Contract Number 2011C-314

11-1200-384

State Auditor Number

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
FOR CONSULTANT SERVICES BETWEEN

(Deloitte Consulting LLP)		(Office of Finance & Management)
(100 Kimball Drive)	AND	(800 Governors Drive)
(Parsippany, NJ 07054)		(Pierre, SD 57501-2291)

(Hereinafter referred to as Consultant or Deloitte Consulting)(Hereinafter referred to as State or Client)

The State hereby enters into an agreement (the "Agreement" or "Engagement Letter") for Consultant services with the Consultant.

I. THE CONSULTANT:

A. Consultant agrees that each member of Consultant's Services team shall not be a full-time employee of the State.

B. The scope of the Services is as follows:

The Consultant will work with SD DOE management to develop a plan for the design, development and implementation of a Longitudinal Data System. The SD DOE will provide significant input and content for the LDS plan. The Consultant will assist in facilitating the development of this content.

The LDS Plan will include the following sections:

- Executive Summary
- LDS Goals and Objectives
- Project Timeframes
- Project Scope
- Implementation Options
- Estimated Costs

Tasks

The following tasks will be performed by the Consultant as part of the planning effort:

- Meet with SD DOE executives to determine LDS goals and objectives
- Identify project scope and timeframe
- Identify implementation alternatives
  - Experiences of Other States
- Identify Resource Requirements and Estimated Cost Ranges
  - Personnel
  - Hardware
  - Software
  - Professional Services
- Develop LDS Plan

State Auditor Number

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
FOR CONSULTANT SERVICES BETWEEN

(Deloitte Consulting LLP	)	(Office of Finance & Management	)
(100 Kimball Drive	) AND	(800 Governors Drive	)
(Parsippany, NJ 07054	)	(Pierre, SD 57501-2291	)

The following tasks will be performed as part of the Data Dictionary effort:

- Meet with SD DOE Data Dictionary team at project onset
- Review plan to develop Data Dictionary and provide feedback
- Provide monthly review of draft Data Dictionary and provide feedback between October 1, 2010 and December 31, 2010

Work Products

The primary Work Product produced by this project will be an LDS implementation plan. The Outline for the plan was described above.

In addition, recommendations for the development of an enterprise-wide Data Dictionary will be provided along with three monthly reviews of the draft Data Dictionary.

II. THE STATE:

A. The State will make a total payment, inclusive of Consultant expenses, not to exceed $50,000.00 upon completion of the Services in conformance with all material respects of the Agreement. Payment will be made in three (3) installments as follows:

The first installment of $15,000.00 will be made on October 30, 2010 upon receipt of an invoice submitted by the Consultant and approved by the State.

The second installment of $20,000.00 will be made on November 30, 2010 upon receipt of an invoice, submitted by the Consultant and approved by the State.

The third and final installment of $15,000.00 will be made on December 31, 2010 upon receipt of an invoice, submitted by the Consultant and approved by the State.

B. The State will:

- Make the Director of Finance and Management and/or the Data Management Administrator available for weekly one hour meetings and/or conference calls during the term of the Agreement.
- Make all other necessary staff available to Consultant on an as needed basis during the term of the Agreement.
- Provide documentation of the SD DOE's strategic plan(s) within one week of project initiation.
- Provide documentation on existing systems and data collections within one week of project initiation.
- Provide copies of SD DOE's Longitudinal Data System grant applications within one week of project initiation.

- Provide adequate work space for the vendor including telephone and internet access.

Contract Number 2011C-314

State Auditor Number

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
FOR CONSULTANT SERVICES BETWEEN

(Deloitte Consulting LLP	)		(Office of Finance & Management)
(100 Kimball Drive	)	AND	(800 Governors Drive)
(Parsippany, NJ 07054	)		(Pierre, SD 57501-2291)

III. SERVICES: It is understood and agreed that the Services may include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the Client.

IV. PAYMENT OF INVOICES: Deloitte Consulting's invoices are due upon presentation. Invoices upon which payment is not received within thirty (30) days of the invoice date shall accrue a late charge of the lesser of (i) 1½% per month or (ii) the highest rate allowable by law, in each case compounded monthly to the extent allowable by law. Without limiting its rights or remedies, Deloitte Consulting shall have the right to halt or terminate the Services entirely if payment is not received within thirty (30) days of the invoice date. The Client shall be responsible for all taxes imposed on the Services or on the transaction, other than Deloitte Consulting's income taxes imposed on a net basis or by employment withholding, and other than taxes imposed on Deloitte Consulting's property.

V. TERM: Unless terminated sooner in accordance with its terms, the term of the Agreement commences October 1, 2010 and shall end December 31, 2010. This engagement may be terminated by either party at any time, with or without cause, by giving written notice to the other party not less than thirty (30) days before the effective date of termination; provided that, in the event of a termination for cause, the breaching party shall have the right to cure the breach within the notice period. Notwithstanding Paragraph XXII of this Agreement, upon termination of the engagement, the Client will compensate Deloitte Consulting under the terms of the Engagement Letter for the Services performed through the effective date of termination.

VI. DELIVERABLES:

a) For purposes of these terms (i) "Technology" means works of authorship, materials, information and other intellectual property; (ii) "Deloitte Consulting Technology" means all Technology created prior to or independently of the performance of the Services, or created by Deloitte Consulting or its subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon; and (iii) "Deliverables" means all Technology that Deloitte Consulting or its sub-contractors create for delivery to the Client as a result of the Services.

b) Upon full and final payment to Deloitte Consulting hereunder, and subject to all other terms and conditions herein, Deloitte Consulting hereby (i) assigns to the Client all rights in and to the Deliverables, except to the extent they include any Deloitte Consulting Technology; and (ii) grants to the Client the right to use, for Client's internal business purposes, any Deloitte Consulting Technology included in the Deliverables in connection with its use of the Deliverables. Except for the foregoing license grant, Deloitte Consulting or its licensors retain all rights in and to all Deloitte Consulting Technology.

c) To the extent any Deloitte Consulting Technology provided to the Client hereunder is a product (to the extent it constitutes merchandise within the meaning of section 471 of the Internal Revenue Code), such Deloitte Consulting Technology is licensed to the Client by

Contract Number 2011C-314

State Auditor Number

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
FOR CONSULTANT SERVICES BETWEEN

(Deloitte Consulting LLP	)		(Office of Finance & Management	)
(100 Kimball Drive	)	AND	(800 Governors Drive	)
(Parsippany, NJ 07054	)		(Pierre, SD 57501-2291	)

Deloitte Consulting as agent for Deloitte Consulting Product Services LLC on the terms and conditions herein. The assignment and license grant in Paragraph VI(b) do not apply to any Technology (including any modifications or enhancements thereto or derivative works based thereon) that is subject to a separate license agreement between the Client and a third party, including, without limitation, Deloitte Consulting Product Services LLC.

VII. LIMITATION ON WARRANTIES: THIS IS A SERVICES ENGAGEMENT. DELOITTE CONSULTING WARRANTS THAT IT SHALL PERFORM THE SERVICES IN GOOD FAITH AND IN A PROFESSIONAL MANNER. DELOITTE CONSULTING DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FIT-NESS FOR A PARTICULAR PURPOSE. THE CLIENT'S EXCLUSIVE REMEDY FOR ANY BREACH OF THIS WARRANTY SHALL BE FOR DELOITTE CONSULTING, UPON RECEIPT OF WRITTEN NOTICE, TO USE DILIGENT EFFORTS TO CURE SUCH BREACH, OR, FAILING ANY SUCH CURE IN A REASONABLE PERIOD OF TIME, THE RETURN OF PROFESSIONAL FEES PAID TO DELOITTE CONSULTING HEREUNDER WITH RESPECT TO THE SERVICES GIVING RISE TO SUCH BREACH.

VIII. LIMITATION ON DAMAGES AND INDEMNIFICATION:

a) Each party agrees that the other party, its affiliates, subcontractors, and their respective personnel shall not be liable for any claims, liabilities, or expenses relating to this engagement ("Claims") for an aggregate amount in excess of (i) in the case of Deloitte Consulting, the fees paid by the Client to Deloitte Consulting pursuant to this engagement, or (ii) in the case of the Client, the fees paid and payable by the Client to Deloitte Consulting pursuant to this engagement, except to the extent finally judicially determined to have resulted primarily from the recklessness, bad faith or intentional misconduct of the other party, its subcontractors or their respective personnel. In no event shall either party, its affiliates, subcontractors, or their respective personnel be liable for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense (including, without limitation, lost profits and opportunity costs), relating to this engagement. The provisions of this Paragraph VIII(a) shall not apply to any Claim for which one party has an obligation to indemnify the other or to any Claim for breach of Paragraph VI. In circumstances where all or any portion of the provisions of this Paragraph VIII or Para-graph XIII (b) are finally judicially determined to be unavailable, the aggregate liability of each party, its affiliates, subcontractors, and their respective personnel for any Claim shall not exceed an amount which is proportional to the relative fault that their conduct bears to all other conduct giving rise to such Claim.

State Auditor Number

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
FOR CONSULTANT SERVICES BETWEEN

(Deloitte Consulting LLP	)	(Office of Finance & Management	)
(100 Kimball Drive	) AND	(800 Governors Drive	)
(Parsippany, NJ 07054	)	(Pierre, SD 57501-2291	)

b) Deloitte Consulting shall indemnify, defend and hold harmless the Client and its personnel from and against any and all Claims attributable to claims of third parties solely for bodily injury, death or damage to real or tangible personal property, to the extent directly and proximately caused by the negligence or intentional misconduct of Deloitte Consulting while engaged in the performance of the Services; provided, however, that if there also is fault on the part of any entity or individual indemnified hereunder or any entity or individual acting on the Client's behalf, the foregoing indemnification shall be on a comparative fault basis.

c) The Client shall indemnify, defend and hold harmless Deloitte Consulting, its subcontractors and their respective personnel from and against any and all Claims attributable to claims of third parties solely for bodily injury, death or damage to real or tangible personal property to the extent directly and proximately caused by the negligence or intentional misconduct of the Client while Deloitte Consulting is engaged in the performance of the Services; provided, however, that if there also is fault on the part of any entity or individual indemnified hereunder or any entity or individual acting on Deloitte Consulting's or any subcontractor's behalf, the foregoing indemnification shall be on a comparative fault basis.

d) As a condition to the foregoing indemnity obligations, the indemnified party shall provide the indemnifying party with prompt notice of any Claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with the indemnifying party in connection with any such Claim. The indemnifying party shall be entitled to control the handling of any such Claim and to defend or settle any such Claim, in its sole discretion, with counsel of its own choosing.

I.X. CLIENT RESPONSIBILITIES: The Client shall cooperate with Deloitte Consulting hereunder, including, without limitation, providing Deloitte Consulting with reasonable facilities and timely access to data, information and personnel of the Client. The Client shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to Deloitte Consulting for purposes of the performance of the Services. The Client acknowledges and agrees that Deloitte Consulting's performance is dependent upon the timely and effective satisfaction of the Client's responsibilities hereunder and timely decisions and approvals of the Client in connection with the Services. Deloitte Consulting shall be entitled to rely on all decisions and approvals of the Client. The Client shall be solely responsible for, among other things: (i) making all management decisions and performing all management functions; (ii) designating a competent management member to oversee the Services; (iii) evaluating the adequacy and results of the Services; and (iv) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.

State Auditor Number

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
FOR CONSULTANT SERVICES BETWEEN

(Deloitte Consulting LLP	)	(Office of Finance & Management	)
(100 Kimball Drive	) AND	(800 Governors Drive	)
(Parsippany, NJ 07054	)	(Pierre, SD 57501-2291	)

X. FORCE MAJEURE: Neither party shall be liable for any delays or non-performance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions or the failure to cooperate by the other party (including, without limitation, entities or individuals under the other party's control, or any of their respective officers, directors, employees, other personnel and agents), acts or omissions or the failure to cooperate by any third party, fire, epidemic or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

XI. LIMITATION ON ACTIONS: No action, regardless of form, relating to this engagement, may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment may be brought no later than one year following the date of the last payment due to the party bringing such action.

XII. INDEPENDENT CONTRACTOR: It is understood and agreed that each party is an independent contractor and that neither party is, nor shall be considered to be, the other's agent, distributor, partner, fiduciary, joint venture, co-owner or representative. Neither party shall act or represent itself, directly or by implication, in any such capacity or in any manner assume or create any obligation on behalf of, or in the name of, each other.

XIII. CONFIDENTIALITY AND USE:

a) To the extent that, in connection with this engagement, either party (each, the "receiving party") comes into possession of any trade secrets or other proprietary or confidential information of the other (the "disclosing party"), it will not disclose such information to any third party without the disclosing party's consent. The disclosing party hereby consents to the receiving party disclosing such information (i) as expressly set forth in the Engagement Letter or to subcontractors, whether located within or outside of the United States, that are providing services in connection with this engagement and that have agreed to be bound by confidentiality obligations similar to those in this Paragraph XIII(a), (ii) as may be required by law, regulation, judicial or administrative process, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining hereto, or (iii) to the extent such information (A) shall have otherwise become publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as the result of a disclosure in breach hereof, (B) becomes available to the receiving party on a nonconfidential basis from a source other than the disclosing party which the receiving party believes is not prohibited from disclosing such information by obligation to the disclosing party, (C) is known by the receiving party prior to its receipt from the disclosing party without any obligation of confidentiality with respect thereto, or (D) is developed by the receiving party independently of any disclosures made by the disclosing party to the receiving party of such information. In satisfying its obligations under this Paragraph XIII(a), each party shall maintain the other's trade

secrets and proprietary or confidential information in confidence using at least the same degree of care as it employs in maintaining in confidence its own trade secrets and proprietary or confidential information, but in no event less than a reasonable degree of care. Nothing in this Paragraph XIII(a) shall alter the Client's obligations under Paragraph XIII(b). Notwithstanding anything to the contrary herein, the Client acknowledges that Deloitte Consulting, in connection with performing the Services, may develop or acquire experience, skills, knowledge and ideas that are retained in the unaided memory of its personnel. The Client acknowledges and agrees that Deloitte Consulting may use and disclose such experience, skills, knowledge and ideas.

b) The Client agrees that neither the Services nor any Deliverables are intended for the express or implied benefit of any person or entity other than the Client. Except as otherwise provided in the Engagement Letter, the Client further agrees that the Services and Deliverables shall not be disclosed, in whole or in part, to any person or entity other than the Client and other contractors of the Client, to whom the Client may disclose the Deliverables solely for the purpose of providing services to the Client, provided that such other contractors shall not disclose the Deliverables to any person or entity. The Client shall indemnify and hold harmless Deloitte Consulting, its subcontractors and their respective personnel from all Claims arising from the Client's disclosure of the Deliverables to any third party.

XIV. SURVIVAL AND INTERPRETATION. All Paragraphs herein relating to payment of invoices, deliverables, limitation on warranties, limitation on damages and indemnification, limitation on actions, confidentiality and use, survival and interpretation, assignment and subcontracting, non-exclusivity, non-solicitation, waiver of jury trial, and governing law shall survive the expiration or termination of this engagement. In the event of any conflict, ambiguity, or inconsistency between these terms and the Engagement Letter, these terms shall govern and control. The provisions of Paragraphs VIII, XI, XIII(b), XIV, XVIII and XX hereof shall apply to the fullest extent of the law, whether in contract, statute, tort (such as *negligence)*, or otherwise, not-withstanding the failure of the essential purpose of any remedy.

XV. ASSIGNMENT AND SUBCONTRACTING: Except as provided below, neither party may assign, transfer or delegate any of its rights or obligations hereunder (including, without limitation, interests or Claims) without the prior written consent of the other party. Client hereby consents to Deloitte Consulting assigning or subcontracting any of Deloitte Consulting's rights and obligations hereunder to (i) any affiliate or related entity, whether located within or outside the United States, or (ii) any entity that acquires all or a substantial part of the assets or business of Deloitte Consulting. Services performed hereunder by Deloitte Consulting's subcontractors shall be invoiced as professional fees on the same basis as Services performed by Deloitte Consulting's personnel, unless otherwise agreed.

State Auditor Number

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
FOR CONSULTANT SERVICES BETWEEN

(Deloitte Consulting LLP	)		(Office of Finance & Management	)
(100 Kimball Drive	)	AND	(800 Governors Drive	)
(Parsippany, NJ 07054	)		(Pierre, SD 57501-2291	)

XVI. NON-EXCLUSIVITY: The parties acknowledge that Deloitte Consulting shall have the right to (i) provide consulting or other services of any kind or nature whatsoever to any person or entity as Deloitte Consulting in its sole discretion deems appropriate, or (ii) use any works of authorship or other intellectual property that may be included in the Deliverables, to develop for itself, or for others, materials or processes that may be similar to those produced as a result of the Services.

XVII. NON-SOLICITATION: During the term of this engagement and for a period of one (1) year thereafter, each party agrees that its personnel (in their capacity as such) who had direct and substantive contact in the course of this engagement with personnel of the other party shall not, without the other party's consent, directly or indirectly employ, solicit, engage or retain the services of such personnel of the other party. In the event a party breaches this provision, the breaching party shall be liable to the aggrieved party for an amount equal to thirty percent (30%) of the annual base compensation of the relevant personnel in his/her new position. Although such payment shall be the aggrieved party's exclusive means of monetary recovery from the breaching party for breach of this provision, the aggrieved party shall be entitled to seek injunctive or other equitable relief. This provision shall not restrict the right of either party to solicit or recruit generally in the media.

XVIII. WAIVER OF JURY TRIAL: THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATING TO THIS ENEGAGEMENT.

XIX. ENTIRE AGREEMENT, AMENDMENT AND NOTICES: These terms, and the Engagement Letter, including exhibits, constitute the entire constitute the entire agreement between the parties with respect to this engagement, supersede all other oral and written representations, understandings or agreements relating to this engagement, and may not be amended except by written agreement signed by the parties. All notices hereunder shall be (i) in writing, (ii) delivered to the representatives of the parties at the addresses set forth in the Engagement Letter, unless changed by either party by notice to the other party, and (iii) effective upon receipt.

XX. GOVERNING LAW; JURISDICTION AND VENUE; AND SEVERABILITY. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota (without giving effect to the choice of law principles thereof). Any action based on or arising out of this engagement or the Services shall be brought and maintained exclusively in any court of the State of South Dakota or any federal court of the United States, in each case located in Hughes County, the State of South Dakota. Each of the parties hereby expressly and irrevocably submits to the jurisdiction of such courts for the purposes of any such action and expressly and irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such action brought in any such court and any claim that any such action has been brought in an inconvenient forum. If any provision of

State Auditor Number

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
FOR CONSULTANT SERVICES BETWEEN

(Deloitte Consulting LLP	)		(Office of Finance & Management)
(100 Kimball Drive	)	AND	(800 Governors Drive)
(Parsippany, NJ 07054	)		(Pierre, SD 57501-2291)

these terms or the Engagement Letter is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth herein.

XXI. COMPLIANCE PROVISION: Consultant will comply with all federal, state and local laws applicable to the provision of Services as set forth in this Agreement.

XXII. DEFAULT PROVISION: This agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.

XXIII. APPROVAL OF DELIVERABLES: Deliverables shall be deemed accepted by Client if not rejected, in writing, within fifteen (15) days of delivery.

In witness hereto the parties signify their agreement by signature affixed below:

[signature]	10/25/10	[signature]	11/19/10
Consultant Signature	(Date)	Authorized State Representative	(Date)
Department of Education			

State Agency Coding: (Center/Company/Account) 1201220186/2024/520405000
State Agency contact who can provide additional information regarding this contract: Tami Darnall (605) 773-6231