

CONSENT AGREEMENT FOR USE OF COPYRIGHTED WORKS

THIS CONSENT AGREEMENT (this "**Agreement**") is entered into as of _____, 20____ (the "**Effective Date**"), by and between Instructional Empowerment, Inc. ("**IE**"), and the Oklahoma State Department of Education ("**OKSDE**"). IE and the OKSDE are hereafter referred to collectively as the "**Parties**" or individually as a "**Party**".

RECITALS

WHEREAS, IE is a leading provider of teacher growth, evaluation and associated professional development solutions and is the owner or exclusive licensee of copyrighted works related to teacher growth, evaluation, and associated professional development solutions;

WHEREAS, the OKSDE desires to use certain copyrighted works owned or licensed by IE, a use which IE desires to permit subject to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IE and OKSDE intending to be legally bound agree as follows:

AGREEMENT

- (1) IE owns or licenses certain copyrighted works related to teacher growth, evaluation and associated professional development including, but not limited to, frameworks for teacher and leadership growth, evaluation, and professional development developed by Dr. Robert Marzano (the "**Marzano Frameworks**") and associated forms which display scales and goals ("**Marzano Rubrics**"). Collectively the Marzano Frameworks and the Marzano Rubrics are referred to herein as the "**IE Materials**."
- (2) Consent. Subject to the terms and conditions contained herein, and only during the term of this Agreement, IE consents to the OKSDE's copying of the IE Materials, the display by the OKSDE of the IE Materials only on the OKSDE's website and the OKSDE's distribution of physical copies of the IE Materials only within the OKSDE's school districts and only for the exclusive use of those school districts.
- (3) Restrictions on Consent. With the exception of those rights which are expressly granted by this Agreement, no other right to any use of the IE Materials is granted to the OKSDE. OKSDE acknowledges the following non-exclusive list of conditions:
 - (a) Except as may occur through the display of the IE Materials on the OKSDE's website, the OKSDE may not in any way provide a third party with access to the IE Materials, and may not distribute or copy the IE Materials for use by third parties.
 - (b) The OKSDE, and its school districts or contractors, may not digitize or, except as permitted for display on the OKSDE's website, may not create digital or electronic versions of any of the IE Materials except for use in a properly licensed version of IE's iE OBSERVATION instructional and leadership improvement system.
 - (c) The OKSDE shall not copy or display the IE Materials for any other purpose or in any other manner than as expressly authorized herein.
 - (d) The OKSDE, and its school districts or contractors, shall not make any alterations or modifications to, or create derivative works based upon, the IE Materials.
 - (e) Nothing contained herein shall afford the OKSDE any right to use any other works owned by IE.
 - (f) IE's consent is non-exclusive and shall not limit any of IE's rights to the IE Materials.
 - (g) The OKSDE shall recognize IE as the exclusive partner of Dr. Robert Marzano for the provision of training for the implementation of Dr. Robert Marzano's Causal Teacher Evaluation Model including its observer scoring and certification training; accordingly, OKSDE shall use only IE for implementation training of Dr. Robert Marzano's Causal Teacher Evaluation Model including its observer scoring and certification training.
- (4) Retention of Copyright Notice. The OKSDE may not remove, alter, or obscure any copyright notice that was displayed by IE or its licensor on the IE Materials. In the event the OKSDE creates any copies, whether physical or permitted digital copies, of the IE Materials all original copyright notices shall be retained. Failure to include, or the destruction or obscuring of any copyright notice shall be deemed a material breach of this Agreement.

- (5) IE's Ownership of the IE Materials. The OKSDE expressly recognizes ownership, and copyright registration, of the IE Materials by IE or IE's licensor. The OKSDE will not in any way, directly or indirectly, do or cause to be done, any act or thing contesting or in any way impairing or tending to impair any part of IE's or its licensor's right, title and interest in connection with the IE Materials. The OKSDE shall not in any manner represent that it has any ownership in said IE Materials or any registration thereof, and the OKSDE acknowledges that use of the IE Materials by it shall not create in the OKSDE any right, title or interest in or to the IE Materials, but all use of the IE Materials by the OKSDE shall inure to the benefit of IE and its licensor. The OKSDE agrees that it shall not, directly or indirectly, during the term hereof or thereafter, attack the validity of the ownership of the IE Materials in any proceeding whatsoever.
- (6) Term and Termination. The term of this Agreement ("Term") shall be perpetual until terminated by IE. IE may terminate this Agreement without cause upon thirty (30) days written notice to the OKSDE; however, in the case of the OKSDE's material breach of this Agreement, IE shall be permitted to terminate this agreement immediately upon written notice to the OKSDE and without an opportunity for the OKSDE to cure said material breach. Within ten (10) days of the expiration or termination of this Agreement for any reason, the OKSDE shall destroy and remove from its website and will provide IE with written assurances that it has destroyed and removed from its website any copies of the IE Materials regardless of format.
- (7) Representations, Warranties, and Compliance with Laws. The OKSDE warrants and represents it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder and, that it will comply with all applicable federal, state, and local laws and regulations in the performance of the terms of this Agreement.
- (8) Indemnification. The OKSDE agrees to defend, indemnify and hold IE, its affiliates and their respective officers, directors, employees, and agents harmless against any losses, damages, liabilities, costs or expenses, including attorneys' fees and costs of settlement, asserted by any third party and arising out of any Claim due to: (i) the OKSDE's breach of its representations, warranties or agreements hereunder; (ii) the OKSDE's infringement of IE's copyright, trademark or any other intellectual property rights; or (iii) any modification or misuse by the OKSDE of the IE Materials.
- (9) Limitation of Liability. IE makes no representations or warranties of any kind to the OKSDE. IE and IE's licensors are not obligated to the OKSDE, its school districts or contractors, in any way. OKSDE for itself, its school districts and contractors, and for their directors and employees, hereby waives any and all claims against IE or its licensors arising for, or related to, the IE Materials whenever such claims arise. Under no circumstances shall IE or its licensors be held liable to the OKSDE for any actual damages or loss of any kind, or for any special, consequential, punitive, exemplary or incidental damages (including lost or anticipated revenues or profits or loss of goodwill relating to the same) arising from any claim relating to this Agreement or the IE Materials, whether such claim is based on contract, tort, or otherwise, even if such IE has been advised of the possibility of such damages.
- (10) Entire Agreement; Amendment; Assignment. This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties relating to the subject matter hereof, and is intended as a final expression of the Parties' agreement. This Agreement shall not be modified or amended except in writing by authorized representatives of IE and the OKSDE. The OKSDE shall have no right to assign this Agreement or sublicense any rights granted by this Agreement without the prior written consent of the IE.
- (11) Notices. All notices or other documents to be made under this Agreement shall be in writing and shall be deemed to have been duly given or made when personally delivered or, if mailed, postage prepaid, registered or certified mail, or by Federal Express or other reputable national overnight courier service to the parties at the addresses provided herein:

If to IE:

Instructional Empowerment, Inc
Michael Toth, CEO
175 Cornell Rd
Suite 18
Blairsville, Pennsylvania 15717

with a copy to:

Michael A. Doctrow, Esquire
McNees Wallace & Nurick LLC
100 Pine Street, P. O. Box 1166
Harrisburg, Pennsylvania 17108-1166

If to the OKSDE:

Oklahoma State Department of Education
Janet C. Barresi, Oklahoma State Superintendent
of Public Instruction
2500 N. Lincoln Boulevard
Oklahoma City, Oklahoma 73105

with a copy to:

Attention: _____

- (12) Waiver and Severability. No waiver by either Party of any default shall be deemed as a waiver of a prior or subsequent default of the same or other provisions of this Agreement. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, then, to the fullest extent permitted by law: (a) all other provisions hereof shall remain in full force and effect and shall be liberally construed to carry out the intentions of the Parties as nearly as may be possible, and (b) the Parties will amend this Agreement as necessary to avoid such invalidity or unenforceability while, to the maximum extent possible, preserving the underlying arrangements herein. To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any provision hereof invalid or unenforceable in any respect.
- (13) Choice of Law. This Agreement shall be construed and disputes under this Agreement shall be governed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any principles of conflicts of law. Any legal action or proceeding arising under or related to this Agreement shall be brought exclusively in the federal and state courts in and for York County, Pennsylvania, and the parties hereto accept and submit to the personal jurisdiction of these courts with respect to any such legal action or proceeding.
- (14) Relationship. This Agreement shall not create an agency or independent contractor relationship.
- (15) Survival. Sections 4 through 9, 13 and 15 herein shall survive and continue in effect following the termination or expiration of this Agreement.

Instructional Empowerment, Inc.

Signature

Printed Name

Date

**OKLAHOMA STATE DEPARTMENT
OF EDUCATION**

Signature

Printed Name

Date