to minimize risk. Datapipe requires that all staff members undergo comprehensive background checks to ensure client confidence. Using thorough security training, Datapipe's staff maintains privacy and best practices from initial setup through daily operations. Datapipe employs strong access control measures across multiple aspects of operations. Some of these include: encrypted security entry cards, mantraps, biometric iris scanners, thin clients, three-factor authentication, email encryption of sensitive data, and PIN verification for account access. In addition, Datapipe provides security services in multiple layers which include perimeter, network integrity, content filtering, host security and data protection. Datapipe offers security services individually as well as grouped together as a part of Datapipe's turn-key PCI solution.

Managed Security Services - PCI Package	Included	Available
Advanced Change Control	X	
Configuration Assessment	X	
System Integrity Monitoring	X	
Transparent Database Encryption (TDE)		X
Database and System Backup Encryption		X
File Encryption		X
Distributed Denial of Service (DDoS) Protection		X
Event Management	X	
Firewall and VPN	X	
Web Application Firewall (WAF)		X
Intrusion Detection System	X	
Intrusion Prevention System		X
Malware Protection	X	
Patch Management	X	
Two-Factor Authentication	X	
Vulnerability Assessment	X	

Managed Storage

Datapipe's certified Managed Storage Engineers have extensive experience in storage management, tuning, systems architecture, design & implementation and utilization planning & optimization. Datapipe supports numerous storage arrays including 3PAR, Brocade, HP, Isilon, Hitachi and NetApp. Storage services include Adding capacity, creating new LUNs, creating partitions; adding point-in-time copies; upgrading software and version management; consulting, designing and implementing equipment upgrades to meet changing storage demands.

Managed Backup and Restoration

Datapipe provides a variety of backup storage options to mitigate the risk of losing vital data and meet specific client needs. Storage experts consult with clients to determine the best backup technique based on data types, storage system, and RPO/RTO requirements.

C. Scope

As this description is intended to focus on features that may be relevant to the internal control structure of Datapipe's clients' use of the services provided by Datapipe, it only encompasses aspects related to colocation services provided or colocation-related procedures followed by Datapipe during the period July 16, 2011 – July 15, 2012.

D. Colocation Services Overview

Hours of Operation

The Managed Services are delivered and monitored through the Global Operations Centers of Datapipe located around the world at Datapipe offices, including the Somerset data centers, which operate 24 hours a day, 7 days a week, 365 days a year.

Health Monitoring

Datapipe monitors the Security Systems 24/7/365 using multiple processes. A Building Management System (BMS) is used to monitor all environmental controls. In addition, APG (an independent physical security firm) personnel conduct facility rounds each shift and serve as a secondary check on environment control status.

All monitored system conditions will be brought to the appropriate level of attention.

Data center environmental alerts are escalated in accordance to SPP-1045, Somerset Emergency Action Manual and SPP-1054, Belmont Emergency Action Manual; for NJ 1 and NJ 2, respectively.

Servers are monitored by Datapipe's custom built Observer application. Alerts are escalated in accordance with the client's SEAP (Solution Escalation Action Plan) which is tailored to each client's solution through an interview process with Project Management.

Responses are also dictated by SPP-1045, Somerset Emergency Action Manual, or SPP-1054, Belmont Emergency Action Manual, and the client's SEAP. These responses are tracked via tickets in both cases with unlimited historical tracking.

Policies and procedures exist to support the facilities' physical security. This includes procedures for enrollment and review. All individuals entering the facility must be authorized to do so, and they are required to submit to the three-factor authentication procedure.

Significant Events and Conditions

Access Control Procedures

New users (including client permanent or long term contractors) can be granted access only if the individual is listed in the client's MyDatapipe record as being authorized for colocation access (colo_access), and can provide an acceptable form of identification (i.e., government issued photo identification). Once the user's identity and access level have been confirmed, they will be issued a DSX ID and access badge.

Datapipe Security is notified when a client account with a DSX ID is deleted and when colo_access rights have been removed via the web portal. Upon notification, the access permissions associated with the DSX ID will be modified or revoked accordingly.

Environmental Alerting, Escalation, and Resolution

In the event of an emergency affecting the data centers' electrical, HVAC, or fire detection and suppression systems; data center personnel are expected to make every reasonable effort to contact the Data Center Operations Manager or another member of the Data Center Engineering team before attempting to troubleshoot. SPP-1045, Somerset Facility Emergency Action Manual; and SPP-1054, Belmont Facility Emergency Action Manual provide data center personnel with:

- Detailed steps for troubleshooting and resolution of issues,
- Escalation procedures for issues they are unable to resolve, and
- Emergency contact information for the Data Center Operations Manager, Data Center Engineers, vendors, and emergency services.

Physical Breach

Should there be a serious incident involving a physical breach of security, officers are instructed to contact the local authorities in accordance with SPP-1037, Somerset Post Orders. Additionally, officers shall escalate to the following individuals:

- Security Site Supervisor
- Data Center Operations Manager
- Chief Security Officer

In turn, these individuals will escalate to the Chief Technology Officer and Chief Executive Officer as necessary. Additionally, if the incident were to involve a Datapipe employee, Human Resources is to be contacted as well.

Customer Reporting and Communication Systems

All monitored conditions related to system availability and the system health status that are defined in “System Availability Checks and Health Monitoring” are reported in the Datapipe Customer Portal. Email notifications may also be sent to colocation clients if:

- An unexpected outage or service interruption impacted their power and/or connectivity,
- Datapipe must perform system and/or infrastructure maintenance that may impact their power/connectivity,
- Changes are made to SPP-1040, Datapipe Facility Rules and Regulations.

E. System Components

NJ 1 Infrastructure

Power/Electrical

NJ 1 is powered by two independent 3,000 amp services which provide power to multiple UPS devices and mechanical panels. All critical loads are protected and backed up by multiple UPS devices which feed out to Liebert PDUs. The PDUs then supply power to the client racks. Datapipe also offers an A & B redundant feed to each client rack.

The entire site is backed up by two 2 Mega Watt generators and one 750 KW generator. Each 2 Mega Watt generator has a 5,000 gallon belly tank for fuel and the 750KW generator has a 3,500 gallon belly tank. Each generator has a built-in Algae X fuel filtration system to ensure clean fuel. The generators are run and tested weekly.

In the event of a power outage, Uninterruptable Power Supplies (UPSs) can support typical loads for fifteen minutes while the generators come online. The generators will automatically pick up the load within twelve seconds after utility loss.

Heating, Ventilation, and Air Conditioning (HVAC)

NJ 1's HVAC system consists of two separate glycol loops which are fed by dry coolers and pumps. There are two glycol pumps per system, controlled by Variable Frequency Drives (VFD) with the capability to transfer from one pump to another in case the lead pump fails. The dry coolers are controlled by VFDs to optimize energy and fan speed control.

All Computer Room Air Conditioners (CRACs), dry coolers and pumps are electrically fed by two separate panels to ensure that 50% of the cooling capabilities can be maintained if one panel fails. All HVAC

equipment is backed up via generators. HVAC equipment is monitored from the Building Management System (BMS), and all alarms are acted on by the Facilities team.

Humidification is controlled internally by the CRACs, which are equipped with an ultrasonic humidification system. The humidity is monitored via the CRACs and the BMS.

Fire and Water Damage Detection and Mitigation

Fire

NJ 1's fire system is a single inter-locking pre-action system; requiring two smoke heads to be triggered before the lines fill with water, then a sprinkler head must be activated by heat before water will be dispersed through the affected zone. There are smoke heads and sprinklers in the drop ceiling and below the raised floors.

This system also utilizes a Very Early Smoke Detection Apparatus (VESDA), a system designed for early detection of smoke and/or small particles. Carbon Fire Extinguishers are located in all server rooms.

Leak Detection

All NJ 1 data center halls are capable of leak detection. A BMS alert is sent out if a leak is detected, notifying staff of the specific location and footage of the leak. All data center halls are on 18" raised flooring to keep the client equipment above the sub floor, and away from any potential water. Floor tiles and/or leak detection maps indicate cable length and where the leak is detected. Devices that regularly carry moisture such as CRAC units are surrounded by leak detection.

Network

The NJ 1 infrastructure is comprised of multiple bandwidth providers with 1 Gb/s and 10 Gb/s connections to the network. Datapipe runs Border Gateway Protocol (BGP) with providers to ensure service in the event a single provider loses connectivity or experiences issues on their network as well as optimizing packet pathing for client solutions by determining the least latency path. Network infrastructure is comprised of a border layer, which handles all bandwidth provider connections, and a distribution layer, which handles the route distribution to the colocation layer, terminating on the collocated equipment. Datapipe can offer Hot Standby Router Protocol (HSRP) for redundant uplinks to two different switches (clients must provide the switch to terminate handoffs), BGP full routing tables with proper client provided advertisement, and AS numbers. Connectivity to a redundant pair of switches is available, providing clients the option of single or redundant handoffs to their solution.

NJ 2 Infrastructure

Power/Electrical

NJ 2's electrical infrastructure consists of a full system plus system (N+N) power distribution system that provides two sources of electrical power for all critical and essential components. This serves to greatly increase the likelihood of continuous power delivery to the installed IT equipment in any part of the facility. This is accomplished through groups of UPS equipment, two utility service entrances with separate distribution switchboards and two engine-generator plants, each of which is backed up by two 900kW generators.

The IT equipment is supported through four separate pairs of UPS systems (10 UPS systems in total). These pairs support dedicated loads. Power can be shared between the two units of each pair or supported entirely from one UPS system when one unit must be shut down for maintenance or repairs.

Downstream from each pair of UPS systems is a pair of static transfer switches that will serve as a point of defense against dropping part of the load in the event of an internal UPS system failure.

The key circuit breakers in the distribution systems (generator breakers, UPS input breakers, UPS maintenance bypass breakers, etc.) are monitored by the BMS, and their status is shown on the active one-line diagram as to its operational status (open, closed, tripped). Load data shall be shown on the active one-line diagram from data captured at the various components of the power system that has onboard metering (STSSs, UPSs, etc.).

Heating, Ventilation, and Air Conditioning (HVAC)

NJ 2 utilizes two different HVAC systems.

The system used in the Managed Services data hall utilizes a glycol system for the CRACs. This is a one to one system and each CRAC has an associated dry cooler located on the roof. Each dry cooler has a redundant pump attached to it. The CRAC and dry cooler units are dual fed electrically, from two separate sources via a transfer switch.

Humidification is monitored by Stultz humidifiers. There is a control panel in each colocation room with humidity sensors in each. There is a master DI plant in the engineering office which supplies deionized water out to the humidifiers via stainless steel piping.

Colocation areas utilize DX units; these are Freon units with condensers dedicated for each unit. Each unit is dual fed electrically from two separate sources via a transfer switch.

All CRACs are monitored by the BMS and current status, as well as alert e-mails are sent out to the Facilities department.

Fire and Water Damage Detection and Mitigation

Fire

The fire system at NJ 2 is a dual interlocking pre action system. This means that two smoke heads in the same zone have to go off before the lines will fill with water, and then a sprinkler head will need to go off on excess heat to start dispersing water throughout a particular zone.

Smoke heads and sprinklers are present in the drop ceiling and smoke heads below the raised floors in all data halls. Carbon Fire Extinguishers are located in all server rooms.

Leak Detection

All NJ 2 Managed Hosting Services data center halls are capable of leak detection. A BMS alert is sent out if a leak is detected, notifying staff of the specific location and footage of the leak. All data center halls are on 18" raised flooring to keep the client equipment above the sub floor, and away from any potential water. Floor tiles and/or leak detection maps indicate cable length and where the leak is detected. Devices that regularly carry moisture such as CRAC units are surrounded by leak detection.

Network

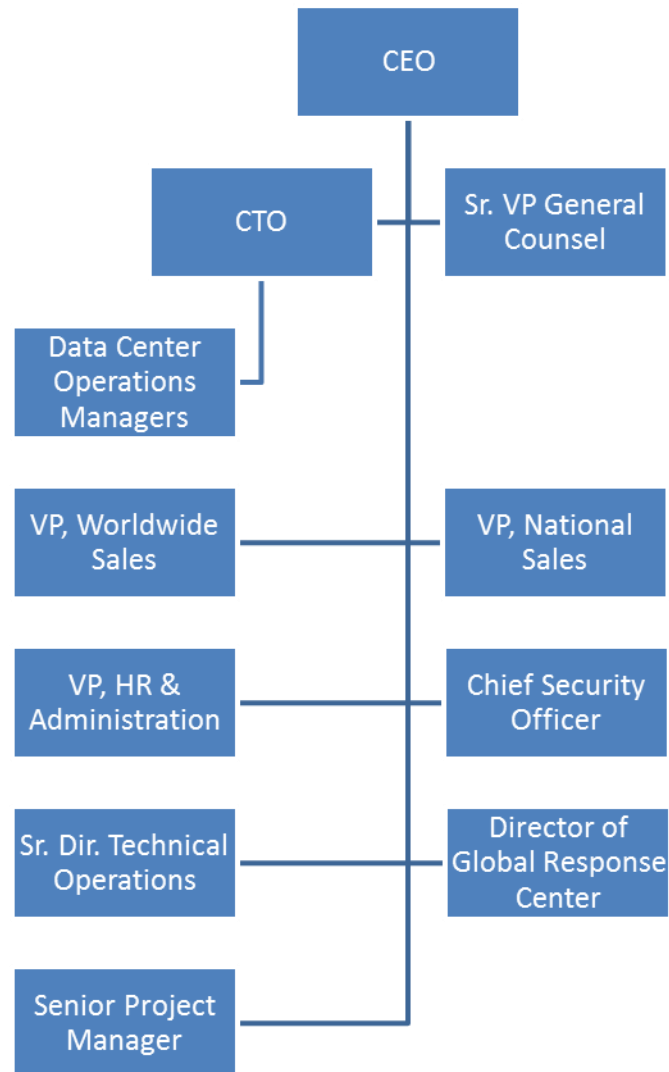
The NJ 2 infrastructure is comprised of multiple bandwidth providers with 1 Gb/s and 10 Gb/s connections to the network. Datapipe runs Border Gateway Protocol (BGP) with providers to ensure service in the event a single provider loses connectivity or experiences issues on their network as well as optimizing packet pathing for client solutions by determining the least latency path. Network infrastructure is comprised of a border layer, which handles all bandwidth provider connections, and a distribution layer, which handles the route distribution to the colocation layer, terminating on the

collocated equipment. Datapipe can offer Hot Standby Router Protocol (HSRP) for redundant uplinks to two different switches (clients must provide the switch to terminate handoffs), BGP full routing tables with proper client provided advertisement, and AS numbers. Connectivity to a redundant pair of switches is available, providing clients the option of single or redundant handoffs to their solution.

Software

Datapipe utilizes various software packages in order to maintain records for environmental systems, as well as manage physical access control.

- ViconNet – Used to view, playback and record digital video surveillance for at least 90 days
- WinDSX SQL – Used by card readers to verify user access levels, generate history reports, lock and unlock doors, and generate alarms
- IrisAccess – Used to store and validate iris biometric data as well as program DESFire smartcards
- SharePoint – Used as a collaboration platform and document repository to store maintenance records, commissioning reports, service contracts, etc.
- Custom BMS – Used as a Building Management System to report on the overall health of all monitored infrastructure equipment
- MyDatapipe – Used to validate colocation access permissions for tours, temporary, and permanent physical access

People/Organizational Structure**Executive Management**

The Executive Management team is responsible for business and strategic operation of Datapipe, Inc. The Executive Management team consists of: CEO, CTO, General Counsel, VP of Finance, VP of National Sales, VP of Worldwide Sales, and VP of Human Resources & Administration.

Chief Executive Officer (CEO)

The Chief Executive Officer's current responsibilities include overall company oversight and leadership, strategic planning and direction, marketing, product and business development.

Chief Technology Officer (CTO)

The Chief Technology Officer is responsible for providing a high quality of service availability to all clients on a 7x24x365 basis. Supervising the activities of the Data Center Managers and the VP of Network

Operations and Data Center Operations Managers and coordinating their efforts in supporting Managed Hosting Services and co-location clients.

General Counsel

General Counsel furthers the strategic goals and protects and preserves the legal, ethical and financial integrity and reputation of Datapipe and its affiliates while proactively delivering practical solutions to legal issues facing the Company. This is accomplished by assessing legal risks, providing timely and strategic legal advice to Datapipe and its affiliates, and seeking to ensure that they conduct their activities in accordance with applicable law, existing contractual obligations and consistently with the mission, vision, and values of Datapipe.

VP Worldwide Sales

The Vice President of Worldwide Sales is responsible for accelerating the growth and success of the company by aggressively driving outside sales and sales operations to increase revenues, profitability, and customer and market penetration. Sets the overall sales strategy for the organization to address the needs of individual markets and ensuring that both margin and revenue goals are achieved or exceeded. Provides senior management team with current market and competitive data enabling a full understanding of the needs and opportunities in each region.

VP of National Sales

The Vice President of National Sales is responsible for developing and implementing strategies to grow company revenue within the US. Participates in the planning and execution of the overall sales growth of the company.

Senior VP of Human Resources and Administration

The Vice President of Human Resources and Administration's job responsibilities include; overall management of the HR function, determine and write policies and procedures, work closely with management team, promote and maintain a positive and motivating workplace environment, employee relations, manage and determine all employee benefits including medical, dental, life, LTD, supplemental, 401K, PTO, ensure federal and state compliance, maintain personnel files and company-wide organizational charts.

Chief Security Officer

The Chief Security Officer is responsible for corporate and client oriented security services development and delivery, physical and logical security, related policies and procedures, security awareness program, and security compliance implementations. The CSO manages Datapipe's internal security department as well as oversees Datapipe's relationship with APG, an outsourced firm which provides security officers to enforce security policy and monitor for unauthorized access.

Senior Director of Technical Operations

The Senior Director of Technical Operations is responsible for developing and implementing strategies to improve customer support services to customer systems in the data centers. Participates in the planning and execution of the overall technological growth of the company.

Director of Global Response Center

The Director of Global Resource Center is responsible for managing the operations of Datapipe's 24/7/365 network to ensure there is no unscheduled downtime. Manages and maintains the Observer Monitoring System which reports on the status and performance of Datapipe's network, ISP services and

facilities. Coordinates software updates to the monitoring system with clients, development groups and support teams. Provides detailed reports on network outages to minimize repeated future outages.

Senior Project Manager

The Senior Project Manager assists business units with development of business case, vision, drivers, feasibility and scope of proposed projects. Works collaboratively with clients to develop plans for the successful implementation and growth of the client's solution. Leads inter-departmental team to enable lifecycle support of client solutions and ensure the highest levels of customer service.

Data Center Operations Managers

The Data Center Operations Managers oversees the data center facility and associated Data Center Engineering (Facilities) staff. Their responsibilities include managing infrastructure capacity planning, establishing operational procedures, developing data center metrics, establishing best practices, analyzing and escalating site conditions, and managing the provisioning of client infrastructure.

Policies and Procedures

Datapipe has developed and maintains policies and procedures that are reviewed and approved by senior management. The following policies have been created by management:

- SPP-1020, Datapipe Organizational Security Policy
- SPP-1036, Datapipe Access Control Policy
- SPP-1039, Datapipe New Hire Security Training
- SPP-1056, Datapipe Environmental Controls Policy

The following procedures have been created as guidance to achieve the desired results of the policies listed above.

- SPP-1023, Somerset Physical Security Procedures
- SPP-1035, Datapipe Access Control System Procedures
- SPP-1037, Somerset Post Orders
- SPP-1040, Datapipe Facility Rules and Procedures
- SPP-1045, Somerset Emergency Action Manual
- SPP-1046, Somerset Facility Fire Drill Procedure
- SPP-1054, Belmont Facility Emergency Action Manual
- SC-1011, Datapipe BC/BCP Risk and Vulnerability Assessment

Data

Datapipe maintains various pieces of data in connection with the control objectives outlined in this report in order to facilitate delivery of consistent and robust environmental and physical security controls. Most data is stored by, and corresponds to, the software detailed in this report. Additionally, there exists some data which resides in paper based log books with a retention rate of at least one year.

Digital video recordings of the data center premises are stored by ViconNet on storage arrays in each facility. The recordings are time coded with synchronized network time and reference the specific source camera. The retention of these recordings is at minimum 90 days.

Datapipe's access control system, WinDSX SQL, stores the following data in connection with each smartcard holder: name, company, photo, card identification number, access level, MyDatapipe ID,

start date, expiration date, and audit date. Department access for Datapipe employees is stored for reference purposes as well.

In addition to user records, the access control system houses data related to role-based access levels including the doors associated with each, device / door names, a history of all successful and unsuccessful access attempts, alarms and associated resolution comments, as well as guard tour events and exceptions. Activity data is retained for at least three years.

The IrisAccess system, which works in conjunction with WinDSX SQL, stores authorized users' name, card identification number, and iris biometric data. Data stored in the IrisAccess database is retained for at least three years.

Preventative maintenance, service call records, and vendor contracts are collected via Datapipe's internal SharePoint environment. Preventative maintenance and service call records typically include the device being serviced, the work performed, the date, and a reviewer's sign off. Additionally, there are four security log books: Visitor Log, Contractor and Vendor Access Log, Temporary Employee Badge Log, and Temporary Client Access Log. Each contains various pieces of data, depending on the log type, which may include a combination of name, company, ticket number, authorized escort, equipment removal indication, cage/rack information, identification type, and signature. Logs are scanned monthly and stored in SharePoint for at least three years.

Datapipe's custom building management system (BMS) generates and stores infrastructure system state data including but not limited to load on UPSs, RPPs, PDUs, CRACs, switch gear, and generators, as well as status of ATSS, fire system, leak detection system, generator start and cool down times, coolant temperature, amperage and voltage, branch circuit draw to each rack. Additionally, the system indicates if there is an alarm status on any given piece of equipment. All BMS data is stored for at least 30 days, while generated email alarms are stored for at least one year.

The MyDatapipe internal company portal maintains names, email addresses, and user permissions for physical access. These permissions include superuser, colo_access flags along with which specific facility, room, cage, and rack access is permitted. MyDatapipe records are retained as long as the account is active and valid.

F. Other Aspects of Control Environment

Management Controls

Datapipe's management has defined several key areas that are critical to support managed client services. These areas are:

- Hiring, training and retaining expert staff
- Single point of contact for customers
- Multiple levels of network security
- Fully redundant network and data center infrastructure
- Quality of Service requirements
- Maintaining network uptime guarantees
- Client Migration, Setup, and Provisioning
- Logical Access
- Confidentiality
- Physical Security and Environmental Controls
- Event Management and Problem Resolution

- Change Control
- Replication and Recovery
- Business Continuity

Datapipe's management is responsible for directing and controlling, establishing, communicating, and monitoring control policies and procedures. Management has established an Acceptable Use Policy, Non-Disclosure / Non-Compete agreement, and performs user and card access reviews.

Risk Assessment Process

Datapipe has implemented a risk assessment process to identify and manage risks that could affect the organization's ability to provide reliable infrastructure hosting and physical security services to its customers. This process requires management, under the advice of subject matter experts, to annually identify significant risks inherent in maintaining environmental and security controls for customers and to implement appropriate measures to monitor and manage these risks. This process has identified risks resulting from the nature of the services provided by Datapipe, and management has implemented various measures designed to manage these risks. Risks identified in this process include, but are not limited to, the following:

- Environmental risks associated with power, cooling, leaks, fire, and humidity
- Security risks associated with unauthorized access and theft

These risks are monitored as described in the Control Monitoring Activities section of this report.

Internal Audit

Although Datapipe has not established an internal audit function, it is assessed annually for PCI DSS Level 1 Service Provider certification. Datapipe also undergoes many audits from 3rd party companies on behalf of its clients assuring that the Datapipe hosted environment complies with their corporate policies and procedures.

Human Resources

Human Resource maintains documentation for new hires and terminations and other Human Resource functions. Forms used for Non-Disclosure, Non-Compete, Starters, Leavers, and Background checks are kept securely in Human Resources at headquarters in Jersey City, NJ.

Client Relations

The Client Relations department acts as a critical link between clients and Management. The department is responsible for reviewing employee reports and client issues to proactively address questions related to substandard performance. They regularly interact with Management to keep them informed about current issues and possible future concerns while effectively communicating the company's position regarding specific events to clients. Client Relations representatives act as liaisons between clients (who report inadequate service) and various technical departments to identify and resolve any existing conflicts while minimizing chances for future conflict occurrence. Issue resolution outcomes may include recommendations for account credits and recommendations for internal process improvement.

Project Management

Internally, Project Managers (PMs) assist business units with the development of feasibility and scoping parameters for new projects. They utilize a Management approved framework for formally adopting projects and meeting defined characteristics. They also assist in the documentation of adopted projects

and identify areas for process improvement. They are directly accountable to business units for the execution and delivery of the projects they undertake.

For Fully Managed clients, PMs are responsible for the project's entire life cycle, including solution initiation, solution implementation, testing, client handover and continuing client support, among other activities to ensure client projects adhere to requirements. They demonstrate the ability to multitask while managing multiple large projects in cross-functional networked computer server environments, communicating tactfully and effectively, verbally and in writing with clients or to business units as part of a client-centric team of teams.

Segregation of Duties

Segregation of duties is a basic, key internal control. Authorization, custody, record-keeping, and reconciliation are maintained as four distinctly separate roles, ensuring that all decisions and changes to systems can be traced and detected. These underlying principles have been implemented in establishing the Somerset data centers' physical and environment controls.

Control Monitoring Activities

Effectively safeguarding critical systems requires continual monitoring and appropriate controls in order to prevent and/or mitigate any potentially devastating disasters. Through the use of automated monitoring and alerting systems, testing, systems redundancies, and documented procedures, Datapipe is able to react to system and technology failures and minimize adverse impacts to service. In addition, Datapipe management and supervisory personnel have also implemented a suite of monitoring activities such as spot-checks and periodic reviews to ensure that control activities are performed effectively over time. These monitoring activities have been incorporated into Datapipe's policies and procedures. Non-compliance or other problems that are identified through monitoring are escalated and resolved timely.

G. Control Objectives and Activities

Control Objectives

Management has developed controls that provide reasonable assurance that physical access to computer and telecommunications equipment, storage media and program documentation are restricted to authorized individuals.

Management has developed controls to provide reasonable assurance that customer and critical infrastructure systems are protected from environmental threats and power interruptions.

General Information System Controls

Physical Security

NJ 1

The entranceway to the data center at Somerset, NJ, is protected with a smartcard reader. After the entranceway foyer area, there is a waiting room with a security officer behind a bullet resistant glass plate and reinforced walls. To gain entry through the main data center portal, enrolled individuals require three-factor authentication. Employees, permanent contractors, and enrolled clients are issued printed photo smartcards. One of these individuals must enter their six-digit PIN to activate the iris scanner and confirm their identity. A successful iris verification will enable the smartcard reader. All individuals, including enrollees and visitors, must individually swipe their smartcard before entering the

single man security portal. The timed anti-passback security feature is enabled on this reader, preventing one individual from swiping their badge multiple times in attempt to allow multiple individuals to enter. A green light on the portal will illuminate to indicate the individual is authorized and may enter. A pop-up of the enrolled individual's picture appears on the security officer's computer screen for a visual confirmation.

Sensors in the floor of the portal will detect if there are more than one persons present, or if an individual has entered the portal without a valid smartcard swipe. If an unauthorized entry is detected, the outer door will remain open and will not allow the unauthorized individual to proceed. Once the outer door is closed, the inner portal door will automatically open assuring that both doors are never opened at the same time. A similar process of PIN and iris scan authentication in a mantrap configuration is repeated for entry into the internal Managed Services server rooms on the first floor; however, independent doors allowing multiple people to enter simultaneously are employed. Due to this configuration, there is a secondary smartcard reader inside of the mantrap, which should only be activated after verification no unauthorized individuals have tailgated in to the mantrap. To gain access to the second floor offices, a staff member must swipe their smartcard again by the elevator or stairwell door. All smartcard swipes are logged and retained for at least three years.

Color-coded badges are required for all facility visitors, clients, staff and contractors. Visitors and temporary contractors must first use the phone outside the facility to signal the officer to allow them entry into the waiting area. They must then surrender government issued picture identification to the officer and sign in via the appropriate log before the officer issues them a temporary smartcard. The smartcard can then be swiped to allow escorted entry into the mantrap in accordance with the procedure above. Tour groups have a similar process as visitors with the exception that their visit is scheduled in advance.

If a client is not present to escort, then a temporary contractor must have a ticket submitted in advance by the client indicating the date and time of their visit. The ticket must also explicitly indicate which equipment the contractor is allowed to remove, if any. Permanent contractors are enrolled into the access control system and issued a smartcard. Permanent contractors must be approved via ticket by authorized Datapipe personnel.

Video cameras are placed in external areas and all built-out areas inside the facility. Video monitoring is done at the officer's station. Officers can pan, tilt, and zoom specific cameras for better inspection. Video cameras monitor full coverage of all Colocation server rooms. Video recording is archived for at least 90 days.

Physical access smartcards utilize DESFire encryption and have an expiration date set in the software to expire at most six months from issuance. At that point a review process is conducted to ensure that individual's role and additional access is still appropriate. Role access is verified semi-annually by department managers and/or executives. Smartcards are immediately deactivated by the Security Department upon notification of employee termination by Human Resources by setting the expiration date to the termination date.

NJ 2

The entranceway to the data center at NJ 2, NJ, is protected with a smartcard reader. Upon entry, there is a waiting room with a security officer behind a bullet resistant glass plate and reinforced walls. To gain entry through the main data center passageway, enrolled individuals require three-factor authentication. Employees, permanent contractors, and enrolled clients are issued printed photo smartcards. One of these individuals must enter their six digit PIN to activate the iris scanner and

confirm their identity. Successful iris verification will enable the smartcard reader. All individuals, including enrollees and visitors, must then swipe their smartcard for authorization to signal the security portal to rotate in order to permit entry. The timed anti-passback security feature is enabled on this reader, preventing one individual from swiping their badge multiple times in attempt to allow multiple individuals to enter. A pop-up of the enrolled individual's picture appears on the security officer's computer screen for a visual confirmation.

Weight sensors inside of the portal detect entering and exiting individuals. If an unauthorized entry is detected, such as an individual attempting to gain entry without a valid card swipe while the portal is rotating to allow someone to exit, an audible alarm will sound and the security portal will reverse its rotation forcing the unauthorized individual to exit the portal. A similar process of PIN and iris scan authentication in a mantrap configuration is repeated for entry into the internal "Managed Care" server room; however, a pair of double doors which allow only a single pair to be open at a given time is employed instead of a portal. All smartcard swipes are logged and retained for at least three years.

Color-coded badges are required for all facility visitors, clients, staff and contractors. Visitors and temporary contractors must first use the intercom outside the facility to signal the officer to allow them entry into the waiting area. They must then surrender government issued picture identification to the officer and sign in via the appropriate log before the officer issues them a temporary smartcard. The smartcard can then be swiped to allow escorted entry into the security portal in accordance with the procedure above. Tour groups have a similar process as visitors with the exception that their visit is scheduled in advance.

If a client is not present to escort, then a temporary contractor must have a ticket submitted in advance by the client indicating the date and time of their visit. The ticket must also explicitly indicate which equipment the contractor is allowed to remove, if any. Permanent contractors are enrolled into the access control system and issued a smartcard. Permanent contractors must be approved via ticket by authorized Datapipe personnel.

Video cameras are placed in external areas and all built-out areas inside the facility. Video monitoring is done at the officer's station. Officers can pan, tilt, and zoom specific cameras for better inspection. Video cameras monitor 100% coverage of all managed care server rooms. Video recording is archived for at least 90 days.

Physical access smartcards utilize DESFire encryption and have an expiration date set in the software to expire at most six months from issuance. At that point a review process is conducted to ensure that individual's role and additional access is still appropriate. Role access is verified semi-annually by department managers and/or executives. Smartcards are immediately deactivated by the Security Department upon notification of employee termination by Human Resources by setting the expiration date to the termination date.

Environmental Controls

Environmental controls are first built on the principle of redundancy. The data center is designed with redundancy for key systems. Redundant systems include: Internet data connections, core routers, access and distribution switches, power distribution units (PDU), computer room air conditioning (CRAC) units, pumps, uninterruptible power supplies (UPS), generators and dry coolers.

All back up power systems are capable of maintaining continuous system services to the entire center for at least 72 hours without additional fuel. Two independent diesel contractors ensure delivery before supplies are exhausted.

Processes and systems are implemented to prevent, detect and mitigate fire damage. The center is equipped with multi-zoned fire suppression systems, aspirating smoke detectors, heat detectors, fire alarms, fire extinguishers and dual interlocking dry-pipe pre-activation sprinkler systems. Fire drills are conducted annually. Raised flooring and/or leak detection system are utilized in the data server rooms.

Environmental systems are inspected and preventive maintenance is performed at regular intervals. Environment controls are monitored by the Data Center Engineers team 24 hours per day using the Business Management System (BMS). APG physical security personnel conduct facility rounds which includes checking environmental control panels. All facility rounds are documented. System events are documented, recorded and escalated as required. The BMS is used to identify and record events of environmental systems.

If the problem cannot be immediately resolved by the Data Center Engineering team member, they escalate the problem to the Data Center Operations Manager. The Data Center Engineering Department has documented escalation procedures for each data center.

Complementary User Entity Controls

Datapipe assumes that certain controls will be in place within client organizations. This section describes the controls that should be in place within client organizations. This is not intended to be a comprehensive list of all controls that should be implemented, but rather specific controls related to Datapipe's Managed Hosting Service.

- Clients should identify client representatives that are authorized to approve client system changes. Note: All users in MyDatapipe are considered authorized to submit tickets associated with their account.
- Clients should develop change control procedures to ensure that ticket requests and any direct system changes are authorized.
- Clients should establish procedures and documentation for authorizing access to client systems. This includes dissemination of system passwords and VPN access.
- Clients should establish policies to determine who is authorized for physical access to client systems and ensure only those individuals receive "colo_access".
- Clients should detail escalation contacts and procedures for incident management in their Solution Escalation Action Plan (SEAP).
- Clients should employ a PIN on their MyDatapipe account to help ensure only authorized individuals may make support requests.
- Clients should always use the encryption feature in MyDatapipe when sending sensitive or confidential data to Datapipe personnel.
- Clients should review employee physical and logical access authorization and communicate any changes to Datapipe as necessary.
- Clients should ensure that any custom code is developed using secure coding practices and is peer reviewed and tested for vulnerabilities.
- Clients should store a copy of their data offsite to ensure business continuity in case of a disaster.
- Clients should make use of highly available systems and/or hot, warm, or cold sites for their systems.
- Clients should encrypt all confidential data on client systems.
- Clients should employ Datapipe's Managed Firewall and other Managed Security services to help ensure logical security of client solutions.

H. Changes to System

Since the last audit period, New Jersey data center systems have been changed as follows:

- NJ 1 was formerly called Somerset One, and NJ 2 was formerly called Somerset Two. The name was updated for marketing purposes in June of 2012.
- Access card audits are conducted every six months instead of annually.

SECTION FOUR

DESCRIPTION OF CONTROLS AND ASSESSMENT RESULTS

Control Objective 1: Controls provide reasonable assurance that physical access to computer and telecommunications equipment, storage media and program documentation is restricted to authorized individuals.

Controls Specified by Datapipe	Testing Performed by Auditors	Result
1. Data center policy and procedures that address physical access are documented, implemented and are current.	<p>Inspected the security policy and procedures regarding access to the data center and confirmed that the documents have been reviewed within the last year and contained an effective date prior to the examination period.</p> <p>Inquired of the Chief Security Officer (CSO) and corroborated that the security policy is applicable, current, and valid.</p>	No Exceptions Noted
2. Badge issuance is documented. Individuals must be identified prior to badge issuance. Badges, color-coded by role, must be worn at all times.	<p>Inquired of the CSO as to the badge usage at the data center and confirmed that badges are required for Datapipe employees, contractors, clients, and visitors:</p> <p>Reviewed post orders regarding badge issuance. Inquired of the CSO to ensure that badge issuance is documented and that individuals must be identified prior to issuance.</p> <p>Confirmed that badges are issued by the authorized security officer according to access level and that badges are color coded to designate the level of access.</p> <p>Observed and inspected the documented list of badge users to confirm that staff badges contain picture IDs and are color coded to differentiate types of access level.</p> <p>Obtained and inspected a sample of users with physical access to the data center to verify that all requests are documented and approved.</p>	No Exceptions Noted

Control Objective 1: Controls provide reasonable assurance that physical access to computer and telecommunications equipment, storage media and program documentation is restricted to authorized individuals.

Controls Specified by Datapipe	Testing Performed by Auditors	Result
3. Permanent physical access in the data center is authorized. Permanent photo badges/smartcards are granted to all Datapipe employees, permanent contractors and enrolled clients.	Inquired of the CSO as to the granting access to dedicated areas of the data center. Confirmed that permanent physical access to the data center is authorized for all Datapipe employees, permanent contractors and enrolled clients appropriately	No Exceptions Noted
4. Temporary physical access to the data center is authorized. Temporary access may be granted to the following individuals: tour members, temporary contractors or visitors. Individuals and escorting hosts must complete the visitor or contractor logs	Inquired of the CSO as to the temporary physical access at the data center and confirmed that access is authorized and documented for tour members, temporary contractors or visitors in respective logs. Confirmed that physical access was authorized for tour members, temporary contractors or visitors and that the logs have been in effect.	No Exceptions Noted
5. Physical access to the data center by client contractors is only granted with an authorized ticket from the client. Tickets authorize Datapipe to allow a client contractor escorted access into the client cage on behalf of the client. Physical access is restricted based on the terms in the ticket (i.e. by time, and location).	Inquired of the CSO as to the granting of client contractor access to the data center. Inspected security logs for contractors/vendor to confirm that entrants to the data center without a badge have signed at the security desk. Obtained and inspected client contractor access tickets and confirmed that co-location client contractors are required to have a client request ticket which approves access to the client equipment with a Datapipe escort.	No Exceptions Noted

Control Objective 1: Controls provide reasonable assurance that physical access to computer and telecommunications equipment, storage media and program documentation is restricted to authorized individuals.

Controls Specified by Datapipe	Testing Performed by Auditors	Result
6. All data center security areas have controls to restrict access to appropriate personnel and that doors to sensitive areas have either a smartcard reader, a smartcard reader with an embedded PIN pad, or an iris scanner with an embedded PIN pad. All reader attempts are logged.	<p>Inquired of the CSO as to the controls to restrict access to sensitive areas in the data center.</p> <p>Observed that sensitive areas have doors equipped with smartcard readers, smartcard readers with an embedded PIN pads, or iris scanners with embedded PIN pad.</p> <p>Reperformed a test of the system by attempting to gain access without valid authentication to confirm that doors are locked and that valid authentication is required for access.</p> <p>Obtained and reviewed the card reader logs at the main entrance, the 'Colo' server room entrances, and private client-dedicated areas to confirm that those areas require the use of smartcard readers or iris scanners with embedded card readers to gain access.</p> <p>Obtained and reviewed the access logs to confirm that each card access attempt was logged and that logging is occurring on all sensitive access.</p>	No Exceptions Noted

Control Objective 1: Controls provide reasonable assurance that physical access to computer and telecommunications equipment, storage media and program documentation is restricted to authorized individuals.

Controls Specified by Datapipe	Testing Performed by Auditors	Result
7. Three-factor authentication is required to access the data center main entry. Server rooms require at least two-factor authentication. The main entry requires three-factor authentication, using a smartcard, biometric iris verification, and a PIN code. All individuals, including visitors, must use a smartcard to gain admittance through the main entry.	<p>Inquired of the CSO as to the controls to restrict access to the restricted areas of the data center:</p> <p>Observed that three-factor authentication (smartcard, biometric iris verification, and a PIN code) is required to gain entry to the data center main door. Two-factor authentication (smartcard, biometric iris verification) is required to gain entry to the data center server rooms.</p> <p>Obtained and reviewed report of individuals enrolled in the iris verification system to confirm that Datapipe employees, clients and permanent contractors are enrolled.</p> <p>Obtained and reviewed card reader logs from the main entrance and a dedicated client area to determine that the card reader system is being used to gain access.</p> <p>Observed Datapipe employees and permanent contractors use PIN to activate the iris scanner followed by a smartcard to confirm that a three-factor authentication is required at the main entrance.</p> <p>Observed that the two-factor authentication is required for access to the server rooms by all personnel, including Datapipe employees, co-location clients and permanent contractors.</p>	No Exceptions Noted

Control Objective 1: Controls provide reasonable assurance that physical access to computer and telecommunications equipment, storage media and program documentation is restricted to authorized individuals.

Controls Specified by Datapipe	Testing Performed by Auditors	Result
8. Controlled passageways (i.e. mantraps and portals) are used to prevent unauthorized users from entering restricted areas. Mantraps allow only one door to be open at a time. Portals allow only one individual to enter/exit at a given time. Both controls prevent “piggybacking”, “tailgating”, or “drafting” by unauthorized users. Mantraps are employed at the main data center entrance, service entrance, fully managed server rooms as well as the shipping/receiving area, which is secured with a partial mantrap. Wait signs are used to indicate an open door on either side of the mantrap.	<p>Inquired of the CSO as to the controls that limit access to the data center’s restricted areas and observed that mantraps or portals are used to deter unauthorized individuals from entering restricted areas.</p> <p>Inspected the building security diagram to confirm the areas where the mantraps or portals are implemented.</p> <p>Reperformed a test of the system by accessing the restricted areas through the mantraps to confirm the effectiveness of the control.</p> <p>Inspected the data center to confirm that mantraps or portals identified in the building security diagram are accurate.</p>	No Exceptions Noted
9. Data center physical security controls are monitored by onsite security officers 24 hour per day. The authentication success and failure of all access attempts are monitored and a visible pop-up picture of enrolled individuals is displayed on the officer's workstation.	<p>Inquired of the CSO as to the monitoring performed to the data center and noted that security cameras are monitored by on site security officers 24 hours a day.</p> <p>Observed that authentication is monitored by screens on the officer’s workstations</p> <p>Inspected the security procedures document of the data center Post Orders as well as the Security Officer Work Schedule to confirm that security guards are expected to be on site on a 24/7 basis.</p> <p>Observed the security cameras monitored by the security guards.</p> <p>Observed smartcard holders swipe an access card to confirm that the user’s information is displayed on a pop-up window on the security officer’s workstation.</p>	No Exceptions Noted

Control Objective 1: Controls provide reasonable assurance that physical access to computer and telecommunications equipment, storage media and program documentation is restricted to authorized individuals.

Controls Specified by Datapipe	Testing Performed by Auditors	Result
10. Video cameras are monitored and video recordings are retained for 90 days. Data center physical activity is monitored by video surveillance both externally and internally. Key areas such as colo and cage entrances, hallways, and electrical/mechanical rooms are monitored. Managed server rooms have complete coverage of server equipment by video surveillance.	<p>Inquired of the CSO as to the video monitoring operation in the data center.</p> <p>Toured the data center to confirm that cameras were placed internally and externally and that the 'Colo' server rooms have a dedicated camera per each aisle in order to provide complete coverage of server equipment</p> <p>Observed the monitoring of the video cameras by the security officer to confirm that monitoring is in place and video is being recorded and retained.</p> <p>Inspected the Physical Security Procedures to confirm that Data center physical activity is expected to be monitored by video surveillance both externally and internally.</p> <p>Obtained and reviewed screenshots showing the configuration of the ViconNet application to confirm that video is being recorded and retained for at least 90 days.</p>	No Exceptions Noted
11. Door key issuance is highly restricted. High security keys for doors are only issued to authorized personnel and documented. The Security booth has restricted wall-mounted security box that contains emergency keys. Key box access is monitored and logged.	<p>Inquired of the CSO as to the issuance of door keys to the data center and the process to request door key issuance.</p> <p>Selected a sample and obtained the corresponding approval forms to confirm that the requests were documented and authorized.</p> <p>Observed that the internal keys used are high security.</p>	No Exceptions Noted

Control Objective 1: Controls provide reasonable assurance that physical access to computer and telecommunications equipment, storage media and program documentation is restricted to authorized individuals.

Controls Specified by Datapipe	Testing Performed by Auditors	Result
12. Physical access is immediately revoked upon termination. Physical access permissions are revoked by setting the smartcard expiration date to the termination date immediately upon notification of employee termination. A client employee's access is revoked upon ticket request.	<p>Inquired of the CSO as to the revoking of physical access to the data center for separated users and confirmed that the Security Procedures document addresses the revocation of access.</p> <p>Obtained a list of all employees separated during the review period and obtained the corresponding DSX smartcard access report to confirm that access was revoked.</p> <p>Obtained all client requests to revoke access during the review period and confirmed that access was removed in a timely manner.</p>	No Exceptions Noted
13. Cardholder access to the facility for active individuals is audited at least semi-annually. Each individual's smartcard permissions are set to expire every six months and then require manager approval to be re-authorized if the individual has access beyond their departmental role. Default Department Access is reviewed at least semi-annually by the department managers and/or executive management.	<p>Inquired of the CSO as to the data center physical access audit process.</p> <p>Selected a sample of users (enrolled in current year + previously enrolled) to confirm that access expires within 6 months of last audit date (or enrollment date if not yet audited).</p> <p>Obtained and reviewed security procedures and confirmed that individual badge access and departmental access roles is to be audited annually.</p> <p>Selected a sample of users (enrolled in current year + previously enrolled) to confirm that access was audited within the last 6 months.</p>	No Exceptions Noted

Control Objective 2: Controls provide reasonable assurance that customer and critical infrastructure systems are protected from environmental threats and power interruptions		
Controls Specified by Datapipe	Testing Performed by Auditors	Result
<p>1. The data center is designed with redundancy for key systems. Redundant systems include: Internet data connections, core routers, access and distribution switches, power distribution units (PDU), computer room air conditioning (CRAC) units, pumps, uninterruptible power supplies (UPS), generators and dry coolers. Power continuity is maintained. All back up power systems are capable of maintaining continuous system services to the entire center for at least 72 hours without additional fuel.</p>	<p>Inquired of the Facilities Manager as to the redundancy design of the data center:</p> <p>Observed that redundancy to the power grid is provided by UPSs and Diesel Generators.</p> <p>Confirmed redundant Internet data connections, redundant network infrastructure, and redundant air conditioning units</p> <p>Obtained and reviewed the Fiber routing map and diagrams of system redundancy to confirm that key systems have sufficient redundancy.</p> <p>Observed generator rooms, pump and diesel rooms and identified all redundant components.</p>	No Exceptions Noted
<p>2. Processes and systems are implemented to prevent, detect and mitigate fire damage. The center is equipped with multi-zoned fire suppression system (i.e. a dual interlocking dry-pipe pre-activation sprinkler systems with heat detectors), photo-electric and aspirating smoke detectors, fire alarms, and fire extinguishers. Fire drills are conducted annually.</p>	<p>Inquired of the Facilities Manager as to the controls to prevent, detect, and mitigate fire damage at the data center.</p> <p>Observed that the data center is equipped with smoke detectors, fire alarms, fire extinguishers, and a fire suppression system.</p> <p>Obtained and reviewed the Facility Fire Drill Procedure and incident reports to confirm that at least one fire drill is conducted annually.</p> <p>Obtained and reviewed the Fire Suppression and Alarm System Test Report to confirm that the system has been tested within the review period.</p>	No Exceptions Noted
<p>3. Systems and equipment are protected from water damage. To mitigate floods, raised flooring is in place. To detect water, a leak detection system is utilized in all managed server rooms.</p>	<p>Inquired of the Facilities Manager as to the physical controls in the data center to prevent and mitigate water damage and determined that raised flooring and a leak detection system is in place.</p> <p>Observed the raised floor during our data center tour to confirm that it was implemented according to the Facilities Manager description.</p> <p>Inspected the diagram of leak cable placement to confirm that a water leakage detection system is utilized throughout the server room.</p>	No Exceptions Noted

Control Objective 2: Controls provide reasonable assurance that customer and critical infrastructure systems are protected from environmental threats and power interruptions		
Controls Specified by Datapipe	Testing Performed by Auditors	Result
4. Environmental systems are inspected and preventive maintenance is performed at regular intervals. Environmental systems include: UPS, PDU, HVAC, fire suppression, generators, and a leak detection system, which all require at least annual maintenance.	<p>Inquired of the Facilities Manager as to the data center environmental controls and their maintenance.</p> <p>Obtained and reviewed the facilities maintenance schedule, the emergency power generator annual operating log, fire suppression inspection reports, system maintenance reports and facility rounds reports to confirm that the environmental controls have been implemented, maintained, inspected, and tested throughout the review period.</p>	No Exceptions Noted
5. Environmental controls are monitored. The data center Facilities department monitors all environmental systems 24 hours per day. Security officers monitor and record environmental readouts at least 8 times daily.	<p>Inquired of the Facilities Manager as to the monitoring of the data center environmental controls.</p> <p>Obtained and reviewed the Facility Rounds report to confirm that alarms that have been triggered in the facility are documented.</p> <p>Inspected the Facilities shift schedule to confirm that environmental controls are monitored on a 24 hour basis.</p>	No Exceptions Noted
6. System events are documented, recorded and escalated as required. The Building Management System (BMS) is used to identify and record events of environmental systems. Data center Facilities directs the problem reports to the appropriate service group, if the problem cannot be immediately resolved. Data center Facilities has documented escalation procedures for each center.	<p>Inquired of the Facilities Manager as to the documentation and escalation procedures for data center environmental control events.</p> <p>Obtained and reviewed the Emergency Action Manual for the data center to confirm that environmental events, including system outages, are documented, recorded and escalated as required.</p> <p>Obtained and reviewed the emails generated by Business Management System to alert Data Center Facilities staff for resolution.</p> <p>Inspected BMS-related emails to confirm that Facilities escalated the event to the appropriate service group according to documented procedures.</p>	No Exceptions Noted