

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT AMENDMENT #1
FOR CONSULTANT SERVICES BETWEEN

American Institutes for Research
1000 Thomas Jefferson Street NW
Washington DC, 20007

Division of Assessment and Accountability
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501-2294

Hereinafter referred to as Consultant

Hereinafter referred to as State

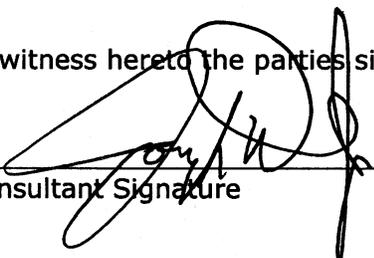
Accordingly, Contract Number 2015C-229 is hereby amended as follows:

Section 4 is revised by adding Exhibit E:

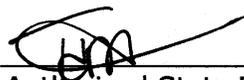
EXHIBITS

1. The terms of this Agreement as may be amended.
2. Exhibit A – Confidentiality Agreement
3. Exhibit B – Budget
4. Exhibit C – Statement of Work
5. Exhibit D – Technology Terms
6. State of Washington Request for Proposals – MAAC RFP NO. 2014 – 09 and Consultant’s Proposal to MAAC RFP NO. 2014 – 09 (“Proposal”), read together
7. Exhibit E – Smarter Balanced-Lexile/Quantile Linking Study

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



 Consultant Signature (Date) 1/6/2016



 Authorized State Representative (Date) 12/14/15
 Department of Education

State Agency Coding: (Center/Company/Account)
State Agency contact who can provide additional information regarding this contract:

Jan Martin (605) 773-3246

Smarter Balanced-Lexile/Quantile Linking Study

The State authorizes the Consultant to embed Lexile and Quantile test items in the Spring 2016 administration of Smarter Balanced Assessments in the State.

At no cost to the State, the Consultant will provide support that will enable the State to link MetaMetrics' Lexile and Quantile scales with the Smarter Balanced English language arts/literacy (ELA) and Mathematics scales in Grades 3 through 8 and 11. To accomplish this objective, the Consultant shall execute a services agreement with MetaMetrics to support the linking study. For the State, the Consultant will perform the following tasks.

1. The Consultant will add 30-40 Lexile and 30-40 Quantile items in the online test packages as additional field-test items for each of Grades 3-8 and 11 English language arts/literacy (ELA) and Grades 3-8 and 11 Mathematics .
2. The Consultant will administer these items randomly with the Smarter Balanced items being field tested.
3. The Consultant will produce and deliver to State separate state-level data files for ELA and Mathematics. The data file will include the attempted tests only Each ELA and Mathematics file will include the following for each student in the state:
 - Sequence number (in place of student ID)
 - Student grade
 - Student gender
 - Student race/ethnicity
 - Student ELL status
 - Student Smarter Balanced claim 1 scale score
 - Student Smarter Balanced overall scale score
 - Student Smarter Balanced overall performance level
 - Accommodations provided to the student for CAT

- i. Designated support/text-to-speech
 - ii. Accommodation/text-to-speech
 - iii. Accommodation/ multiplication table
- For each Smarter Balanced item
 - i. Anonymized unique Item ID
 - ii. Claim measured
 - iii. Student score point(s)
- For each Lexile or Quantile item:
 - i. MetaMetrics-provided Item ID
 - ii. Student score point(s)

All data shall be anonymized so no information that can be linked to a student will be included in the files. No information on Smarter Balanced item content will be included in the files.

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STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
FOR CONSULTANT SERVICES BETWEEN

American Institutes for Research
1000 Thomas Jefferson Street NW
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Division of Assessment and Accountability
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501-2294

Hereinafter referred to as Consultant

Hereinafter referred to as State

The State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant's services under this Agreement shall commence on September 1, 2014 and end on August 31, 2017, unless sooner terminated pursuant to the terms hereof. This Agreement may be renewed at the initiative of the State, and if mutually agreed upon by the parties, for up to two (2) additional one (1) year terms.

2. The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed four million one hundred five thousand six hundred sixty-one dollars (\$4,105,661.00). The State's total liability for all services, including expenses, is limited to this total contract amount. This amount may only be increased upon the written agreement of Consultant and the State, and such agreement must specifically reference this paragraph.

3. The State will not pay Consultant's expenses as a separate item.

4. The Consultant agrees to:

a. The exhibits listed below are attached to this Agreement and by this reference incorporated herein as if set forth in full.

b. If there is a conflict among the documents comprising this Agreement, then the conflict shall be resolved by utilizing the following order of precedence:

EXHIBITS

1. The terms of this Agreement as may be amended.
2. Exhibit A - Confidentiality Agreement
3. Exhibit B - Budget
4. Exhibit C - Statement of Work
5. Exhibit D - Technology Terms
6. State of Washington Request for Proposals - MAAC RFP NO. 2014 - 09 and Consultant's Proposal to MAAC RFP NO. 2014 - 09 ("Proposal"), read together

5. The Consultant will not use State equipment, supplies or facilities.

6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

a. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

b. Business Automobile Liability Insurance:

The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

c. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

d. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

The Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event of a substantial change in insurance, issuance of a new policy, or cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

7. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Jan Martin, on behalf of the State, and by Vickie Brooks, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or if personally delivered, when received by such party.

8. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent or employee of the State of South Dakota. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.

9. Consultant agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

10. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery. Consultant's obligation under this paragraph shall only be to report the occurrence of any event to the State and to make any other report provided for by Consultant's duties or applicable law. Consultant's obligation to report shall not require disclosure of

any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this paragraph shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

11. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

12. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant is solely responsible for the performance of any subcontractor. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

13. This Agreement may not be assigned without the express prior written consent of the State. An assignment may not operate to relieve Consultant of any of its duties and obligations under this Agreement, nor may such assignment affect any remedies available to the State that may arise from any breach of the provisions of the Agreement, including but not limited to rights of setoff. Any attempted assignment, transfer or delegation in contravention of this paragraph shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

14. The Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain any software program, and all information contained therein provided to the State by the Consultant in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

15. The Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. The Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency. The Consultant further certifies that neither it nor its principals have, within a three (3) year period preceding the awarding of this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local transaction or contract or been convicted of a violation of federal or state antitrust statutes, embezzlement, theft, forgery, bribery, falsifications, destruction of records, making false statements, or receiving stolen property. Consultant further certifies that neither it nor its principals have, within a three (3) year period preceding this contract, had a federal, state, or local transaction terminated for cause or default.

16. The award of this Agreement to Consultant is not in any way an endorsement of Consultant or Consultant's services by the State and may not be so represented by Consultant in any advertising or publicity materials. Consultant agrees to submit to the State all advertising, sales promotion, and other publicity relating to this Agreement wherein the State's name is mentioned or language is used from which the connection of the State's name therewith may, in the State's judgment, be inferred or implied. Consultant further agrees not to publish or use such advertising, sales promotion, or publicity

without the prior written consent of the State. Consultant may not in any way contract on behalf of or in the name of the State, nor may Consultant release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Agreement without obtaining the prior written approval of the State.

17. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Each invoice must reference the Agreement number and provide detailed information in a format as requested by the State. Payment will be made consistent with SDCL Ch. 5-26. Consultant acknowledges that it would be difficult or impracticable for the State to provide the notice of disagreement provided for by SDCL 5-26-5 within the ten days provided by that section. Accordingly, Consultant hereby waives the application of that section to this Agreement.

18. The payment of any invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. The Consultant shall promptly, but in all cases within thirty days of notification, pay to the State the full amount of any erroneous payment or overpayment upon notice of an erroneous payment or overpayment to which Consultant is not entitled. If Consultant fails to make such a timely refund, the State shall charge Consultant one percent (1%) per month on the amount due until paid in full.

19. The State is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

20. Amounts due to the State by Consultant, including but not limited to damages, or claims for damages, may be deducted or set-off by the State from any money payable to Consultant pursuant to this Agreement.

21. Consultant shall maintain documentation for all work performed or money received under this Agreement for a period of five (5) full years following completion of this Agreement. This documentation may be subject to audit, at any reasonable time and upon reasonable notice, by State or federal authorities.

22. Claims for payment must be submitted on an invoice within forty-five (45) days of the date upon which the Consultant knew or should have known of the claim or forty-five (45) days after the termination or expiration of this Agreement, whichever is earlier. If an invoice cannot be submitted within forty-five days, then written notice and an explanation of need must be provided to the State for consideration of an extension, which shall be in the sole discretion of the State. Failure of the Consultant to abide by this paragraph shall relieve the State of any obligation to pay for such claim.

23. This Agreement may be terminated by either party hereto upon ninety (90) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

24. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

25. This Agreement shall be governed by and construed in accordance with the laws of the

State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

26. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

27. This agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

28. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

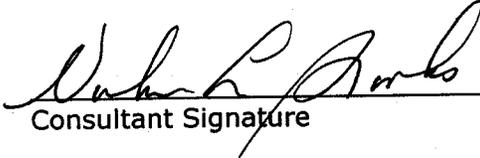
29. No remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy may be cumulative and may be in addition to every other remedy given under this agreement, not and hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

30. Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under this Agreement may not be deemed a waiver of any such right, power, or privilege under this Agreement. Any waivers granted by the State for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. The State's pursuit or non-pursuit of a remedy under this Agreement for Vendor's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that the State may have at law or equity for any other occurrence of the same or similar breach, nor prevent the State from pursuing such remedy.

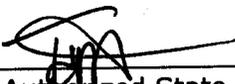
31. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by the State of any immunities from suit or from liability that the State may have by operation of law.

This Agreement is intended to govern only the rights and interest of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

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



Consultant Signature (Date) 12/5/14



Authorized State Representative (Date) 11/20/14
Department of Education



Authorized Representative (Date) 12/12/14
Bureau of Information and Telecommunications

State Agency Coding: (Center/Company/Account)
State Agency contact who can provide additional
information regarding this contract:

Jan Martin (605) 773-3246

EXHIBIT A
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT 2015C-229
CONFIDENTIALITY AGREEMENT

1. All program files, database schemas, software object code, software source code, and related documentation used by Consultant to create the South Dakota Assessment System are solely owned by Consultant and are considered proprietary to Consultant and shall be kept confidential by the State and shall only be used by the State as expressly authorized by Consultant in writing. These obligations of the State shall not apply to any portion of this information: (i) which was rightfully known or becomes rightfully known to the State without confidential restrictions from a source other than Consultant; (ii) which was or becomes publicly available or a matter of public knowledge generally, through no fault of the State; (iii) which is approved by Consultant, in writing, for disclosure without restrictions; (iv) which is independently developed by the State; (v) which is generalized know-how or skills; or (vi) which the State is legally compelled to disclose, provided that the State has given Consultant reasonable notice and opportunity to contest such compulsive disclosure, and Consultant requests that the information be treated as confidential. Consultant acknowledges that the State is a public entity and thus is bound by South Dakota open meetings and open records laws. It is not a breach of this Confidentiality Agreement for the State to take any action that the State reasonably believes is necessary to comply with open records or open meetings laws.

2. For purposes of this Confidentiality Agreement, "State Proprietary Information" shall include all information disclosed to Consultant by the State or the State's End Users. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Confidentiality Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under the Agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents, or subcontractors except those who have agreed to obligations of confidentiality at least as strict as those set out in this Confidentiality Agreement and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State Proprietary Information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced.

State Proprietary Information shall not include information that: (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) was independently developed by Consultant without the benefit or influence of the State's information; or (iv) becomes known to Consultant without restriction from a source not connected to the State of South Dakota or its End Users.

Consultant understands State Proprietary Information is confidential and protected under state and federal law and agrees to immediately notify the State if the information is disclosed, either intentionally or inadvertently. If work assignments performed in the course of the Agreement require additional security requirements or clearance, then Consultant will be required to undergo investigation.

3. Unless otherwise provided in this Confidentiality Agreement, all data provided to Consultant by the State or a school, school district, or student ("End Users") and all reports and assessments shall be solely owned by the State and will not be used in any way by Consultant without the written consent of the State. All State Proprietary Information, State data, and End User data provided in connection with the South Dakota Assessment System shall be solely owned by the State. Any State Proprietary Information disclosed to Consultant will further the legitimate educational interests of the State and Districts by allowing the Consultant assist in the administration of assessments. State Proprietary Information will be used only as necessary to: (a) further these legitimate educational interests; (b) carry out an audit or evaluation of Federal- or State-supported education programs; or (c) enforce or comply with legal requirements that relate to those programs. By disclosing this information to Consultant, the State is in no way assigning ownership of this information to Consultant.

4. No State property referenced in paragraph 3 will be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such property for government purposes.

5. For purposes of this Agreement, "disclose" or "disclosure" means to permit access to or the release, transfer, or other communication of State Proprietary Information by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

6. For purposes of the Family Educational Rights and Privacy Act ("FERPA"), State designates Consultant an "authorized representative" pursuant to 20 U.S.C. 1232g(b)(1)(C) and 34 C.F.R. 99.31(a)(3). Consultant shall also be considered a "school official" with legitimate educational interests pursuant to 20 U.S.C. 1232g(b)(1)(A) and 34 C.F.R. 99.31(a)(1)(i)(B). Consultant and the State shall comply with the provisions of FERPA in all respects. Nothing in this Agreement may be construed to allow either party to maintain, use, disclose or share personally identifiable student information in a manner not allowed by state or federal law or regulation.

If any personally identifiable student information is disclosed to Consultant as part of its work under the Agreement, this information shall be included in the definition of State Proprietary Information. The personally identifiable information which may be necessary to disclose to Consultant under this Confidentiality Agreement, for legitimate educational interests, may include the following Student Name, Student Identifier, Gender, Race/Ethnicity, Grade, IDEA Indicator, Limited English Proficiency Status, Section 504 Status, Title I Targeted Assistance Participation, State, District Number, District Name, School Number, School Name, and Test Responses. By disclosing this information to Consultant, the State is in no way assigning ownership of this information to Consultant. No other personally identifiable student information will be disclosed to Consultant.

7. Consultant may only use personally identifiable student information for purposes of fulfilling its duties under the Agreement. Consultant will abide by the security standards of this Confidentiality Agreement to protect this information in such a manner that it will be disclosed only to Consultant staff whose duties under the Agreement specifically require them to have access to this information. Under no circumstances shall Consultant disclose personally identifiable student information to any other person. Under no circumstances shall Consultant disclose any other information to any other person which would allow individual students to be directly or indirectly identified. Consultant will return or destroy all State Proprietary Information, in any form, by August 31, 2017 or upon the earlier

termination of its duties under this Agreement. Consultant will provide the State with affidavits to this effect upon request of the State.

8. Consultant and the State shall identify at least one authorized representative or data custodian from their respective agencies who shall be responsible for processing and responding to data requests from the other party.

9. All Consultant employees, officers, and agents with access to the State Proprietary Information must acknowledge that they are aware of and will abide by the provisions of this Confidentiality Agreement. Consultant agrees to remove any person from performing work who has, or is suspected to have, violated the terms of this Confidentiality Agreement. All persons receiving confidential information of Consultant or State Proprietary Information must acknowledge in writing that they have received and will abide by the provisions of this Confidentiality Agreement by signing the Certification below.

10. The parties will enforce the terms of this Confidentiality Agreement to its fullest extent. The parties agree to remove any person from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Agreement.

11. Violation of this Confidentiality Agreement is cause for immediate termination of this Agreement and could subject any violator to criminal prosecution in accordance with state law. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy may be cumulative and may be in addition to every other remedy given under this Agreement, not and hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

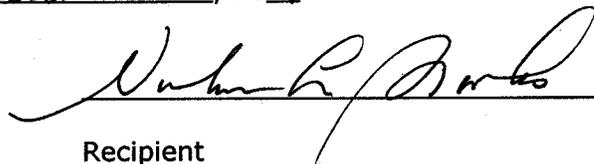
12. Neither this Confidentiality Agreement, nor any part thereof, shall establish any privacy rights to, for or on the part of, any employee of the Consultant or State or waive any remedies against any such person for illegal, improper, or unauthorized use of the computers or any computer system or portion thereof.

13. Consultant agrees that, when directed by State, it will provide a full data extract of all State data collected during the Agreement period to State via electronic media within 10 days of State's written request. Consultant reserves the right to download data for maintenance and backup purposes only during the Agreement period and it shall be maintained subject to the requirements of this Confidentiality Agreement.

14. This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

15. CERTIFICATION: I, Verkie L. Brooks, have read this Confidentiality Agreement and agree to abide by its terms.

Dated this 5th day of December, 2014.



Recipient

2015-C-229 - Exhibit B - Budget

South Dakota Pricing Summary	Year 1 (2014-2015)	Year 2 (2015-2016)	Year 3 (2016-2017)	Total Contract Period
Admin	550,368.00	550,368.00	550,368.00	1,651,104.00
Scoring	714,332.47	728,619.12	743,191.50	2,186,143.09
Reporting	7,560.00	7,560.00	7,560.00	22,680.00
Smarter Balanced 3-8,11 Admin, Scoring & Reporting Total	1,272,260.47	1,286,547.12	1,301,119.50	3,859,927.09
Braille	Removed	Removed	Removed	-
LP	-	-	-	-
Provision for Printed Test Forms	9,882.79	10,080.44	10,282.05	30,245.29
Accommodations Total	9,882.79	10,080.44	10,282.05	30,245.29
Ancillary Materials Total (online only)	9,000.00	900.00	900.00	10,800.00
Interim Assessments	-	-	-	-
Technical Reporting	21,046.19	21,046.19	21,046.19	63,138.57
Data Forensics Analysis	15,000.00	15,000.00	15,000.00	45,000.00
Inventory of Student Responses and Supporting Documentation	4,000.00	4,000.00	4,000.00	12,000.00
Digital Library	250.00	250.00	250.00	750.00
Advisory/Committee Meetings	27,000.00	27,000.00	27,000.00	81,000.00
Achievement Level Setting	-	-	-	-
IHE Reporting	2,800.00	-	-	2,800.00
Other Total	79,096.19	68,196.19	68,196.19	215,488.57
South Dakota Grand Total	1,361,239.45	1,364,823.75	1,379,597.75	4,105,660.95

First Renewal (2017-2018)	Second Renewal (2018-2019)
550,368.00	550,368.00
758,055.33	773,216.44
7,560.00	7,560.00
1,315,983.33	1,331,144.44

Removed	Removed
-	-
-	-
-	-

900.00	900.00
-	-
21,046.19	21,046.19
15,000.00	15,000.00
3,000.00	3,000.00
250.00	250.00
27,000.00	27,000.00
-	-
67,196.19	67,196.19
1,383,179.52	1,398,340.63

Task	Deliverables	Scope and Assignments	DOE Team Lead/Approver	Proposal Section
Training Test	6 Grade Band Training Tests	Receive Smarter-provided Grade band training tests (grade band and content area combination) Deploy selected training tests	DOE selects Smarter or state-provided training test DOE reviews and approves	2.1E 2.1E 2.1F
Test Engine	Test Delivery System (TDS)	Provide evidence AIR Test Engine meets Smarter specifications (as long as a realistic certification process is provided. Smarter currently does not have a certification process). User Acceptance Testing (UAT) will provide DOE opportunity to verify correct item rendering, accommodations functionality, item scoring procedures and overall score generation, etc. Complete TDS Test Specifications based on Smarter Balanced common MAAC, and state-specific specifications Common Across MAAC: - Deployment instance for OP - TDS Configs (pause rules, etc.) - TA ability to set test settings - Other TA configurations (e.g., time between refresh) - TDS Monitor - SIRVE (Secure Item Review Viewing Environment) Unique By State: - Smarter and State Specific Testing Windows Common Across MAAC: - Deployment instance for Interim - Skin - TDS Configs (pause rules, etc.) - Other TA configurations (e.g., time between refresh) - TDS Monitor - SIRVE (Secure Item Review Viewing Environment) Unique By State: - TA ability to set test settings - Testing Windows Configure TDS Deploy TDS	DOE selects options from TDS specification document that can be unique by state; reviews and approves	2.1F
Availability and Capacity		Determine helpdesk staffing and allocation of test delivery system resources Provide updates in management reports	Confirm testing counts	2.1G 2.1G 2.1G
Technology Readiness	AIR Diagnostic Tool	Ensure AIR technology requirements are to be consistent with the minimum technology requirements established by Smarter Balanced Publish "Supported Operating Systems and Recommended Specifications" Deploy AIR diagnostic tool. (Note: Smarter Balanced Technology Readiness Tool is provided and supported by Smarter Balanced). (See flow 02 for more details on guidelines and tutorials)	DOE Reviews DOE Reviews DOE Reviews	2.1H 2.1H 2.1H
System Security	Secure Browser Chart of MAAC User Roles/access to specific systems functions	Provide state-level security brief for devices and AIR browser and Chromebooks, consistent with Proposal. Provide evidence browser meets Smarter specifications. Coordinate across MAAC and recommend master set of user roles Finalize and configure user roles applicable to TIDE, TDS & OPS	DOE reviews DOE provides user roles specific to the state, consistent with Smarter Balanced recommendations DOE reviews, comments and approves	2.1I 2.1I 2.1I

Contractor Proposed	DOE Requested	Proposal
Ship to schools/districts via traceable carrier		2.1.K.vii
Receive and support helpdesk inquiries		
Pickup all materials via traceable carrier		
Log in all returned boxes of test booklets, prioritizing materials to be scored		2.1.K.vi
Scan		
Implement a method to bill and collect payment directly from districts for paper testing (VMA only)	DOE and AIR set paper/pencil testing fee	2.1.K.vi
Generate Missing Material Reports and follow-up with schools/districts that did not return all of their secure materials.	DOE reviews	2.1.K.vi
Create a secure FTP site to post student test papers with alerts.	DOE confirms access	2.1.K.viii
Configure Alert Tool to scan text responses for each student record for the presence of MAAAC jurisdiction's approved target words and phrases and route to handscoring	MAAAC provides target words and phrases	2.1.K.viii
Identify alerts as they occur during handscoring	DOE reviews and takes action	2.1.K.viii
Configure systems to collect data and provide analysis as described in proposal.	DOE reviews and takes action	2.1.K.viii
Produce forensic reports.	DOE requests additional forensic data or analyses	2.1.K.viii
Provide cost estimate (if any) and provide databasenames		
Provide common Data Reconciliation procedures including method, validation specifications, file layout, and data exchange frequency (weekly, daily [up to once per day]).	DOE reviews and approves	2.1.K.ix
State reviews student data file layout	DOE reviews	2.1.K.ix
AIR will capture the student demographic data AT THE TIME OF TESTING and that is what will be included in the data file we send to client at the end of the window.	DOE reconciles	2.1.K.ix
Statates may make edits student data using automated data the uploads and/or using TIDE (with CSV files or individual records) up until testing occurs.		
Post files to SFTP		2.1.K.ix
Configure for machine-scoring of items with explicit rubrics		2.1.K.x
Test and confirm		2.1.K.x
Prepare handscoring specifications that meets Smarter requirements, covering training, agreement rates, condition codes, process for handling alerts, QA (including information on how to handle 15% double reads, 5% validity), scoring process reporting, and security	DOE reviews	2.1.K.x
Test handscoring system and data flow between AIR and Measurement Inc. (MI)		2.1.K.x
Receive all scoring materials from Smarter, including training, qualifying, and validity papers		2.1.K.x
Measurement Inc. (MI) will recruit, qualify, and assign scorers		2.1.K.x
Provide cost estimate (if any) and revise plan below	DOE requests variation from scoring plan in Proposal	2.1.K.x
Scorers assign primary and 15% secondary scores, with 5% validity papers	DOE may participate and provide feedback during the scoring window	2.1.K.x
Monitor inter-rater reliability and provide reports	DOE reviews statistics	2.1.K.x
Resolve non-adjacent primary and secondary scores		2.1.K.x
Complete Scoring		2.1.K.x
Flow hand-scores to DoR		2.1.K.x
Confirm correct Import Smarter Balanced bank item parameters, both within grade and vertically linked parameter estimates, along with all other attributes of the Smarter Balanced items.		2.1.K.x
Use simulated test administrations to test and verify the performance of all scoring and reporting systems		2.1.K.xii

Line	Tests	CONTRACTOR Products	Scope and Assumptions	DOE Interaction/Approvals	Proposed Schedule
			Configure MAAC-common appeals module of TIDE Authorized users submit appeals in TIDE and the DOE reviews the appeal request for further action through the TIDE system	DOE provides input DOE reviews	2.1.K.iii 2.1.K.iii
			Receive and validate Smarter-provided form banks and test maps for Interim Block and Summative Clone Interim assessments, including all Smarter-provided logging. Draft MAAC-common reporting requirements using AIR's reporting system (ORS) to contain everything that Smarter reports include for Smarter interim assessments, including business rules for assessments with pending hand-scoring. AIR will provide resource materials and training to aid in the hand scoring of interim assessment items	Identify Smarter Interim Assessments to be made available and associated windows	2.2
		Smarter Balanced Interim Assessments for Multi/ELA grades 3-8, 11	UAT of Interim Assessments Deploy selected Interim Assessments in test delivery ORS system and Hand-Scoring module. Create ORS specs, including when scores are released to ORS Create ORS mock-ups Conduct ORS UAT Deploy ORS	MAAC reviews and approves MAAC reviews and approves	2.2 2.2 2.2 2.2 2.2
		Training module on Interim Hand-scoring	Open Interim Windows Provide User Support for Interim Assessment delivery and teacher hand-scoring. HelpDesk staff will be able to address questions for interim assessments.		2.2
			Release results in ORS		2.2
		Smarter Balanced Digital Library (K-12)			2.3
		Smarter Balanced Digital Library	Arrange with Smarter, Balanced to allow users to access to Smarter-hosted Digital Library using a single sign-on. Depending on Smarter decisions, this may require state users to login separately to the Digital Library or may allow for single sign-on with AIR systems and the Digital Library.	Identify proposed users for the Digital Library and identify source of user information, if different from current sources to populate TIDE	2.3
			Update HelpDesk training and internal FAQ to support user requests for login/password access to the Digital Library. Training on functionality for the Digital Library is not specifically included, although AIR will make best efforts to provide support beyond access.		2.3
		State Specific Assessments (VA, HI, USM, ID, WA) (Separate Document: This Section just shows full list of possible Major Tasks)	Full List of Possible Major Tasks included Below (Applicable tasks will be deleted and remaining tasks will be expanded with subtasks to create each State's Scope of Work)		2.5
		(List State Specific Tests Here), including those built with Smarter Balanced Items	Import Items Create/Refine Blueprint/Test Specifications/Item Writing Guidelines (if required)		2.5 2.5

			<ul style="list-style-type: none"> -Deployment model -Data transfer format -Data transfer frequency -Student demographics collected -Diagnostic codes -Ship -User roles -Admin Features -Arrange Users configuration -Orders (Process) -Arrange Reports -General Features -Download Voice Pack -Test Import/Export/Imports -State Specific: -Orders -Paper/Form -State Forms 	<ul style="list-style-type: none"> -Common Across MAAC: -Deployment model -Data transfer format -Data transfer frequency -Student demographics collected -Diagnostic codes -Ship -User roles -Admin Features -Arrange Users configuration -Orders (Process) -Arrange Reports -General Features -Download Voice Pack -Test Import/Export/Imports -State Specific: -Orders -Paper/Form -State Forms 	DOE reviews and comments	2.1.JI	
	TDE Specifications, section on test settings		(See below for common MAAC processing of MAAC test settings) MAAC test settings are a MAAC-common process for creating and re-opening test sessions as needed or extending test windows due to unforeseen circumstances.		DOE provides input	2.1.JII	
			Provide a testing interface containing the features described in section 2.1.JI of the Proposal.		(DOE reviews below in UAT)	2.1.JIV	
			Work with Smarter and DOE to complete adding new comments in table bases of AIX and Open Source.		DOE identifies requests for enhancements	2.1.JIV	
	Error Logs		Operate monitoring system to detect system errors and will make all reasonable effort to fix errors		DOE reviews error log	2.1.JIV	
						2.1.K	
	Administration of Common MAAC components		Deploy and configure hardware		DOE reviews and approves	2.1.K	
			Display and configure TDE, TDS, and associated systems		DOE reviews and approves	2.1.K	
			Load Test Packages		DOE confirms	2.1.K	
			Correct issues identified in UAT		DOE confirms	2.1.K	
			Lock down		DOE determines EIA and Health test windows following Smarter	2.1.KI	
	Administration Windows		Launch Smarter provided TAM and TCM Review with MAAC states to identify errors and report them to Smarter		DOE determines EIA and Health test windows following Smarter	2.1.KI	
					DOE reviews cover art	2.1.KI	
			Incorporate State Specific cover art if required		DOE reviews and approves	2.1.KI	
			Propose modular Tests of Contents (TOC) for state		DOE reviews and approves	2.1.KI	
			Insert Cover Art and Cover		DOE reviews and approves	2.1.KI	
			Prepare and load state specific sections		DOE reviews and approves	2.1.KI	
			Review state specific sections		DOE reviews and approves	2.1.KI	
			Review state specific sections		DOE reviews and approves	2.1.KI	
			Post electronic versions of TCM and TAM (PDF)		DOE reviews	2.1.KI	
			Prepare draft 8-10 page state-specific Administration Guide and 8-10 page state-specific Coordination Guide		DOE reviews	2.1.KI	
			Review and finalize		DOE approves	2.1.KI	
			Receive requests for printed copies of TCM/TAM and state-specific sections and Coordination Guides, print and deliver and change requests.		DOE approves	2.1.KI	
			Set up 800 number and email address for each state/jurisdiction. Help Desk information will be posted on each state/jurisdiction portal		DOE reviews and approves	2.1.KII	
	Operations Support (Tier 1 Help Desk)		Review FAQs		DOE reviews and approves	2.1.KIIV	
	Technical Support (Tier 2/3 Help Desk)		Help Desk will be available 1 month prior to the practice test opening and a minimum of one month after the Smarter Balanced summative testing closes. Monday through Friday during normal school hours (8:00 a.m. to 5:00 p.m. local time) on the school day (normally 6:00 a.m. to 5:00 p.m. local time)		DOE reviews and approves	2.1.KIIV	
			Provide a minimum of two points of contact from the state/jurisdiction identified project manager, who will be available to answer and respond to assessment related questions.		DOE reviews and approves	2.1.KIIV	

	Smartw/ Balanced Digital Library		Identify proposed uses for the Digital Library and identify source of user information. If different from current sources to populate TIDE	2.3	
		Coordinates with DOE technical staff to propose changes to TIDE file layout, user roles, and data flows		2.3	
		Update HandQ&W training and internal FAQ to support user requests for log/password access to the Digital Library. Training on functionality for the Digital Library is not specifically included, although AIR will make best efforts to provide support beyond access.		2.3	
		Import Items		2.5	
		Create/Receive Blueprint/Test Specifications/Item Writing Guidelines (if required)		2.5	
		Develop Items, including Committee and DOE reviews (if required)		2.5	
		Create content/ adapt item Page		2.5	
		Review TDS and TIDE Specifications for State-Specific Tests		2.5	
		Create state-specific sections to TCOL and TALI	DOE selects and approves	2.5	
		Conduct UAT for State-specific assessments	DOE reviews and approves	2.5	
		Provide additional training	DOE determines Test Windows	2.5	
		Administer State-specific assessments, including Field Support		2.5	
		State Specific PIP		2.5	
		State Specific Access/Accommodations (Blind/Large print)		2.5	
		Range Validation		2.5	
		Range finding		2.5	
		Data Review		2.5	
		Standard Setting		2.5	
		Online Reporting		2.5	
		Paper Reporting		2.5	
		Psychometrics		2.5	
		Technical Report, State Specific Sections		2.5	
		State Specific Advisory Panels		2.5	
		Prepare draft calendar with AIR-request dates on packages		3.1.0	
		Provide DOE staff with timely updates about project activities and progress toward project goals	DOE collaborates	3.1.0	
		Issue Log updated weekly		3.1.0	
		Weekly list of issues needing resolution with the required resolution dates as necessary to meet project deadlines.	DOE collaborates	3.1.0	
		Project status reports that document progress on key milestones, decisions, and description of any next steps necessary to resolve major issues	DOE participates	3.1.0	
		AIR Project Management/Planning Documents: - Project Implementation Plan - Special Versions Summary - Ancillary Abstract - Receipt Specifications - Scoring Specifications - TIDE Specifications - DOE Project Final Specifications - Online Reporting Specifications - Committee Participant Payments		3.1.0	
		Future Scope Changes (if needed)	DOE oversees contract modification for desired changes	3.1	
		Kick Off Meeting	DOE reviews and approves DOE members who attend and 4 AIR Staff	3.1	
		Testing Private School Students	DOE provides list of eligible private schools Receives and approve requests from schools	Not part of RFP	
		AIR this year Private School	Not part of RFP	Not part of RFP	
		Upon Payment students will be allowed to test.	Not part of RFP	Not part of RFP	

		Provide access to training, interim and summative assessments, digital books, and other reporting.		Not part of RFP	
		Ensure Private School leaders' results are removed from State Aggregate data		Not part of RFP	

	Test Delivery System (TDS)	Provide evidence AIR Test Engine meets Smarter process is provided. Smarter currently does not have a certification process. User Acceptance Testing (UAT) will provide DOE opportunity to verify correct item rendering, accommodations functionality, item scoring procedures and overall score generation, etc.	DOE reviews and approves	21F	
	TDS Specifications, All Operational Smarter Tests	<ul style="list-style-type: none"> Configure TDS Test Specifications based on Common Across MAAC and State specific specifications Common Across MAAC: <ul style="list-style-type: none"> - Deployment Instance for OP - TDS Configs (pause rules, etc.) - TA ability to set test settings Other TA configurations (e.g., time between tests) TDS Member -SRVE (Secure Item Review Viewing Environment) Unique By State: <ul style="list-style-type: none"> - Smarter and State Specific Testing Windows - Skin 	DOE selects options from TDS specification document that can be unique by state; reviews and approves	21F	
	TDS Specifications, All Intern Smarter Tests	<ul style="list-style-type: none"> Common Across MAAC: <ul style="list-style-type: none"> - Deployment Instance for Intern - TDS Configs (pause rules, etc.) - Other TA configurations (e.g., time between tests) TDS Member -SRVE (Secure Item Review Viewing Environment) Unique By State: <ul style="list-style-type: none"> - Smarter and State Specific Testing Windows - Testing Windows 	DOE selects options from TDS specification document that can be unique by state; reviews and approves	21F	
		Configure TDS		21G	
		Deploy TDS		21G	
		Determine hypothesis, staffing and allocation of best delivery system resources	Confirm testing counts	21G	
		Provide updates in management reports		21G	
	AIR Diagnostic Tool	Ensure AIR technology requirements are to be consistent with those established by Smarter Balanced Education Specifications	DOE Reviews	21H	
		Deploy AIR diagnostic tool (Nook, Smarter Balanced Technology Readiness Tool is provided and supported by Smarter Balanced)	DOE Reviews	21H	
		(See Row 92 for more details on guidelines and updates)		21H	
	System Security	Provide state-based secure browser for desktops and AIR branded secure browsers for mobile devices and Chromebooks, consistent with Smarter specifications	DOE reviews	21I	
		Coordinate across MAAC and recommend master set of user roles	DOE provides user roles specific to the state, consistent with Smarter Balanced recommendations	21I	
		Finalize and configure user roles applicable to TDE, TDS & ONS	DOE reviews, comments and approves	21I	
		Follow security plan presented in proposal; update as necessary in consultation with DOE	DOE reviews and comments	21I	
		Monitor security of user content and student data; report any breaches in proposal		21I	
		Contract requirements identified in the proposal		21I	
	Assessment Delivery System (ADS) Access Inaccessibility	Work with state to create a MAAC common student data layout and a MAAC common score file layout that conforms with Smarter Balanced	DOE will provide a list of districts/complex areas and schools, as well as test coordinators to add to TDE	21J1	
		Work with DOE and technology representatives to create test flow, sources, transfer process and frequency	DOE reviews and approves	21J1	
		Test data flows		21J1	
		Documented the layout, data flows and data reporting		21J1	

Project	Task	Responsible Party	Start Date	End Date	Priority	Notes
Smarter Balanced Digital Library		Coordinate with DOE technical staff to propose changes to TIDE the layout, user roles, and data flow. Sign-off functionality will be available to access the Digital Library.			2.3	
		Update Helpdesk training and internal FAQ to support user requests for log-in/access to the Digital Library. Training on functionality for the Digital Library is not specifically included, although AIR will make best efforts to provide support.			2.3	
		Full List of Possible Major Tests Included Below (prepopulate tests will be deleted and remaining tests will be expanded with subjects to create each State's Scope of Work)			2.5	
		Import Items			2.5	
		Create/Receive Blueprint/Test Specifications/Item Writing Guidelines (if required)			2.5	
		Develop Items, Endorsing Committee and DOE Review			2.5	
		Create Test Forward/Alpha Item Pool			2.5	
		Review TOS and TIDE Specifications for State-Specific Tests			2.5	
		Create state-specific sections to TCM and TAM			2.5	
		Conduct UAT for State-specific assessments			2.5	
		Provide additional training			2.5	
		Administer State-specific assessments, including Field Support			2.5	
		State Specific RFP			2.5	
		State Specific Needs/Accommodations			2.5	
		Hand scoring			2.5	
	Range finding			2.5		
	Data Review			2.5		
	Standard Setting			2.5		
	Online Reporting			2.5		
	Paper Reporting			2.5		
	Psychometrics			2.5		
	Technical Report, State Specific Sections			2.5		
	State Specific Access/Events			2.5		
	Provide start calendar with AIR-relevant dates on (prepopulated) tests (e.g., receiving Smarter test)			3.1C		
	Provide DOE staff with timely updates about project activities and progress toward project goals			3.1C		
	Issue DOE to issues requiring resolution and notify DOE staff of any changes or potential changes that may affect the administration of the Smarter, EOC and State Specific assessments from any perspective			3.1C		
	Conduct Weekly Telephone Calls and Annual Planning Meeting (Orientation Meeting), attend additional meetings in Hawaii upon request by DOE			3.1C		
	Maintain a secure document management tool to store and provide version control of documents between AIR and DOE (e.g., KnowledgeTree)			3.1C		
	Project status reports that document progress on key milestones, decisions, and description of any next steps necessary to resolve major issues			3.1C		
	Issues Log updated weekly			3.1C		
	Weekly list of issues needing resolution with the required resolution dates as necessary to meet project deadlines.			3.1C		
	AIR Project Management/Planning Documents: -Project Implementation Plan -Project Version Summary -Ancillary Abstract -Packaging Specifications -Research Specifications -Scoring Specifications -TIDE Specifications -TOS Specifications -Online Reporting Specifications -Committee Participant Payments			3.1C		
	Future Scope Changes (if needed)			3.1		
	Note preferences or other changes in DOE request and draft scope (time and money) implications			3.1		
	Implement funded scope changes			3.1		
	2 day meeting, 10 DOE staff, 10 State Participants, 4 AIR Staff			3.1		
	AIR establishes fees associated with testing			3.1		
	AIR adds schools as eligible to test			3.1		
	AIR files each Private School			3.1		
	Upon Payment students will be allowed to test.			3.1		
	Identify proposed users for the Digital Library and identify source of user information, either internal or external to provide TIDE content sources to populate TIDE			2.3		
	DOE selects and approves			2.5		
	DOE reviews and approves			2.5		
	DOE determines Test Windows			2.5		
	DOE provides list of eligible private schools			3.1		
	DOE requests and approves			3.1		
	DOE requests who attends and			3.1		
	DOE reviews and approves requests from schools			3.1		
	Not part of RFP			3.1		
	Not part of RFP			3.1		
	Not part of RFP			3.1		
	Not part of RFP			3.1		

		Provide access to training, interim and summative assessments, digital library, and other learning resources. Ensure Private School test results are removed from State Aggregate data.		Not part of RFP	
				Not part of RFP	

EXHIBIT D
STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT 2015C-229
TECHNOLOGY TERMS

BIT Hybrid Contract Clauses

1. APPLICATION OF CONTRACT TERMS:

All of the following terms and provisions are applicable to each and every entity that hosts State data. If Consultant subcontracts any hosting of State data to another entity, the relationship between Consultant and any such subcontracting entity must be that of Principal and Agent. No such Agent may act as an independent contractor for Consultant. Consultant must include in its contract with any such Agent explicit terms providing for this Principal and Agent relationship, and Consultant must further supervise such Agent so as to insure that such Agent complies with all of the following terms.

2. HANDLING OF DATA BREACHES:

Immediately upon becoming aware of a data compromise or of *circumstances* that could have resulted in unauthorized access to, disclosure of, alternation of, or use of State data, Consultant will notify the State, fully investigate the incident, and cooperate fully with the State's investigation of, analysis of, and response to the incident. The Consultant will use a forensics company that is acceptable to the State, preserve all evidence including but not limited to communications, documents, and logs and the State will have the authority to set the scope of the investigation. In addition, the Consultant shall inform the State of the actions it is taking or will take to reduce the risk of further loss to the State Except as otherwise required by law, Consultant shall provide notice of the incident to the State only. The State shall then give notice to the person or entity whose data may have been involved, to regulatory agencies, and to other entities. This procedure is adopted for the purpose of promoting clarity of reporting and avoiding confusion and double reporting.

Notwithstanding any other provision of this agreement, and in addition to any other remedies available to the State under law or equity, the Consultant will reimburse the State in full for all costs incurred by the State in investigation and remediation of such Data Compromise, including but not limited to providing notification to third parties whose data were compromised and to regulatory agencies or other entities as required by law or contract. The Consultant shall also pay any and all legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Data Compromise.

3. CHANGE MANAGEMENT PROCESS:

From time to time it may be necessary or desirable for either the State or the Consultant to propose changes in the Services provided. Such changes shall be effective only if they are in writing and contain the dated signatures of authorized representatives of both parties. Unless otherwise indicated, a change or amendment shall be effective on the date it is signed by both parties. Automatic upgrades to any software used by the Consultant to provide any services that simply improve the speed, efficiency, reliability, or availability of existing services and do not substantially alter or add functionality, are not considered "changes to the Services"

and such upgrades will be implemented by the Consultant on a schedule no less favorable than that provided by the Consultant to any other customer receiving comparable levels of services.

BIT Technology Contract Clauses

4. DOMAIN NAME OWNERSHIP:

The Portal website(s) that the Consultant creates as part of this project must have the domain name registered by and owned by the State. The Consultant maintains ownership of IP addresses and domain names related to Consultant systems used to provide services.

5. USE OF SUBCONTRACTORS:

The Consultant acknowledges responsibility for all services, work product, and maintenance of security and privacy, whether work is performed by AIR staff, consultants, or subcontractors. The Consultant will provide evidence that individuals with access to data have executed commercially reasonable security responsibility acknowledgements.

6. BACKGROUND CHECKS:

The State of South Dakota requires all contractors, subcontractor and or agents who have access to protected-personally identifiable information or have access to secure areas to have background checks.

7. INSTALLATION AND OPERATION OF THE PRODUCT:

The State will install and operate the Secure Browser as described in the Consultant's Proposal.

8. SECURITY:

The Consultant shall take all actions necessary to protect state information from exploits, inappropriate alterations, access or release, and malicious actor attacks.

By signing this contract, the Consultant warrants that:

- A. All known security issues are resolved.
- B. The Consultant will fully support and maintain the Consultant's application on platforms and code bases (including but not limited to: operating systems, hypervisors, web presentation layers, communication protocols, security products, report writers, and any other technologies on which the application depends) that are still being supported, maintained, and patched by the applicable third parties owning them, except as otherwise noted or required in the contract. The Consultant may not withhold support from the state for this application nor charge the state additional fees as a result of the state moving the Consultant's application to a new release of third party technology if:

- i. The previous version of the third party code base or platform is no longer being maintained, patched, and supported; and
- ii. The new version to which the state moved the application is actively maintained, patched, and supported.

If there are multiple versions of the applicable code base or platform(s) supported by the third party in question, the Consultant may limit their support and maintenance to any one or all of the applicable third party code bases or platforms.

- C. If a code base or platform on which the Consultant's application depends is no longer supported, maintained, or patched by a qualified third party, the Consultant commits to move its application from that code base and/or platform to one that is supported, maintained, and patched after the State has performed a risk assessment using industry standard tools and methods. Failure on the part of the Consultant to work in good faith with the State toward a timely move to supported, maintained, and patched technology shall constitute a breach of this contract and shall allow the State to cancel this contract without penalty.
- D. Assistance will be provided to the State of South Dakota by the Consultant in performing an investigation to determine the nature of any security issues that are discovered or are reasonably suspected after acceptance. This investigation can include security scans made at the State's discretion, but such scans will be coordinated with Consultant so as not to impact ongoing services for any client. Failure by the Consultant to remedy any security issues discovered can be considered a breach of this contract by the State.

The discovery of security issues during UAT are automatically grounds for non-acceptance of a product even if a product meets all other acceptance criteria. Any security issues discovered during UAT that require product changes will not be considered a project change chargeable to the state. The state urges the use of industry scanning/testing tools and secure development methods be employed to avoid unexpected costs and project delays.

9. MALICIOUS CODE

The Consultant covenants that:

- A. The Licensed Software does not contain any code that does not support a software requirement.
- B. Will not insert into the Licensed Software or any media on which the Licensed Software is delivered any virus, rogue program, time bomb, worm, Trojan Horse, back doors, Easter eggs or other malicious or intentionally destructive code and
- C. Will use commercially reasonable efforts consistent with industry standards to scan for and remove any Malicious Code from the Licensed Software before installation. In the event any Malicious Code is discovered in the Licensed Software as delivered by the Consultant to the State under this contract, the Consultant shall provide the State at no charge with a clean copy of the applicable Licensed Software that does not contain such Malicious Code or otherwise correct the affected portion of the services provided to the State under

this contract. The remedies in this paragraph are in addition to such other and additional remedies as the State may have at law equity or otherwise

D. Will resolve all known security issues.

10. USE OF CONSULTANT SOFTWARE

The Consultant grants to the State a nonexclusive license to access the software listed in the proposal and associated documentation, plus any additional software which shall be added by mutual agreement of the parties, for the purposes of obtaining test administration, delivery, and reporting services during the term of this contract.

11. DISCLOSURE OF OPEN SOURCE, CUSTOM BUILT AND PROPRIETARY TECHNOLOGIES:

Technology vendors must grant the State the right to perform scanning and audits on their processes, tools and systems. These scans and audits may be software-based and/or involve interviews, remote access sessions, on-site tours, reviews of key contracts, self-attestation processes, as well as other reasonable means of gathering and validating information. The State will make reasonable efforts to ensure that these audits and scans minimize the impact on the Consultant's business operations.

Refusal to comply with this request may be grounds to exclude a vendor from consideration as a technology provider for the State's confidential, sensitive, or private data or systems. Falsifying or withholding information requested by the State may, at the State's sole discretion, be deemed a breach of contract by the Consultant and/or an automatic exclusion from consideration or selection in an RFP process. Regardless, the Consultant remains solely responsible for any penalties, fines or legal actions that may result from the falsification or withholding of information.

The Consultant must disclose to the State all tools, systems, third-party products, and services used in the development, support, maintenance, hosting, accessing, authenticating, encrypting, storing, retrieving, backing up, recovering, sharing, and accessing of any and all data, systems, workflows, and any other technologies used by the Consultant at or on any site, location, or system that supports or is co-located with systems or data belonging to or in use by the State. This includes technologies that are open source, custom built, and proprietary.

The State will, at the Consultant's written request, sign a non-disclosure statement provided that the request is deemed to comply with South Dakota open records laws and exceptions.

12. DISCLAIMER

It is understood and agreed to by all parties that the Bureau of Information and Telecommunications (BIT) is representing that, as the state's technology governing organization, it has reviewed only the technical provisions of this contract.

Tools and Infrastructure Worksheet

Consultant/Vendor Name: _____

Date: _____

Product Name: _____

Name of person filling out this form: _____

Title of person filling out this form: _____

Phone Number: ____-____-____

Email address: _____

Instructions:

Provide the information below for all tools, systems, third-party products, and services used in the development, support, maintenance, hosting, accessing, authenticating, encrypting, storing, retrieving, back up, recovery, sharing, and accessing of state data, systems, workflows, and any other data related technologies used by the Consultant supporting services offered to the State. This includes technologies that are open source, custom built, and proprietary

A separate form must be filled out for each product or service(s) the State will be licensing. Services/products provided by third parties must be included. If you have any questions please contact your BIT point of contact.

Name of the process or software	Source of process or software	URL of webpage for the source of the process or software (If available and applicable)	Purpose or function of the process or software

Hosting, Software as a Service and Cloud Contract Clauses

1. DISASTER RECOVERY:

The Consultant will maintain a disaster recovery plan (the "Disaster Recovery Plan") with respect to the services provided to the State. For purposes of this Agreement, a "Disaster" shall mean any unplanned interruption of the operation of or inaccessibility to the Consultant's service in which the State, using reasonable judgment, requires relocation of processing to a recovery location. The State shall notify the Consultant as soon as possible after the State deems a service outage to be a Disaster. The Consultant shall move the processing of the State's services to a recovery location as expeditiously as possible and shall coordinate the cut-over.

2. AUDIT:

When hosting any state data that may be confidential, private, financially sensitive, or contain personally identifiable information, the Consultant must agree to:

Allow State, at the State's expense, twice annually, a security audit and vulnerability assessment to provide third party verification of Consultant's IT security safeguards for the system and its data and/or that of the company and its policies and procedures. At its request, the state may review any and all independent audit reports that document the system's and company's policies and/or procedure's security posture. This security audit and vulnerability assessment must come from a third party source agreed to in advance by the state.

The Consultant agrees to work with the state to rectify any serious security issues revealed by the security audit and vulnerability assessments. This includes additional security audits and vulnerability assessments that shall be performed after any remediation efforts to confirm the security issues have been resolved and no further security issues exist.

3. FACILITIES INSPECTION:

The Consultant grants authorized state and/or federal personnel access to inspect their systems, facilities, work areas, contractual relationships with third parties involved in supporting any aspects of the hosted system, and the systems which support/protect the hosted system. This access will be granted on 24 hour notice. Such personnel will be limited to staff authorized by the state or the federal government to audit the system, and representatives of the state entity that funds the hosting. The state accepts that access will be arranged with an escort, and the Consultant commits that the escort will have the access and authority to provide physical access to facilities, answer appropriate questions, and provide requested documentation, including but not limited to executed contract terms, operating procedures, records of drills and tests, evidence of background checks, security logs, and any other items required by state or federal audit requirements or as deemed by the state to be required to demonstrate the Consultant is complying with all contract terms.

4. REDUNDANT POWER AND COOLING TO ALL HARDWARE:

The Consultant will provide documentation and, at the discretion of the state, allow for on-site inspections as needed to demonstrate all facilities supporting the application have adequate redundant power and cooling capacity to operate uninterrupted, and without the need to refuel generators, for not less than 24 hours in the event the local external power fails.

5. UPS BACKUP:

The Consultant will provide documentation and, at the discretion of the state, allow for on-site inspections as needed to demonstrate that all facilities supporting the application have adequate UPS power to carry the systems for not less than 10 minutes, and to protect the system from power fluctuations including, but not limited to, surge, spikes, sags, and instability.

6. RIGHTS AND LICENSE IN AND TO STATE AND END USER DATA:

The parties agree that between them, all rights including all intellectual property rights in and to State and End User data shall remain the exclusive property of the State, and that the Consultant has a limited, nonexclusive license to use these data as provided in this Agreement solely for the purpose of performing its obligations hereunder. This Agreement does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Agreement.

7. MIGRATION CAPABILITY:

Upon termination or expiration of this Agreement, the Consultant will ensure that all State and End User Data is transferred to the State or a third party designated by the State securely, within a reasonable period of time, and without significant interruption in service. The Consultant will ensure that such migration uses facilities and methods that are compatible with the relevant systems of the transferee, and to the extent technologically feasible, that the State will have reasonable access to State and End User Data during the transition.

The Consultant will notify the State of impending cessation of its business or that of a tiered provider and any contingency plans in the event of notice of such an event. This includes immediate transfer of any previously escrowed assets and data and State access to the Consultant's facilities to remove or destroy any State-owned assets and data. The Consultant shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the State. The Consultant will provide a fully documented service description and perform and document a gap analysis by examining any differences between its services and those to be provided by its successor. The Consultant will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the State. The Consultant will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and impact on the State, all such work to be coordinated and performed in advance of the formal, final transition date.

8. SERVICE LEVEL AGREEMENTS:

The Consultant warrants that all services will be performed in a professional and workmanlike manner consistent with industry standards reasonably applicable to

such services. The Consultant further warrants that the services will be operational at least 99.99% of the service hours in any given month during the term of this Agreement. In the event of a service outage, the Consultant will:

- A. Promptly and at the Consultant's expense, use commercial best efforts to restore the services as soon as possible, and
- B. The Consultant will provide the State with seven days prior notice of scheduled downtime in the provision of services for maintenance or upgrades. To the extent possible, the Consultant will schedule downtime during times of ordinarily low use by the State. In the event of unscheduled or unforeseen downtime for any reason, except as otherwise prohibited by law, the Consultant will promptly notify the State and respond promptly to the State's reasonable requests for information regarding the downtime.

9. HOST FACILITY PHYSICAL SECURITY:

The Consultant will provide documentation and, at the discretion of the state, allow for on-site inspections as needed to demonstrate that all facilities supporting the application have adequate physical security. This includes, at a minimum, centrally administered electronic locks that control entry and exit from all rooms where the hosted system resides. Any door security system must either be connected to the building's power backup system as defined elsewhere or have internal battery power sufficient to last 24 hours in normal usage. Security events for the physical access system must be logged and the logs stored electronically in a secure location in a non-changeable format and must be searchable. Retention on the logs must be not less than 7 years. Log entries must be created for at least: successful entry and exit (indicating whether the access was to enter or exit the room) as well as all security related events such as, doors left open more than 30 seconds, forced entries, failed entry attempts, repeat entries without exit, repeat exits without entry, attempts to access doors for which access was not authorized. The Consultant agrees to provide, at the state's request, full access to search the security logs for any access or security events related to any and all rooms and physical locations hosting the state's system.

10. HOST NETWORK SECURITY:

The Consultant will use industry standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing Services under this Agreement as indicated in the Consultant's proposal.

The State may either conduct or have conducted at least on an annual basis:

- A. A vulnerability scan of the Consultant's systems and facilities that are used in any way to deliver services under this Agreement; and
- B. A formal penetration test of the Consultant's systems and facilities that are used in any way to deliver services under this Agreement.

11. LEGAL REQUESTS FOR DATA:

Except as otherwise expressly prohibited by law, the Consultant will:

- A. Immediately notify the State of any subpoenas, warrants, or other legal orders, demands or requests received by the Consultant seeking State and/or End User Data maintained by the Consultant;
- B. Consult with the State regarding its response;
- C. Cooperate with the State's requests in connection with efforts by the State to intervene and quash or modify the legal order, demand or request; and
- D. Upon the State's request, provide the State with a copy of both the demand or request and its proposed or actual response.

12. EDISCOVERY

The Consultant shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. The Consultant shall not respond to service of process, and other legal requests related to the State without first notifying the State unless prohibited by law from providing such notice.

13. DATA PRIVACY:

- A. The Consultant will use State Data and End User Data only for the purpose of fulfilling its duties under this Agreement and for the State's and its End User's sole benefit, and will not share such data with, or disclose it to, any third party, without the prior written consent of the State or as otherwise required by law. By way of illustration and not of limitation, the Consultant will not use such data for the Consultant's own benefit and, in particular, will not engage in "data mining" of State or End User Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by the State through a State employee or officer specifically authorized to grant such use of State data
- B. All State and End User Data will be stored on servers located solely within the continental United States.
- C. The Consultant will provide access to State and End User Data only to those Consultant employees and subcontractors who need to access the data to fulfill the Consultant's obligations under this Agreement.

14. DATA EXCHANGE AND ENCRYPTED DATA STORAGE:

All facilities used to store and process State and End User Data will employ commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure the Consultant's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, the Consultant warrants that all State and End User Data will be encrypted in transmission (including via web interface) at no less than 128-bit level encryption. Sensitive identifiers, including student identifiers and names, will be encrypted at rest.

15. DATA RETENTION AND DISPOSAL:

- A. The Consultant will use commercially reasonable efforts to retain data in an End User's account until the End User deletes them, or for an alternate time period mutually agreed by the parties.

- B. Using appropriate and reliable storage media, the Consultant will regularly back up State and End User Data and will either securely destroy or transmit to the State repository the backup copies at termination of the contract or before. Upon the State's request, the Consultant will supply the State with a certificate indicating the nature of the storage media destroyed, the date destroyed, and the method of destruction used.
- C. The Consultant will immediately place a "hold" on the destruction under its usual storage media retention policies of storage media that include State and End User Data, in response to an oral or written request from authorized State personnel indicating that those records may be relevant to litigation that the State reasonably anticipates. Oral requests by the State for a hold on storage media destruction will be reproduced in writing and supplied to the Consultant for its records as soon as reasonably practicable under the circumstances. The State will promptly coordinate with the Consultant regarding the preservation and disposition of storage media. The Consultant shall continue to preserve the storage media until further notice by the State. The Consultant will provide documentation and, at the discretion of the State, allow for on-site inspections as needed to demonstrate that all facilities supporting the methods of disposal of storage media, are appropriate to and fulfill all of the State's needs. By way of example but not of limitation, all hard drives and tapes used to store State data must, upon destruction be properly disposed of.

16. MULTI-TENANT ARCHITECTURE LOGICALLY/PHYSICALLY SEPARATED TO INSURE DATA SECURITY:

The Consultant will provide documentation and, at the discretion of the State, allow for on-site inspections as needed to demonstrate that all facilities supporting the application have adequate safeguards to assure that needed logical and physical separation is in place and enforced to insure data security, physical security, and transport security.

17. ACCESS ATTEMPTS:

All access attempts, whether failed or successful, to any system connected to the hosted system which can access, read, alter, intercept, or otherwise impact the hosted system or its data or data integrity shall be logged by the Consultant. For all systems, the log must include at least: log-in page used, username used, time and date stamp, incoming IP for each authentication attempt, and the authentication status, whether successful or not. Logs must be maintained not less than 7 years in a searchable database in an electronic format that is un-modifiable. At the request of the state, access must be granted to search those logs as needed to demonstrate compliance with the terms of this contract, and any and all audit requirements related to the hosted system.

18. PASSWORD POLICIES:

Password policies for all Consultant employees will be documented annually and provided to the state to assure adequate password protections are in place. Logs and administrative settings will be provided to the state on request to demonstrate such policies are actively enforced.

19. SYSTEM UPGRADES

Advance notice of 30 days shall be given to the State of any major upgrades or system changes that the Consultant will be implementing. A major upgrade is a replacement of hardware, software or firmware with a newer or better version, in order to bring the system up to date or to improve its characteristics. The State reserves the right to postpone these changes.

The state recognizes that hardware is occasionally added or replaced to increase capacity, or replaced when defects are found. These cases are excluded from the above clause.

20. SEPARATION OF JOB DUTIES

The Consultant shall require commercially reasonable non-disclosure agreements, and limit staff access to State data to that which is required to perform job duties.

21. PROVISION OF SERVICES

The Consultant shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided.

22. IDENTIFICATION OF BUSINESS PARTNERS

The Consultant shall identify all of its business partners and subcontractors related to services provided under this contract, who will be involved in any application development and/or operations.

23. LOCATION OF STATE AND END USER DATA

All State data hosted by the Consultant will be stored in facilities located in the United States of America. At no time is it acceptable for any State data to be stored in facilities outside the United States of America. This restriction also applies to disaster recovery; any disaster recovery plan must provide for data storage entirely within the United States of America.