2015A-122 Amendment #1

Exhibit C to MOU:

Member Annual Fee Worksheet for FY 2015-16

Due June 30, 2015

1. Provide the "Projected Number of Students to be Tested" in Grades 3-8 and in Grade 11...

A:	How many students in **GRADES 3: 8** will take the **SUMMATIVE** test in 2015-16? Enter the number on Line 1	Line 1	66275
B:	How many students in **GRADE 11** will take the **SUMMATIVE** test in 2015-16? Enter the number on Line 2	Line 2	10426
C:	Enter the **SUM** of Line 1 and Line 2 on Line 3	Line 3	76701
D:	"**Billable Students**" If Line 3 is LESS THAN OR EQUAL TO ONE MILLION students, enter the number from Line 3 on Line 4; if Line 3 is GREATER THAN ONE MILLION, enter 1,000,000 on Line 4	Line 4	76701

2. Select the Assessment Package you wish to use and calculate your fee...

Check ONLY ONE below

✓	**Complete -- All Grades Tested** ✓ Must have student counts in both Line 1 and Line 2 ✓ includes **SUMMATIVE (Gr.3-8 & 11)** ✓ includes **INTERIM (Grades K thru 12)** ✓ includes **FORMATIVE (Grades K thru 12)**	Multiply the number from Line 4 by **$9.55**. Enter the result on Line 5
	Complete -- Only Gr. 3-8 Tested ✓ Must have student counts in Line 1 but not in Line 2 ✓ includes **SUMMATIVE (Gr.3-8)** ✓ includes **INTERIM Grades (K thru 12)** ✓ includes **FORMATIVE (Grades K thru 12)**	Multiply the number from Line 4 by **$10.10**. Enter the result on Line 5
	Basic ✓ **SUMMATIVE Only** ✓ No **INTERIM (K thru 12)** ✓ No **FORMATIVE (K thru 12)**	Multiply the number from Line 4 by **$6.20**. Enter the result on Line 5

Line 5 (Fee for 3-8 & 11 Testing): 732,494.55

E:	Will you use the secure item pool for additional tests your state will give to students in **grades 9, 10, 11 and/or 12?**	☐ NO. **STOP**. Your TOTAL FEE is shown on line 5 ☑ YES. Continue to Step F

Exhibit C to MOU:

Member Annual Fee Worksheet for 2015-16

3. (Optional) Calculate fee for additional high school testing...

F:	Enter the **TOTAL TEST EVENTS** for **English language arts/Literacy** you expect for **Grades 9 through 12** on Line 6a.	Line 6a	200
	Enter the **TOTAL TEST EVENTS** for **Mathematics** you expect for **Grades 9 through 12** on Line 6b.	Line 6b	200
G:	Multiply Line 6a by $3.10 and enter the amount on Line 7a	Line 7a	620.00
	Multiply Line 6b by $3.10 and enter the amount on Line 7b	Line 7b	620.00
H:	Enter the sum of Lines 7a, and 7b on Line 8. This is the fee for your additional HS testing.	(Fee for Additional HS Testing) Line 8	1240.00
I:	Enter the sum of Lines 5 and 8 on Line 9. This is your TOTAL FEE.	(Total Fee) Line 9	733,734.55

4. Provide Member information...

Member Name: SD DOE

Representative Name: Jan Martin

Date: 6/30/2015

Please complete and return to sb@smarterbalanced.org by June 30, 2015.

MEMORANDUM OF UNDERSTANDING AND AGREEMENT

This Memorandum of Understanding and Agreement (this "**MOU**") is entered into by and between the entity (or authorized agency or division thereof) identified as "Member" by the parties' signatures below ("**Member**"), and The Regents of the University of California ("**UC**"), a public entity with full powers of self governance under Article IX, Section 9 of the California Constitution, as represented by the University of California at Los Angeles and its National Center for Research on Evaluation, Standards and Student Testing ("**CRESST**"), which is located in UCLA's Graduate School of Education and Information Studies (collectively, "**UCLA/CRESST**"), as of the latest date set out by the parties' signatures below (the "**Execution Date**"), with reference to the following:

A. The Smarter Balanced Assessment Consortium (the "**Consortium**") is currently a state-led enterprise intended to provide world-class leadership and resources to improve teaching and learning by creating and maintaining a balanced suite of formative, interim and summative assessment tools aligned to the Common Core State Standards in mathematics and English Language Arts/Literacy. The Consortium is not an independent legal entity and thus, the State of Washington currently acts as the Consortium's fiscal agent (the "**Fiscal Agent**") and oversees all fiscal, administrative and operational responsibilities on behalf of the Consortium.

B. UCLA/CRESST has as its mission the promotion of research, development, applications and training designed to raise the learning of students and the abilities of teachers, and to improve educational institutions through the creation of knowledge, models and tools.

C. The Consortium's projects are currently funded primarily through a grant from the U.S. Department of Education, but this grant will end in 2014, and the intent of this MOU is to enable the work of the Consortium to continue at UCLA/CRESST, with UC assuming those current or anticipated liabilities of the Consortium or the State of Washington in its capacity as the Fiscal Agent as may be expressly set forth in one or more written agreements between UC and the Fiscal Agent.

D. As the Fiscal Agent, the State of Washington has entered into contracts and undertaken obligations on behalf of the Consortium and its members, and Member understands and expects that the work of the Consortium will be transitioned to UCLA in a manner that allows UC to succeed to the fiscal, administrative and operational responsibilities currently carried out by the Fiscal Agent.

E. Schedule 1 attached hereto contains a list of current contracts to which the Fiscal Agent is a party on behalf of the Consortium that will be assigned to UC (the "**Consortium Contracts**"), together with a list of those other Consortium assets currently owned by or otherwise in the possession of the Fiscal Agent that will be assigned to UC (the "**Consortium Assets**"), and pursuant to a separate written agreement the Fiscal Agent will assign or otherwise transfer to UC the Consortium Assets and the Consortium Contracts.

F. Beginning with UC's 2014-2015 fiscal year (which begins on July 1, 2014), Smarter Balanced ("**SB**") will exist under and operate as a part of The UCLA Graduate School of Education and Information Studies, subject to the direction of the Governing Board, to be funded by members paying annual fees to UC, in order to allow the Consortium's work to continue for those members that execute this MOU.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Member and UC agree as follows:

1. Definitions.

1.1. "**Annual Fees**" means those amounts that Member pays for its participation in SB pursuant to this MOU, including any late fees charged pursuant to Section 5.1(d) below. Member's initial Annual Fees, which are calculated on a projected per-student basis (as described in Section 5.6(c) below) are set forth on Exhibit A, and Exhibit C attached hereto provides the calculations on which the Annual Fees will be based during the Term

EXHIBIT A TO MOU

Member Information

Member Information

Member Name: **South Dakota Department of Education**

Member Address for Notice Purposes

Any notices required under Section 9.5 of the Memorandum of Understanding to which this Exhibit A is attached (the "**MOU**") will be delivered to Member at the following address:

South Dakota Department of Education

800 Governors Drive
Pierre, SD 57501

Member Contacts:

State Lead: **Jan Martin Office of Assessment Administrator**

605-773-3246 jan.martin@state.sd.us
Name, Title, Phone Number and Email Address

Member Representative: **Abby Javeruk-Huming Director – Division of Assessment and Accountability**

605-773-4708 abby.javurek-humig@state.sd.us
Name, Title, Phone Number and Email Address

Project Manager: **Jan Martin Office of Assessment Administrator**

605-773-3246 jan.martin@state.sd.us
Name, Title, Phone Number and Email Address

Member Vendor(s):

Member has chosen the following vendor(s) for the implementation, operation and delivery of the Assessment System (list each vendor's name, and include name, title, phone and email information for at least one contact at each vendor):

AIR

Jon Cohen , President, AIR Assessment

jcohen@air.org (202) 403-5420

EXHIBIT A TO MOU (continued)

Annual Fees

Member's Annual Fees have been calculated on Exhibit C to the Agreement, and the total amount of Member's Annual Fees for the fiscal year to which this Exhibit A applies (subject to any adjustment required under Section 5.1(b) of the MOU) is as follows: $__680,628.50_____

Payments of Annual Fees must be made by check or by Electronic Funds Transfer and in strict accordance with UCLA's payment instructions, which are available upon request.

Initial Payment and Monthly Fee Amount

At the beginning of each fiscal year during the Term (i.e., by no later than July 1), as described in Section 5.1, Member will make an initial payment equal to two times the Monthly Fee Amount (the "**Initial Payment**"); provided, that if the Execution Date for the MOU occurs after July 31, then in addition to the Initial Payment, Member will also be required to pay the Monthly Fee Amount for the first day of each additional calendar month after July 1 that occurred prior to the Execution Date. By way of example, if the Execution Date of this MOU is September 2, then Member's first payment will equal four times the Monthly Fee Amount – the Initial Payment (equal to two times the Monthly Fee Amount) plus an additional Monthly Fee Amount for each of August and September.

Fee Discount

For fiscal year 2014-2015 only:

If Member's Execution Date is on or before July 31, 2014, then Member will receive a 1% discount on Member's Initial Payment (i.e., two times the Monthly Fee Amount, or 1/6 of Member's Annual Fee). Member's other payments for the 2014-2015 fiscal year will not be affected.

Invoice Information for Member:

The following information must be on any Invoices UC provides to Member under this MOU:

Name /Address of Vendor____

Specific date(s) of services being billed
Current billing amount
Amount previously billed
Agreement balance

EXHIBIT B TO MOU

Products and Services; Additional Member Benefits

The Products and Services (as defined in the Memorandum of Understanding to which this Exhibit B is attached) available to Member for fiscal year 2014-2015 consist of the following, in addition to those obligations of UC described in the MOU. Any capitalized terms used but not defined in this Exhibit B will have the meanings given to them in the MOU.

Assessment Packages

Basic: SB's "basic" assessment package includes summative assessments only, and does not include any interim or formative assessments.

Complete: SB offers two versions of its "complete" assessment package, as follows:

Only Gr. 3-8 Tested: this version of the "complete" package includes summative assessments for grades 3 – 8, and formative and interim assessments for grades K – 12.

All Grades Tested: this version of the "complete" package includes summative assessments for grades 3 – 8 and grade 11, and formative and interim assessments for grades K – 12.

General Operations and Membership Services

- SB will provide oversight of the maintenance and operations of the Assessment System.
- SB will provide technical support services for the Assessment System.
- SB will provide project management, including detailed project timelines, for the delivery of the Assessment System and the Products and Services described herein.
- SB will provide general communication tools and templates and communication materials translated into additional languages supported by the Assessment System.
- SB will establish, operate, maintain and update the SB Website.
- SB will provide "Tier-1" help desk support for State Assessment Directors and Chiefs or their designees.

Assessment and Item Design

- SB will maintain and enhance the assessment design by facilitating expert reviews consistent with the Association of Test Publishers (ATP)/Council of Chief State School Officers (CCSSO) best practices and the joint National Council on Measurement in Education (NCME), the American Educational Research Association (AERA) and the American Psychological Association (APA) standards for educational testing.
- SB will compile, submit and revise as necessary, for the standard SB products and services, documentation sufficient to address the requirements of the U.S. Department of Education standards and assessment peer review or equivalent large-scale assessment technical review.
- SB will design and conduct validity studies based on the priority order established by the Governing Board.
- SB will maintain and facilitate approved changes to test blueprints that describe the attributes of the assessment for each grade and content area.
- SB will maintain documentation regarding the item development process, including but not limited to, an external, independent review of item specifications, and external, independent reviews of items including content, sensitivity and bias, and accessibility reviews.

- SB will obtain and maintain permissions and copyrights for passages, written materials, graphics, photos, and other related stimuli.
- SB will maintain a research-based list of accommodations and publish annually a set of accommodations guidelines that support valid test results for all students including students with disabilities and English language learners.
- For fiscal years 2014-2015, 2015-2016 and 2016-2017, SB will develop blueline test booklets in accordance with specifications provided by the Governing Board. These blueline forms will be available for each of the grades 3-8 and grade 11 summative assessments in English language arts/literacy and Mathematics, as follows:
    - For English language arts/literacy, the forms will be available in English; and
    - For Mathematics, the forms will be available in English and also in an English/Spanish side-by-side format.
- SB will maintain specifications for an adaptive algorithm.

Interoperability and Certification Assistance

- SB will maintain interoperability standards for items, test registration, and student results for the Assessment System.
- SB will provide a certification process and implementation of certification services to verify each Member State has followed the processes for administering and processing the assessments as established by SB.
- SB will provide a certification process to affirm that Members have followed SB procedures.

Applications Development and Maintenance

- SB will maintain an item banking/item authoring tool, test administration application, digital library and data warehouse/reporting application.
- SB will facilitate an annual membership review of applications to prioritize enhancements.
- SB will sponsor application enhancements based on Members' priorities.
- SB will provide expert consultation to Members regarding the assessment delivery application.

Reporting Services

- SB will produce standardized reports for assessment results.
- SB will provide aggregate reporting at the SB, local education agency, school, and grade level, disaggregated by standard categories.
- SB will publish an annual technical report regarding the Assessment System on a state-by-state basis.

Optional Services

- SB will offer hosting for a digital library that supports formative assessment practices and tools.
- SB will offer access to an interim assessment item bank developed using procedures approved by SB.

Additional Member Benefits

In addition to the Products and Services described above, Member's payment of Annual Fees will entitle Member to the following:

- SB will pay the travel expenses for Member's State Lead and another representative of Member's state to attend up to two collaboration conferences per fiscal year, such payment to be made consistent with the applicable travel and expense policies of Member's state and of UC.

- SB will support the Governing Board and Member's participation thereon with appropriate infrastructure (e.g., conference lines, web conferencing, and meeting management services)

Exhibit C to MOU:

Member Annual Fee Worksheet for 2014-15

1. Provide the "Projected Number of Students to be Tested" in Grades 3-8 and in Grade 11...

A:	How many students in **GRADES 3-8** will take the **SUMMATIVE** test in 2014-15? Enter the number on Line 1	Line 1 61,600
B:	How many students in **GRADE 11** will take the **SUMMATIVE** test in 2014-15? Enter the number on Line 2	Line 2 9,670
C:	Enter the **SUM** of Line 1 and Line 2 on Line 3	Line 3 71,270
D:	**"Billable Students"** If Line 3 is LESS THAN OR EQUAL TO ONE MILLION students, enter the number from Line 3 on Line 4; if Line 3 is GREATER THAN ONE MILLION, enter 1,000,000 on Line 4	Line 4 71,270

2. Select the Assessment Package you wish to use and calculate your fee...

Check ONLY ONE below

☒	**Complete -- All Grades Tested** ✓ Must have student counts in both Line 1 and Line 2 ✓ includes **SUMMATIVE (Gr.3-8 & 11)** ✓ includes **INTERIM (Grades K thru 12)** ✓ includes **FORMATIVE (Grades K thru 12)**	Multiply the number from Line 4 by **$9.55**. Enter the result on Line 5
☐	**Complete -- Only Gr. 3-8 Tested** ✓ Must have student counts in Line 1 but not in Line 2 ✓ includes **SUMMATIVE (Gr.3-8)** ✓ includes **INTERIM Grades (K thru 12)** ✓ includes **FORMATIVE (Grades K thru 12)**	Multiply the number from Line 4 by **$10.10**. Enter the result on Line 5
☐	**Basic** ✓ **SUMMATIVE Only** ✓ No **INTERIM (K thru 12)** ✓ No **FORMATIVE (K thru 12)**	Multiply the number from Line 4 by **$6.20**. Enter the result on Line 5

Line 5 (Fee for 3-8 & 11 Testing): $680,628.50

E:	Will you use the secure item pool for additional tests your state will give to students in **grades 9, 10, 11 and/or 12?**	☒ NO. **STOP**. Your TOTAL FEE is shown on line 5 ☐ YES. Continue to Step F

Complete this worksheet and insert as page 27 of the MOU

Exhibit C to MOU:

Member Annual Fee Worksheet for 2014-15

3. (Optional) Calculate fee for additional high school testing...

F:	Enter the **TOTAL TEST EVENTS** for **English language arts/Literacy** you expect for **Grades 9 through 12** on Line 6a.	Line 6a _____
	Enter the **TOTAL TEST EVENTS** for **Mathematics** you expect for **Grades 9 through 12** on Line 6b.	Line 6b _____
G:	Multiply Line 6a by $3.10 and enter the amount on Line 7a	Line 7a _____
	Multiply Line 6b by $3.10 and enter the amount on Line 7b	Line 7b _____
H:	Enter the sum of Lines 7a, and 7b on Line 8. This is the fee for your additional HS testing.	(Fee for Additional HS Testing) Line 8 -0-
I:	Enter the sum of Lines 5 and 8 on Line 9. This is your TOTAL FEE.	(Total Fee) Line 9 $680,628.50

Complete this worksheet and insert as page 27 of the MOU

SCHEDULE 1 TO MOU

CONSORTIUM CONTRACTS AND CONSORTIUM ASSETS

[TO BE FINALIZED FOLLOWING REVIEW OF AGREEMENTS WITH FISCAL AGENT]

Consortium Contracts
[None]

Consortium Assets
The Consortium assets currently owned by or otherwise in the possession of the Fiscal Agent consist of the following categories of materials (a detailed list of Consortium Assets will be provided upon request):

Items
Psychometric attributes of items
Test administration and training materials
Item development specifications and guidelines
Permissions contracts for stimuli
Commissioned passages and stimuli
Responsibility for the sponsorship of open source applications developed under the grant
SB Marks, comprising the Smarter Balanced name and the logos included below

Smarter Balanced
Assessment Consortium

SmarterApp

of this MOU. Exhibit C may be updated from time to time during the Term at the direction of the Governing Board to reflect any changes to the way the Annual Fees are calculated, and Exhibit A will be updated at least yearly at the direction of the Governing Board to reflect the Annual Fees for each subsequent fiscal year during the Term.

1.2. "**Annual Operating Expenses**" means the annual operating expenses for SB, as measured on a fiscal year basis, as approved by the Governing Board, and as described in more detail in Section 5.2 below. Consistent with UC's goal of operating SB on a "revenue neutral" basis, the Annual Operating Expenses will be determined by reference to the total number of Members entering into memoranda of understanding with UC for participation in SB and the total fees the Members will pay annually.

1.3. "**Assessment System**" means the services, tools, applications, and resources, developed initially by the Consortium, which will be managed by SB from and after the Effective Date, and which includes, but is not necessarily limited to, the SB Materials and the UC Materials.

1.4. "**Confidential Information**" means any nonpublic information of Member that is disclosed to or otherwise shared with SB and UC, and any nonpublic information of SB that is disclosed to or otherwise shared with Member. Confidential Information will be identified at the time of disclosure as "confidential." Confidential Information will further include any information that the Governing Board Procedures designate for confidential treatment.

1.5. "**Consortium Assets**" has the meaning ascribed to it in the recitals, above. For the avoidance of doubt, the Consortium Assets include the SB Marks and will further include any Enhancements to the Consortium Assets, including (without limitation) any such Enhancements developed during the Term of this MOU.

1.6. "**Consortium Governance Structure Document**" means the Smarter Balanced Assessment Consortium Governance Structure Document dated July 1, 2010 (as amended by the Consortium from time to time), which is available on the "Governance" page of the Consortium's website, http://www.smarterbalanced.org/about/governance/, under "Publications and Resources."

1.7. "**Effective Date**" means July 1, 2014.

1.8. "**Enhancements**" means any enhancements, improvements, modifications or alterations to any works of authorship or other materials that embody any intellectual property rights that are conceived or otherwise developed by a party, alone or with others, or by the parties jointly, under or in connection with their performance of this MOU.

1.9. "**Executive Committee**" means the set of representatives elected by the Governing Board, together with at least one ex officio representative of UC. The Executive Committee will have primary responsibility for interfacing with SB on behalf of the Governing Board and the Members.

1.10. "**Governing Board**" means a board that consists of one representative from each Member, and to which Member will be entitled to appoint its Member Representative, who will serve during the Term of this MOU. The Governing Board will meet on a regular basis and will be responsible for providing SB with Member input and direction on operational and financial issues for SB.

1.11. "**Governing Board Procedures**" means the set of rules, policies, and procedures that will govern the operations of the Governing Board and the Executive Committee. The Governing Board Procedures will be created, adopted and amended pursuant to the terms of Section 3.3 below; provided, that until such time as the Governing Board Procedures have been adopted as set forth herein, the Governing Board will continue to operate in accordance with the Consortium Governance Structure Document. In addition, in the

event of any conflict between the Governing Board Procedures and this MOU concerning the allocation of authority between the Governing Board and the Executive Committee, the Governing Board Procedures will take precedence, and any references in this MOU to "Governing Board" or "Executive Committee" will be understood as referring to the body that has been allocated the applicable authority under the then-current Governing Board Procedures. For avoidance of doubt, the foregoing refers only to the allocation of authority between the Governing Board and the Executive Committee, and the Governing Board Procedures and actions of the Governing Board will at all times be subject to the provisions of Sections 3.2 and 3.3 below.

1.12. "**Governing Board Representative**" means an individual designated by the Governing Board who will be the single point of contact between the Governing Board and UC and between the Governing Board and each Member. At or promptly following its first meeting, the Governing Board will designate the Governing Board Representative. The Governing Board Procedures will specify the means by which the Governing Board can change the Governing Board Representative and the notice required to be given to Members and UC upon any such change.

1.13. "**Invoice**" means an invoice sent by UC to Member that includes the information (if any) that Member has identified on Exhibit A as required to be included on invoices submitted to Member.

1.14. "**Member Materials**" means any and all services, tools, applications, resources, documentation, reports, works of authorship, specifications, know-how, trade secrets, ideas, discoveries, improvements, and other works protected by intellectual property rights that are independently developed by Member during the Term of this MOU and that are not Consortium Assets, SB Materials, or UC Materials. The Member Materials will further include any Enhancements to the Member Materials, including (without limitation) any such Enhancements developed during the Term of this MOU, as long as such Enhancements are independently developed by Member.

1.15. "**Member Representative**" is the individual appointed by Member to serve as Member's representative to the Governing Board. Member's initial Member Representative is identified on Exhibit A attached hereto. Member will give UC and the Governing Board at least 15 days prior written notice of any change to its Member Representative.

1.16. "**Members**" means, collectively, every state, commonwealth or United States territory that enters into a memorandum of understanding and agreement with UC for participation in SB, as well as any other entities that the Governing Board determines to provide with voting rights in SB equal to the rights enjoyed by Member under this MOU. By way of example, if upon approval of the Governing Board the Bureau of Indian Education or the Department of Defense should enter into a memorandum of understanding and agreement with UC for participation in SB, then such entity would be included in the definition of Members hereunder. The term "**Other Member**" is used to refer to Members other than Member in the singular.

1.17. "**Monthly Fee Amount**" means one twelfth (1/12th) of Member's Annual Fee.

1.18. "**Most Favored Nations Provisions**" means the terms of the following sections of this MOU: Section 2 ("Term and Termination"); Section 5.1 ("Fees"); Section 5.4 ("Confidentiality"); Section 5.5 ("Obligations of UC"); Section 5.6 ("Obligations of Member"); and Section 6.2 ("Representations and Warranties by UC"). The Most Favored Nations Provisions also include Exhibit B and Exhibit C attached hereto.

1.19. "**Non-routine Services**" means any administrative or support services such as legal, contracting, accounting, or purchasing, that are beyond the scope of the Support Services to be provided by UC to SB pursuant to Section 5.5(e).

1.20. "**Planning Documents**" means, with respect to SB, the annual budget (including the Annual Operating Expenses for each fiscal year), staffing plans, project schedules, descriptions of Products and Services to be offered to Members, and such other planning and management documentation as the Governing Board determines for each fiscal year.

1.21. "**Products and Services**" means those products and services that Member obtains from UC pursuant to this MOU, which will include (without limitation): general operational support; assessment and item design; interoperability and certification assistance; applications development and maintenance pursuant to agreed upon milestones and service levels; access to and use of the SB Website; reporting services; and, to the extent included in or otherwise relevant to the foregoing, the Consortium Assets, the SB Materials, and the UC Materials. The specific Products and Services available to Member at the Effective Date are set forth in Exhibit B. The Products and Services are subject to change from time to time as set forth in Section 5.5(a) below. Section 5.5(a) also sets forth the process by which Member will identify Products and Services for purchase under this MOU.

1.22. "**Project Manager**" means, with respect to each party, that individual who is designated as its principal point of contact for day to day operational communications with the other party under this MOU. Member's initial Project Manager will be Member's State Lead, as identified on Exhibit A attached hereto, unless a different person is identified on Exhibit A as the Project Manager. Member will give UC at least 15 days prior written notice of any change to its Project Manager. UC's initial Project Manager will be Noelle Griffin; provided, UC's Project Manager and his or her responsibilities are subject to change from time to time as set forth in Section 5.5(b) below.

1.23. "**Reserve Account**" has the meaning given to it in Section 5.3(a) below.

1.24. "**SB Marks**" means, collectively, the Smarter Balanced name and those Smarter Balanced logos identified on Schedule 1 to this MOU, as well as any derivation thereof that would reasonably be understood to be referring to Smarter Balanced; provided, however, that the Governing Board must approve in advance any proposed combination of any SB Mark with any UC Mark, and any combined mark approved by the Governing Board will remain subject to all applicable terms and restrictions set forth or referenced herein regarding use of UC Marks.

1.25. "**SB Materials**" means any and all services, tools, applications, resources, documentation, reports, works of authorship, specifications, know-how, trade secrets, ideas, discoveries, improvements and other works protected by intellectual property rights that may be developed from time to time by SB, or by other UC resources or third parties acting at the direction of SB or UC, and that are paid for by Annual Fees from Members. The SB Materials are expected to include, without limitation, assessment items and revisions thereto, as well as other materials created for use in the administration of assessments to students. The SB Materials will further include any Enhancements to the SB Materials, including (without limitation) any such Enhancements developed during the Term of this MOU. For avoidance of doubt, the SB Materials specifically exclude any items that constitute existing Consortium Assets, Member Materials or UC Materials. Regardless of who holds title to the SB Materials, all ownership rights and interests in the SB Materials will be directed and controlled by the Governing Board so that such rights and interests inure to the benefit of the Members.

1.26. "**SB Personnel**" means those employees and contractors that UC hires as SB employees or otherwise engages as contractors to provide services to SB (including but not limited to employees with career appointments, temporary employees, and contract employees).

1.27. "**SB Website**" will be the website established, operated and maintained by SB as part of the products and services provided to Members.

1.28. "**Shortfall**" has the meaning given to it in Section 5.3 below.

1.29. "**State Lead**" means Member's principal point of contact under this MOU for high-level communications. Member's initial State Lead is identified on Exhibit A attached hereto. Member will give UC at least 15 days prior written notice of any change to its State Lead.

1.30. "**STIP Rate**" means the most recently available rate of return earned by UC's Short-Term Investment Pool, as calculated and published by the General Accounting Office in UC's Office of the President.

1.31. "**Support Services**" has the meaning given to it in Section 5.5(e) below.

1.32. "**Term**" has the meaning given to it in Section 2.1 below.

1.33. "**UC Marks**" means, collectively, the University of California name (including abbreviations of any University of California name), trade names, logos, seals and other trademarks and identifying names or graphics, as well as any derivation thereof that would reasonably be understood to be referring to the University of California or any campus, center, division or representative thereof. The UC Marks will further include any Enhancements to the UC Marks, including (without limitation) any such Enhancements developed during the Term of this MOU.

1.34. "**UC Materials**" means any and all services, tools, applications, resources, documentation, reports, works of authorship, specifications, know-how, trade secrets, ideas, discoveries, improvements, and other works protected by intellectual property rights that are independently developed by UCLA/CRESST, or by any other UC resources, that were not developed using any Annual Fees. The UC Materials are expected to include, without limitation, analytical tools, statistical models, and intellectual property related to assessment design and analysis. The UC Materials will further include any Enhancements to the UC Materials, including (without limitation) any such Enhancements developed during the Term of this MOU.

1.35. "**Vendor Specification Package**" means the set of requirements, analyses, specifications, and other materials that SB provides to Member for the purpose of facilitating Member's use of one or more vendors for the implementation, operation, and delivery of the Assessment System.

2. Term and Termination.

2.1. Term. This MOU will have an initial term of three years, commencing on the Effective Date. Upon expiration of the initial term, this MOU will automatically renew for successive one-year periods, unless earlier terminated as set forth herein; provided, that after the initial three-year term, Member may provide UC with written notice of non-renewal between July 1 and October 1 of any calendar year, and this MOU will terminate at the end of the then-current term. As used in this MOU, "**Term**" refers to the initial term and any and all renewal terms.

2.2. Termination of MOU.

(a) Termination for Breach. Either party may terminate this MOU if the other party fails to cure a material default of the terms hereof within 30 days after receiving written notice of the default.

(b) Termination for Violation of State Law. Member may terminate this MOU on thirty (30) days' prior written notice in the event that the Governing Board should take any action that violates Member's state laws applicable to Member's performance of this MOU, unless the Governing Board cures the violation within the 30-day period after receiving Member's notice. In order to exercise its termination right under this paragraph, Member's written notice to UC and the Governing Board Representative must include a written opinion of Member's legal counsel that identifies in

reasonable detail the applicable state law or laws violated and the specific action or actions of the Governing Board in violation of such law or laws. Notice that does not include an opinion of counsel will not be an effective notice of termination for purposes of this paragraph.

(c) Termination for Convenience. During the Term, either party may terminate this MOU effective as of June 30 of any year (that is, at the end of any fiscal year during the Term) by providing the other party with written notice of its intent to terminate on or before the preceding October 1. By way of illustration, if a Member wished to terminate for convenience effective as of June 30, 2016, Member would need to notify UC no later than October 1, 2015.

(d) Termination for Withdrawal of Authority or Non-Appropriation of Funds. Member may terminate this MOU on reasonable prior written notice if (i) Member's state withdraws, or materially reduces or limits the Member's ability to perform Member's duties under this MOU, or (ii) Member's state fails to appropriate the funds necessary for Member's Annual Fee; provided, that Member must immediately notify UC upon Member's learning of any withdrawal of authority or non-appropriation of funds, and Member will exercise reasonable efforts to provide UC with at least sixty (60) days advance notice of termination under this paragraph (but, for avoidance of doubt, Member is only obligated to provide such advance notice as is reasonably possible in light of the circumstances leading to a withdrawal of authority or non-appropriation of funds). For clarity, this Section 2.2(d) is not intended to provide Member with an expedited alternative to termination under Section 2.2(c) above, and Member acknowledges and agrees that it will exercise its rights under this Section 2.2(d) in good faith and in connection with a bona fide withdrawal of authority or non-appropriation of funds.

2.3. Termination as to All Members.

(a) All Members may vote (in accordance with the then-current Governing Board Procedures) to collectively withdraw from SB and their association with UC effective as of June 30 of any year (that is, at the end of any fiscal year during the Term) by having the Governing Board provide UC with written notice on or before the preceding October 1. By way of illustration, if all Members wished to collectively withdraw from SB effective as of June 30, 2016, the Governing Board would need to notify UC no later than October 1, 2015.

(b) UC may terminate its association with all Members, effective as of June 30 of any year (that is, at the end of any fiscal year during the Term), by providing the Governing Board and all Members with written notice on or before the preceding October 1. By way of illustration, if UC wished to terminate its involvement with all Members effective as of June 30, 2016, UC would need to notify all Members no later than October 1, 2015.

2.4. Effect of Termination.

(a) By Member. After the effective date of any termination of this MOU, Member will no longer be entitled to continue to use any of the Products and Services, except to the extent permitted by, and subject to Member's compliance with, any terms and conditions determined by the Governing Board in accordance with the Governing Board Procedures.

(b) As to All Members. In the event of any termination of this MOU under Section 2.3 above or any other termination that results in SB having no Members paying fees for access to Products and Services:

(i) The Governing Board Representative will work with the UC Project Manager to address transition and closing issues and to develop a transition plan in order to carry out the other requirements of this Section 2.4(b);

(ii) It is the intention of the parties, but not a legal obligation, to cooperate and endeavor to coordinate the content and timing of any press release, statement or other public announcement regarding the termination (whether by UC, by Member individually or by the Governing Board or any other representative acting on behalf of Member and other Members);

(iii) If not previously designated, the Governing Board will promptly identify a third party or third parties that will be responsible for taking title to and possession of the Consortium Assets and for taking ownership and possession of the SB Materials (as well as any third-party software, tools or applications related to the Consortium Assets or the SB Materials) and for continuing to provide the Consortium Assets and SB Materials for the benefit of any and all Members entitled to continued access and use thereof, and the Consortium Assets, SB Materials and related third-party materials will be delivered to the designated third party or parties in accordance with the transition plan developed under Section 2.4(b)(i) above;

(iv) Only if and to the extent necessary in order to carry out the transition plan, UC agrees to negotiate in good faith with the Governing Board Representative regarding the manner in which SB Materials and any related third-party materials would be transferred under this Section 2.4(b), and regarding responsibility for any actual transfer expenses or other payments required for such transfer (which, for avoidance of doubt, will be limited to any out-of-pocket expenses or other cost reimbursement actually required to effect such transfer);

(v) In connection with the transfer of the Consortium Assets and SB Materials under this Section 2.4(b), UC will execute any assignment, quit claim or other documentation reasonably requested to facilitate the transition requested by the Governing Board, and take any and all such other actions as may be reasonably necessary to give effect to and carry out the transition plan and transfer of Consortium Assets and SB Materials hereunder; and

(vi) Member will have a perpetual, worldwide, nonexclusive, fully-paid and royalty-free right and license to continue to use, at no additional cost and with no further obligations to UC, any UC Materials comprising software that was in use by Member at the time that this MOU was terminated; provided, that use of any and all such software will be limited to the version in use by Member at the time of termination and will be at Member's sole discretion and without any warranty, obligation of support, or liability of any kind on the part of UC.

3. Governing Board and Member Authority

3.1. Role of Governing Board Generally. The Governing Board will provide direction and oversight with respect to Products and Services to be provided by SB to the Members. The Governing Board will be responsible for approving the Planning Documents annually and otherwise as required by this MOU or by the Governing Board Procedures. The Governing Board will be the principal means by which the Members communicate with SB on matters requiring the input of Members. By entering into this MOU, Member is agreeing to participate in the Governing Board in accordance with the terms hereof, and is further agreeing to be bound by the Governing Board Procedures and by all other decisions and actions of the Governing Board that are intended by the terms of this MOU to bind Member.

3.2. Governing Board Direction. SB and UC will take actions based on the direction of the Governing Board as contemplated herein. In the event that any action directed by the

Governing Board would conflict with UC or UCLA policies or procedures, or where UC determines that the action is not operationally feasible or could expose UC or SB to undue or unreasonable risk, UC and the Governing Board Representative will negotiate in good faith to find a resolution acceptable to the parties.

3.3. Governing Board Procedures and Operations. The Governing Board will be responsible for organizing and supervising such committees and subcommittees as the Governing Board shall form from time to time. In addition, the Governing Board will adopt a process and timeline for preparation of the Governing Board Procedures, and may determine to seek input from UC in connection with such preparation; provided, that UC will have no formal input regarding, and no responsibility or other liability for (and UC expressly disclaims any and all such responsibility or liability), the Governing Board Procedures or their implementation. In addition, for avoidance of doubt, UC will not be a party to the Governing Board Procedures and will not be bound in any way by the Governing Board Procedures, and under no circumstances will the Governing Board Procedures effect any modification to this MOU or to the respective obligations of Member and UC to one another hereunder. The Executive Committee will be responsible for interpreting the Governing Board Procedures consistent with the terms of this MOU.

3.4. Executive Committee. The Governing Board will establish an Executive Committee in the manner described by the Governing Board Procedures. The Executive Committee will be authorized to act on behalf of the Governing Board consistent with the constraints described in the Governing Board Procedures and subject to all applicable provisions of this MOU (including, without limitation, those provisions hereunder providing for appointment of and communications through a Governing Board Representative). The Executive Committee may approve changes to the Planning Documents, unless those changes require Governing Board approval under Section 3.5 or under the Governing Board Procedures.

3.5. Decisions Requiring Governing Board Input. Without limiting the general authority of the Governing Board as described above and elsewhere in this MOU, the Executive Committee will determine when a request for approval or other action needs to be presented to the Governing Board; provided, however, that the following decisions and actions will only be made or taken by UC after the Governing Board has been notified and has been given the opportunity to meet and thereafter provide its input to UC (and, for avoidance of doubt, after Member and other Members have been given the opportunity to participate in and provide input at any and all such Governing Board meetings):

(a) Hiring or termination of key SB employees;

(b) Approval of the annual SB budget, to be proposed by SB, approval of other annual Planning Documents, and approval of changes to the Planning Documents as required by the Governing Board Procedures;

(c) Approval of Annual Fees; and

(d) Any modification to the Products and Services proposed to be offered to all Members.

3.6. Member Representative. During the Term of this MOU, Member will be entitled to designate one individual (who may be, but need not be, Member's State Lead or Project Manager) as its Member Representative.

3.7. Relationship of the Parties. UC's employees and agents performing under this MOU are not, and will not be construed to be, employees or agents of Member or of the Governing Board. No employee or agent of UC will hold itself out as or claim to be an officer, employee or agent of Member by reason hereof, nor will UC make any claim for any right, privilege, or benefit which would accrue to such employee or agent under law.

Member and its employees and agents performing under this MOU are not, and will not be construed to be, employees or agents of UC. No employee or agent of Member will hold itself out as or claim to be an officer, employee or agent of UC by reason hereof, nor will Member make any claim for any right, privilege, or benefit which would accrue to such officer, employee or agent under law.

4. Intellectual Property Rights

4.1. Ownership of Intellectual Property Rights.

(a) UC Marks and UC Materials. UC owns and will retain all right, title and interest in and to the UC Marks and the UC Materials and any Enhancements thereto that may be created under or in connection with this MOU.

(b) SB Materials and SB Marks. Subject to any contrary agreement between UC and Member, and further subject to the terms of Section 2.4(b)(iv), and except as UC may otherwise agree with respect to all Members, UC will own all worldwide intellectual property rights (including rights under patents, patent applications, trademark laws, trade secret laws, and copyright laws) in the SB Materials. UC will only use the SB Materials and the SB Marks in connection with the operation of, and in furtherance of the objectives of, SB and its Members. UC's ownership of the SB Materials will be undertaken on behalf of and solely for the benefit of the Members, and following delivery of SB Materials in accordance with the terms of Section 2.4(b) above, UC will have no further right, title or interest in, right to possess or right to make use of any SB Materials.

(c) Member Materials. Subject to any contrary agreement between UC and Member, Member will own all worldwide intellectual property rights (including rights under patents, patent applications, trademark laws, trade secret laws, and copyright laws) in the Member Materials, as well as any Enhancements thereto developed by Member independent of the parties' performance of this MOU.

(d) Consortium Assets. UC acknowledges that nothing in this MOU will provide or will be construed to provide UC with ownership rights in or to any Consortium Assets, and to the extent that UC takes title or possession of or is otherwise involved in use or the delivery of any Consortium Assets to Members in connection with UC's operation of SB, such title, possession or delivery will be undertaken on behalf of and solely for the benefit of the Members, and following delivery of Consortium Assets in accordance with the terms of Section 2.4(b) above, UC will have no further right to possess or make use of such Consortium Assets.

4.2. License Grants.

(a) Assessment System. During the Term of this MOU, and contingent upon Member's timely payment of all Annual Fees when due hereunder, UC grants to Member the nonexclusive, fully-paid, royalty-free right and license to use the Assessment System and any Enhancements thereto that are made generally available to Members, only for supporting educational purposes related to Member's students and Member (and not for commercial exploitation, resale, or use in any manner not reasonably related to the administration of assessments to Member's students), and subject to any reasonable restrictions on reproduction, distribution or use that may apply to the Assessment System or certain of the SB Materials, Consortium Assets or UC Materials included therein. Member will faithfully reproduce, and will not under any circumstances remove, alter, obscure or deface any SB Marks or UC Marks that appear in any Assessment System materials.

(b) SB Marks. Until such time as the Consortium Assets are transferred in accordance with the terms of Section 2.4(b) above, UC will have the right to use the SB Marks in

order to identify SB and to designate SB as the source of the Products and Services, and Member will be entitled to make such use of the SB Marks as may be permitted under the Governing Board Procedures.

(c) Member Materials. Member hereby grants and agrees to grant to UC the nonexclusive, fully-paid, royalty-free right and license (with right of sublicense) to use any Member Materials that Member contributes to SB or otherwise makes available to UC; provided, that any such use will only be in support of SB's obligations to Member under this MOU, and SB will not incorporate any Member Materials into the Assessment System, distribute any Member Materials to other Members or to non-member third-parties, or otherwise make use of the Member Materials without Member's prior written consent.

4.3. Action on Claim of Infringement. Should any part of the Assessment System that is generally used by all or substantially all Members become, or in UC's opinion be likely to become, the subject of a claim of infringement, UC will provide written notice to the Governing Board Representative of the circumstances giving rise to such claim or likely claim of infringement. In the event that Member receives notice of a claim of infringement, or is made a party to or is threatened with being made a party to any claim of infringement related to the Assessment System or Member's participation in SB, Member will provide notice of such claim or threat to UC's Project Manager and to the Governing Board Representative. Following receipt of such notice by the Governing Board Representative, except as UC and the Governing Board Representative may otherwise agree in writing, UC will either (at UC's sole election) (a) procure for Members the right to continue to use the affected portion of the Assessment System, or (b) replace, or otherwise modify, the affected portion of the Assessment System to make it noninfringing, or obtain a reasonable substitute product for the affected portion of the Assessment System, provided that any replacement, modification or substitution under this paragraph does not effect a material change in the functionality of the Assessment System. If none of the foregoing options is reasonably available to UC, then UC will so notify Member and the Governing Board Representative in writing, and Member will cease all use of the affected portion of the Assessment System promptly upon receipt of UC's notice.

4.4. Use of UC Marks. Member will not use the UC Marks, in any form or manner, in advertisements, reports, or other information released to the public, and Member will not place any UC Marks on any consumer goods, products, or services for sale or distribution to the public, without UC's prior written approval, to be given or withheld in UC's sole discretion. Member is hereby charged with notice of, and agrees to comply at all times with California Education Code Section 92000 et seq.

5. Obligations of the Parties

5.1. Fees.

(a) Annual Fees; Student Testing Projections. Member's Annual Fees are calculated (using Member's projections regarding the anticipated number of students to be tested, which Member will make in good faith and in reliance on all resources available to Member) on a fiscal year basis, and the fiscal year for SB begins on each July 1. Annual Fees under this MOU are generally payable in arrears, on a monthly basis, except that Member is obligated to make a payment at the start of each fiscal year, in order to fund certain expenses that SB will incur at the beginning of each fiscal year. Accordingly, for as long as this MOU remains in effect and Member remains a participant in SB as one of its Members, Member will be obligated to make an initial payment (with respect to each fiscal year during the Term hereof, the "**Initial Payment**") equal to two times the Monthly Fee Amount for the applicable

fiscal year, to be invoiced and paid as set forth in Section 5.1(c) below) with the remaining portion of Member's Annual Fees invoiced and paid monthly as described in more detail below. Member will provide UC with the anticipated number of students to be tested for an upcoming fiscal year at least one hundred twenty (120) days prior to the start of the fiscal year immediately preceding the fiscal year in which testing is to occur, and UC will calculate and provide Member with notice of Member's Annual Fees within thirty (30) days after receipt of Member's anticipated number of students to be tested.

(b) Fee Adjustments. Because Member's Annual Fees are calculated based on projected student testing numbers, adjustments to Member's Annual Fees may be required once the actual number of tested students is known. The necessity for any such adjustments (referred to herein as "**Fee Adjustments**") will be determined, and where necessary Fee Adjustments will be made, as follows:

(i) SB will endeavor to determine Member's actual number of tested students for a fiscal year by June 15 of that fiscal year, and will in any event determine such numbers as soon as reasonably possible after all records necessary for such determination have been received by SB, and will thereafter notify Member of actual student testing numbers for that fiscal year, together with a calculation of Member's Annual Fee for that fiscal year based on the actual student testing numbers (the "**Final Fee Amount**");

(ii) Where the Final Fee is more than $15,000 higher than the Annual Fees paid by Member for that fiscal year (an "**Underpayment**"), then Member will pay the amount of the Underpayment within 30 days after receiving an Invoice therefor, which Invoice will be provided together with SB's Final Fee Amount notice under Section 5.1(b)(i) above; and

(iii) Where the Final Fee is more than $15,000 lower than the Annual Fees paid by Member for that fiscal year (an "**Overpayment**"), then Member will receive a credit for the amount of the Overpayment, to be applied against (and reflected on the Invoice for) Member's first payment of Annual Fees for the next fiscal year; provided, if this MOU terminates at the end of the fiscal year in which there was an Overpayment, Member will instead receive a refund in the amount of the Overpayment, which refund will be provided to Member within sixty (60) days after Member receives SB's Final Fee Amount notice.

(iv) In the event that SB determines that any Fee Adjustment required pursuant to this Section 5.1(b) (or the operation of this Section 5.1(b) in general) poses a financial risk to SB or is otherwise not operationally feasible, SB will either request a review of this Section 5.1(b) by the Governing Board, or SB will negotiate in good faith with Member (and any other affected Members) in order to find a resolution acceptable to the affected parties.

(c) Payment Terms. Subject to the final sentence of Section 5.1(d) below, and subject to Member's receipt of a timely Invoice therefor, Member must make timely payment of the applicable Initial Payment prior to the start of each fiscal year (i.e., on or before July 1). The remaining portion of Member's Annual Fees will be paid in 10 equal monthly installments, each equal to the Monthly Fee Amount, with the first installment due not later than August 1 of the applicable fiscal year, and each subsequent installment due on the first day of the next nine calendar months (and with no Monthly Fee Amount due on June 1, all Annual Fees having been due prior to that time); provided, that if the Execution Date for this MOU occurs after July 31, then Member's Monthly Fee Amount payments will be due as set forth on Exhibit A. UC will provide Member with an Invoice at least thirty (30) days prior to the due date for each Initial Payment and Monthly Fee Amount.

(d) Late Fees. Each Initial Payment and Monthly Fee Amount will be due on the first day of the month, as specified above in Section 5.1(c), but payments will not be considered late for purposes of this Section 5.1(d) until the tenth day of the month in which the applicable payment is due. An Initial Payment or Monthly Fee Amount that is not paid by the tenth day of the month in which is due will accrue monthly interest at the STIP Rate until paid; provided, however, that before any late fee is assessed, UC will first obtain the approval of the Executive Committee, pursuant to a process established by the Governing Board and included in the Governing Board Procedures. These late fees will be without prejudice to UC's right to suspend Member's membership and access under Section 5.1(e) below for Member's failure to timely make payments when due. The foregoing notwithstanding, for the 2014-2015 fiscal year, Member's Initial Payment will not be deemed late and will not be subject to a late fee as long as that Initial Payment is received by UC within thirty (30) days after Member's receipt of an Invoice therefor, which will be provided on or after the Execution Date.

(e) Suspension of Membership. Any failure of Member to timely pay an Invoice when due may result in late fees being charged (as set forth in Section 5.1(d)) and may result in suspension of Member's membership and access to the Assessment System until UC receives Member's payment of all amounts due; provided, however, that before suspending Member's membership and access to the Assessment System, UC will obtain the approval of the Executive Committee, pursuant to procedures established by the Governing Board. During the period of any suspension, Member will not be entitled to enjoy any of the privileges of membership in SB, nor will Member be entitled to receive any of the Products and Services. Member may prepay all or a portion of its Annual Fees at any time, and Member's unpaid Monthly Fee Amounts will be reduced pro rata by the amount of any such prepayment.

5.2. Governing Board Review of Operating Expenses. On a year-to-year basis beginning after the end of the 2014-2015 fiscal year, UC will consult with the Governing Board about and obtain the Governing Board's approval of the Annual Operating Expenses, with the goal of operating SB on a "revenue-neutral" basis; provided, that Annual Operating Expenses will initially consist of the following:

(a) Personnel Costs and Related Operating Expenses. Actual costs of SB Personnel salaries, fringe benefits, and related expenses such as technology infrastructure fees, and actual cost of Support Services.

(b) Standard Costs. Calculated based on SB expenditures, and consisting of an annual administrative fee (which is currently 1.5%) to UCLA's Graduate School of Education, and an annual administrative fee (which is currently 1.23%) to UC's Office of the President.

(c) Support Services. Currently estimated at approximately $1 million per year.

(d) CRESST Expenses. Currently anticipated to be $3.5 million per year for psychometric and validity analysis services.

(e) Pass-Through Costs. Actual costs of goods or services that UC procures for SB through the purchasing support provided under Section 5.5(e) below.

(f) Capital Expenditures. Actual costs of capital improvements and other projects undertaken by SB based upon recommendations and other input from UC and the Governing Board regarding the needs of SB and the Members, such as systems upgrades, software revisions and other improvements to SB's systems and resources.

(g) Non-routine Services. Actual costs of any Non-routine Services that UC determines are needed to provide the Products and Services.

5.3. Reserve Account; Recoupment of Shortfall.

(a) Reserve Account. Consistent with UC policies and procedures, UC will establish and maintain a means of holding any Annual Fees that are not expended on Annual Operating Expenses (a "**Reserve Account**"), such that funds in the Reserve Account are available for SB use in subsequent years, subject to the provisions of Section 5.3(b). To the extent permitted by UC policies and procedures, amounts held in the Reserve Account will accrue monthly interest at the STIP Rate.

(b) Recoupment of Shortfall In the event that, for any fiscal year, the total revenue that UC receives for SB is less than the Annual Operating Expenses, then UC may advance the amount of such shortfall (to the extent not covered by the Reserve Account, the "**Shortfall**") to SB. The Shortfall will accrue interest monthly at the STIP Rate until recouped. Interest will begin to accrue on the last day of the calendar month in which the Shortfall occurs, and UC will be entitled to recoup the Shortfall plus accrued interest either from any positive Reserve Account balance, or directly from SB revenue in any subsequent fiscal year(s) in which such revenue exceeds the Annual Operating Expenses.

5.4. Confidentiality.

(a) Protection of Confidential Information of Member. To the extent that UC receives or is provided with access under this MOU to any Confidential Information of Member: UC will not disclose such information to any unauthorized third party without Member's consent; UC will make no use of such Confidential Information except to the extent required for UC to perform this MOU and to comply with any applicable Governing Board Procedures; and (subject to any requirements or limitations that may be imposed by applicable laws) UC will only make such Confidential Information available to its employees, subcontractors and agents that have a need to know such Confidential Information and that are bound by obligations of confidentiality at least as restrictive as those set forth in this Section 5.4(a).

(b) Protection of Confidential Information of SB. To the extent that Member receives or is provided with access to any Confidential Information of SB: Member will not disclose such information to any unauthorized third party without the Governing Board's consent; Member will make no use of such Confidential Information except to the extent required for Member to perform this MOU, to participate in SB, or to administer assessments consistent with the Assessment System and any applicable Governing Board Procedures; and Member will only make such Confidential Information available to its employees and contractors that have a need to know such Confidential Information and that are bound by obligations of confidentiality at least as restrictive as those set forth in this Section 5.4(b).

(c) Exceptions. The obligations of a party that receives Confidential Information (a "receiving party") from the other party (the "disclosing party") under this MOU will not apply to any information that the receiving party can demonstrate (i) was developed by the receiving party independently of the disclosing party and of this MOU and without reference to Confidential Information of the disclosing party, (ii) was rightfully obtained without restriction by the receiving party from a third party not having any obligation of confidentiality, (iii) was or became publicly available other than through the fault or negligence of the receiving party, or (iv) was released without restriction by the disclosing party. In addition, a receiving party's obligations under this Section 5.4 are expressly limited by applicable public records laws, such as (by way of example only) the California Public Records Act.

(d) Personally Identifiable Information. The protections and other terms of this Section 5.4 notwithstanding, no confidential student information, student-level data, or other

personally identifiable information will be disclosed by either party or otherwise shared under this MOU.

(e) Data Management and Data Security. UC will comply with any reasonable data management and data security provisions adopted by the Governing Board from time-to-time, subject to Sections 3.2 and 3.3 above.

5.5. Obligations of UC. In establishing SB at UCLA/CRESST to continue the work of the Consortium, and in addition to the parties' obligations set forth elsewhere in this Section 5, UC will have the following obligations, to be performed in accordance with the Governing Board Procedures and in compliance with all applicable law:

(a) Products and Services. Provided that Member timely pays its Annual Fees when due, UC will provide Member with Products and Services as determined by the Governing Board and as described on Exhibit B. Exhibit B attached hereto describes the Products and Services available as of the Effective Date. Exhibit B and the specific Products and Services set forth therein may be amended by UC for any upcoming fiscal year during the Term of this MOU as long as the Governing Board has approved the amendments, and UC provides Member with at least ninety (90) days prior written notice of such amendments, which written notice may be provided by sending Member an updated Exhibit B. In addition, any time the Governing Board should approve a material change in the Products and Services made available by SB, UC will send Member an updated Exhibit B that reflects such approved change in the Products and Services, which Exhibit B will supersede and replace the then-current Exhibit B at the date specified in the updated Exhibit B. Member may also refer to the SB Website at any time in order to review all Products and Services then available from UC, as well as information on the fees charged by SB to its Members.

(b) Project Management. SB will prepare and present drafts of all annual and amended Planning Documents to the Governing Board or the Executive Committee (as required by the Governing Board Procedures) for approval, and UC will manage SB in compliance with the approved Planning Documents. UC's Project Manager will have primary responsibility for day-to-day communications between UC and Member on operational matters related to this MOU, and on such other matters as UC may assign to its Project Manager from time to time. UC may notify Member and other Members of any change to UC's Project Manager and/or the operational matters for which the Project Manager is responsible by posting such information on the SB Website.

(c) Fiscal Responsibility. UC will be responsible for collecting fees from Members, for expending those fees on the Annual Operating Expenses and, if applicable, allocating any excess amounts to the Reserve Account, for supporting SB in identifying vendors and subcontractors (including, where necessary, via a competitive bidding or other selection process) and in negotiating and entering into contractual relationships with selected vendors and subcontractors, for providing SB with accounting, auditing and financial reporting support, for assisting SB with routine legal advice regarding UCLA, California and Federal regulations, polices, and laws related to SB and its finances, and for supporting the administrative, human resources, and operational needs of SB as required by the laws of the State of California and the policies and procedures of UC.

(d) SB Staffing. UC will seek input and evaluate recommendations from the Executive Committee regarding the recruitment and hiring of key employees, and will make offers of employment or otherwise engage such individuals on such terms as UC determines to be appropriate in light of all relevant circumstances, and in a manner consistent with applicable Governing Board Procedures and with how UC hires employees in comparable UC divisions or units.

(e) Support Services. UC will support the SB Personnel by providing the following day-to-day administrative and other support services (the "**Support Services**"), in a manner consistent with how such support is provided to comparable UC divisions or units (in terms of budget, number of personnel, and other considerations deemed relevant by UC); provided, however, that administrative or other support services outside the scope of the following will be made available as Non-routine Services:

(i) Administrative services, including IT and information practices, and financial and legal support;

(ii) Payroll;

(iii) Office space appropriate for SB's operations and research;

(iv) Accounts payable services;

(v) Travel accounting services;

(vi) Purchasing support, as needed, for purchasing goods and services;

(vii) Human resources support;

(viii) Advice and consultation regarding logistical, measurement and development issues; and

(ix) Basic compliance support, including standard monitoring of compliance with legislative policies and monitoring of legislative and legal developments.

(f) Financial Information. Within a reasonable time after the end of each calendar quarter during the Term, UC will provide Member with a quarterly financial report that is consistent with the form and content of financial reports that the Consortium provided to its members. For clarity, Members will receive the same quarterly report; reports will not be customized or otherwise targeted in any way to Member or to any Other Member.

5.6. Obligations of Member. As a participant in SB, Member will have the following obligations to UC and to the other Members, in addition to the parties' obligations set forth elsewhere in this Section 5, and together with such other obligations as UC and Member may agree in writing from time to time:

(a) State Lead. Member's State Lead will serve as its principal point of contact for high-level communications with UC under this MOU, and will also be responsible for managing communications between the Governing Board and Member's state.

(b) Communication Regarding Needs. Member will provide SB with meaningful input and consultation on Member's specific product and services needs under this MOU, so that SB (in consultation with the Governing Board) can accurately set Member's Fees.

(c) Projected Testing Numbers for Fees Calculation. Member will indicate on Exhibit A attached hereto (i) the student grade levels to which the Assessment System will be applied during the initial fiscal year of the Term, (ii) for each such student grade level, whether Member desires a "basic" or a "complete" package (as described in more detail on Exhibit B), and (iii) the projected number of students to be tested for each such grade level, and Member will use this information and Exhibit C attached hereto to calculate Member's Annual Fees. Thereafter, Member will continue to provide its selection of grade levels, election of Assessment System packages, and identification of projected student testing numbers by submitting an updated Exhibit A for subsequent fiscal years during the Term. Any Member-requested change to student grade levels or package selection at any time other than the start of a fiscal year will only be made if and to the extent permitted by the Governing Board

Procedures; actual student testing numbers, together with any required adjustment to Annual Fees, will be determined as set forth in Section 5.1(b) above.

(d) Vendor Selection. SB will provide Member with a Vendor Specification Package, which Member may use to ensure that each vendor selected by Member is able to implement, operate, and/or deliver (as applicable) the Assessment System for Member. Member will indicate on Exhibit A attached hereto its chosen vendor(s) for the implementation, operation and delivery of the Assessment System, and Exhibit A will be updated and amended as necessary to reflect any addition of or other changes to Member's chosen vendors. Member understands and agrees that SB will not interact with any vendor on behalf of Member unless and until such vendor has been identified on Exhibit A.

(e) Payment of Fees. Member will make timely payment of all Annual Fees due under this MOU, and will promptly notify UC of any expected delay or other difficulty in making payments when due hereunder.

(f) Governing Board Participation. Member will appoint an individual to serve as its Member Representative and will at all times during the Term uphold its obligations to the Governing Board and to any committees or subcommittees thereof on which Member agrees or is appointed to participate. As provided hereunder, Member will notify UC of any changes to its Member Representative, State Lead, and/or Project Manager.

(g) Coordination with State Agencies. Member will coordinate with its state and local education agencies in order to ensure that materials developed and provided to Member under this MOU are being properly delivered, administered, scored, reported and otherwise used by users in Member's state.

(h) Participation in Field Testing. Member will participate in field tests embedded in the Computer Adaptive Test, and will consider in good faith participating in additional field testing of assessment items and tasks for the purpose of maintaining and improving Member's Products and Services, as approved by Member. Consistent with applicable state and federal laws, and with each party's confidentiality obligations under Section 5.4, Member will allow SB to use the data collected from such field testing to:

(i) Conduct technical studies as required to improve the Products and Services that SB offers to Members;

(ii) Ensure consistent scoring of constructed responses across all Members; provided, that any data used across all Members in this way will be used only on an anonymous, non-personally-identifiable basis, stripped of any and all state, district, school, or student identifiers, and of any names, dates of birth or other information that could potentially allow data to be traced to a specific student or otherwise lead to the discovery of a student's identity; and

(iii) Develop templates and exemplars for use in connection with parent education and teacher training and professional development.

Other than as expressly set forth on Exhibit B or as approved by the Governing Board, UC and SB will make no use for research purposes of any testing data received from Member or otherwise obtained by UC or SB as a result of Member's participation in SB under this MOU, including, without limitation, for any publication.

6. **Representations and Warranties.** Each party represents, warrants and covenants to the other party hereto as follows:

6.1. By Member. Member has full power and authority to enter into this MOU and to perform its obligations hereunder; Member's entry into this MOU is permissible under the laws of Member's state and has been authorized by all necessary legislative, administrative or other governmental authority; the person signing this MOU on behalf of Member is authorized to do so, and has the power and authority to bind Member to all of the terms hereof; Member's entry into and performance of this MOU do not and will not violate any other agreements to which Member is a party or under which Member is otherwise bound, and Member will not enter into any agreements that violate this MOU during the Term; and there are no claims or lawsuits pending or, to Member's knowledge, threatened against Member, Member's state or the Consortium related to or arising out of any of the products and services that the Consortium has provided to its member states.

6.2. By UC. UC has full power and authority to enter into this MOU and to perform its obligations hereunder; UC's entry into this MOU has been authorized by The Regents of the University of California (as such authority has been delegated to the President and her designees); and, the person signing this MOU on behalf of UC is authorized to do so, and has the power and authority to bind UC to all of the terms hereof.

7. **Disclaimer and Limitation of Liability.**

7.1. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS MOU OR AS UC MAY EXPRESSLY AGREE IN WRITING, AND ONLY TO THE EXTENT PERMITTED BY LAW, UC AND SB DISCLAIM ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) REGARDING THE PRODUCTS AND SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

7.2. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS MOU OR THE TRANSACTIONS IT CONTEMPLATES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). IN ADDITION, IN NO EVENT WILL EITHER PARTY'S LIABILITY TO THE OTHER PARTY UNDER THIS MOU EXCEED THE AGGREGATE OF (A) THE ANNUAL FEES PAID OR PAYABLE BY MEMBER FOR THE FISCAL YEAR IN WHICH THE CLAIM GIVING RISE TO THE LIABILITY OCCURRED, AND (B) THE PROCEEDS RECEIVED FROM ANY INSURANCE COVERAGE THAT APPLIES TO THE LIABILITY INCURRED. Notwithstanding anything to the contrary in this MOU, this Section 7.2 will not apply to damages arising out of or relating to any breach by a party of its confidentiality obligations under Section 5.4.

7.3. State Law Conflicts. To the extent that any laws of Member's state expressly prohibit or limit the enforcement of this Section 7 or its application to Member, this Section 7 will be applied and enforced only to the extent permissible under the laws of Member's state.

8. **Audit Right.**

8.1. Audit Request. UC will maintain, and Member will have the right to examine and audit those books and records of UC and SB containing financial information relevant to UC's operation of SB and SB's use of the Fees collected from Members, as follows:

(a) Member will make any request for an audit under this Section 8 in writing and will deliver such request to UC's Project Manager and the Governing Board Representative.

(b) Following receipt of Member's request for an audit, the Governing Board Representative will notify the Governing Board and all other Members of the request, and other Members will have the option to participate in the audit, by notifying UC's Project Manager and the Governing Board Representative within 10 days after receiving notice of Member's audit request from the Governing Board Representative.

(c) The expense of the audit will be shared equally by all Members participating in the audit, and once an audit request has been made in accordance with this MOU (whether by Member or by any Other Member, and whether or not Member participates in the audit), Member will not be entitled to request an audit under this Section 8 until six months after the date that the requested audit concludes.

8.2. Audit Process. UC will make the books and records described above available to the audit participant(s) for review at SB's office or another UC location agreed upon by UC and the audit participant(s) within a reasonable time after the expiration of the 10-day notice period described in Section 8.1(b) above. In the event that any audit participant identifies any discrepancies or other concerns with books and records audited under this Section 8, such the audit participant will so notify UC in writing, UC will respond to such questions or concerns within 30 days after receipt of such notice.

8.3. Record Retention. UC will keep and preserve all books and records of UC and SB containing financial information relevant to UC's operation of SB and SB's use of the Fees collected from Members for a period of at least five years, including after termination of this MOU, subject to any different requirements that may be imposed by UC's record retention policies or by applicable law.

9. Miscellaneous Terms

9.1. Entire Agreement. This MOU (including its exhibits and any other attachments identified for inclusion here, and further including the Products and Services, UC Project Manager, and addresses for notices to UC hereunder, as the foregoing are identified from time to time on the SB Website) constitutes the entire understanding and agreement between Member and UC concerning the subject matter set forth herein and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties pertaining to the subject matter hereof. This MOU may be executed in multiple counterparts, each of which will constitute an original and all of which together will constitute one instrument.

9.2. "Most Favored Nations."

(a) Right to Request Inclusion of More Favorable Provisions. Subject to Section 9.2(c) below, in the event that any Other Member should, subsequent to the date that Member executes this MOU, execute a version of this MOU having any Most Favored Nations Provisions that are more favorable than the Most Favored Nations Provisions of this MOU, then UC will provide Member with written notice of such more favorable Most Favored Nations Provisions, and Member will have the right (but not the obligation) to request inclusion of such Most Favored Nations Provisions in this MOU.

(b) Request for Inclusion. Member will have thirty (30) days after receipt of written notice from UC under Section 9.2(a) above to notify UC in writing that it wants such Most Favored Nations Provisions included in this MOU, which inclusion will be automatic upon UC's receipt of timely notice from Member as set forth herein;

provided, that upon Member's written request to UC during such 30-day period for an extension under this Section 9.2(b), Member will automatically receive a further thirty (30) days in request inclusion of such Most Favored Nations Provisions in this MOU. After expiration of the aforementioned 30-day period (or 60-day period, if Member has timely requested an extension hereunder), Member will no longer have the right to request inclusion of such Most Favored Nations Provisions in this MOU; provided, that the process set forth in this paragraph will be repeated any time any Other Member executes an MOU containing more favorable Most Favored Nations Provisions.

(c) Limitations. For avoidance of doubt, any Other Member that exercises its right under the "Most Favored Nations" clause in its MOU will not be deemed to have "obtained more favorable Most Favored Nations Provisions" or "executed an MOU containing more favorable Most Favored Nations Provisions" for purposes of Member's rights to request inclusion under this Section 9.2. In addition, UC will not be obligated to provide notice of, or offer Member the right to include, any change made to an Most Favored Nations Provision for any Other Member that was made in order to accommodate the specific requirements of that Other Member's state laws.

9.3. Severability. If any provision of this MOU is determined or adjudicated to be invalid or unenforceable, such provision will be interpreted to the maximum extent to which it is valid and enforceable, and the remaining provisions of this MOU will, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

9.4. No Waiver. No terms or provisions of this MOU will be deemed waived and no breach excused, unless such waiver or consent will be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, will not constitute a consent to, waiver of, or excuse for any other different or subsequent breach. The failure by any party to execute any right provided for under this MOU will not be deemed a waiver of that right or of any other right hereunder.

9.5. Notices. All notices required or permitted hereunder will be in writing and addressed, if to Member, to its address at set forth on Exhibit A (or such other address as Member may specify by notice given pursuant to this Section 9.5), and if to UC, to its address as set forth on the SB Website (as such address may be updated on the SB Website from time to time). Notices hereunder will be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) five business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt.

9.6. Section Headings, Days. The descriptive headings in this MOU are intended for reference only and will not affect the construction or interpretation of this MOU. As used in this MOU, "days" refers to calendar days, unless otherwise specified as business days. "Business days" means all weekdays, except for Saturdays, Sundays, and any holidays as defined by California Code of Civil Procedure Sections 12a and 12b.

9.7. Modifications and Amendments. This MOU may be amended or modified only in a writing agreed to and signed by authorized representatives of Member and UC.

9.8. Non-Exclusive Remedies. The remedies provided for in this MOU will not be exclusive but are in addition to all other remedies available under law.

9.9. Authority to Bind. The signatories to this MOU represent that they have the authority to bind their respective organizations to this MOU.

[SIGNATURE PAGE FOLLOWS]

In Witness Whereof, the parties are executing this MOU as of the Execution Date, with the intention of having it take effect as of the Effective Date.

"MEMBER"	**"UC"** **The Regents of the University of California**
Member Name (i.e., name of state, commonwealth, territory, etc.)	
Dr. Melody Schopp Signature	Signature
Melody Schopp, Sec of Ed Print Name and Title	Steven A. Olsen, CFO Print Name and Title
7-31-14 Date	9/30/14 Date