south dakota
DEPARTMENT OF EDUCATION
Learning. Leadership. Service.

800 Governors Drive
Pierre, SD 57501-2235

T: 605.773.3134
F: 605.773.6139
www.doe.sd.gov

APPENDIX B: STATE AND FEDERAL TERMS AND CONDITIONS
FY 2026 Equipment Assistance Sub Grant

This appendix must be reviewed by the district applying for an equipment grant. These will be the terms and conditions added in the SD Department of Education (DOE) contract with the district. If the district has concerns or questions, they should be asked prior to applying. This will help avoid delays in the award and funding payout process.

FEDERAL REGULATORY REQUIREMENTS

Regulatory Requirements
Office of Management and Budget (OMB) Guidance: This Federal financial assistance award is subject to rules and regulations related to the Recipient's organizational entity type.

Government-wide Regulations

- 2 CFR Part 25: "Universal Identifier and System for Award management"
- 2 CFR Part 170: "Reporting Sub-award and Executive Compensation Information"
- 2 CFR Part 175: "Award Term for Trafficking in Persons"
- 2 CFR Part 180: "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-Procurement)"
- 2 CFR Part 200: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
- 2 CFR Part 400: USDA Implementing regulations "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
- 2 CFR Part 415: USDA "General Program Administrative Regulations"
- 2 CFR Part 416: USDA "General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments"
- 2 CFR Part 417: USDA "Non-procurement Debarment & Suspension"
- 2 CFR Part 418: USDA "New Restrictions on Lobbying"
- 2 CFR Part 421: USDA "Requirements for Drug-Free Workplace (Financial Assistance)"
- 7 CFR Part 3: "Debt Management"
- 7 CFR Part 16: "Equal Opportunity for Religious Organizations"
- 41 USC Section 22 "Interest of Member of Congress"
- Privacy Act. The Cooperator/Grantee shall follow the rules and procedures of disclosure set forth I the Privacy Act of 1974, 5 U.S.C 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.
- Freedom of Information Act (FOIA). Public access to Federal Financial Assistance records shall not be limited, except when such records must be kept confidential and would have been excepted from disclosure pursuant to the "Freedom of Information" regulation (5 U.S.C. 552)

Property Standards
Insurance Coverage: The Recipient must provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds.

This institution is an equal opportunity provider.

Equipment: Equipment is defined as tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of $1,000 or more per unit. The purchase of equipment not included in the approved project budget is allowable only if it is specifically approved beforehand by the Agency and there is documentation to support that the purchase is necessary and reasonable to carry out project activities. Equipment records must be maintained that include the description of the equipment, the serial number or other identification number, the source of funding for the equipment (including the Federal Award Identification Number, or FAIN), the title holder, the acquisition date, the percentage of Federal participation in the project costs for the Federal award under which the equipment was acquired, the location, use, and condition of the equipment, and any ultimate disposition data including the date of disposal and the sale price of the equipment. A physical inventory of the equipment must be taken, and the results reconciled with the equipment records every two years or at the grant close out, based on which of these occurs first. A Tangible Personal Property Report, SF-428, 428B, and 428S, must be submitted at award close-out to report the status of the equipment. The Recipient will follow the Agency's equipment disposition guidance and procedures as defined in 2 CFR 200.312.

Sub-recipient compliance: The Recipient will ensure that sub-recipients are in compliance with applicable Federal administrative requirements and cost principles. No funds shall be provided to an eligible collaborator or contractor before such an agreement is signed by all parties.

PROCUREMENT STANDARDS

The recipient will adhere to all procurement standards, including those listed below, if applicable, as found in 2 CFR 200.318 through 2 CFR 200.323, however, State recipients will comply with 2 CFR 200.317. When procuring property and services under a Federal award, a State must follow the same policies and procedures used for procurements from its non-Federal funds.

General procurement standards: The non-Federal entity must use its own documented procurement procedures, which reflect applicable State and local laws and regulations provided that procurements conform to applicable Federal law and the standards identified in this section. The Recipient must maintain oversight over contractors to ensure performance in accordance with the terms, conditions and specifications of their contracts or purchase orders, including written performance standards of its employees engaged in the selection, award and administration of contracts. The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. In accordance with 2 CFR 200.318(j)(1), the non-Federal entity may only use time and material type contracts after a determination that no other contract is suitable and if the contract includes a ceiling that the contractor exceeds at its own risk.

Competition: All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR 200.319.

Suspension/Debarment: The Recipient agrees to ensure that all sub-recipients are neither excluded nor disqualified under the Suspension and Debarment rules found at 2 CFR Part 180 and 2 CFR Part 417 by doing any one of the following:

a. Checking the System for Awards Management (SAM) to determine if the applicant or Recipient has been debarred or suspended. This information can be found at https://www.sam.gov/

b. Collecting a certification that the entity is neither excluded nor disqualified. Because a Federal certification form is no longer available, the Recipient or sub-Recipient electing this must devise its own.

c. Including a clause to this effect in the sub-recipient agreement and in any procurement contract expected to equal or exceed $25,000, awarded by the Recipient or a sub-recipient within any agreements.

Civil Rights:

Assurance of Civil Rights Compliance for Child Nutrition:

The Grantee hereby agrees that it will comply with i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.); iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189); vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000); vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.); viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3); ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement. x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance. By accepting this assurance, the Grantee agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Grantee, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA.

RECORD RETENTION AND ACCESS

Evaluation and Access to Records: The Recipient will cooperate with any evaluation of the program by providing the Agency requested data and access to records. The Recipient will cooperate with any, as needed, on-site financial and/or technical reviews and audits at any time during the term of the agreement. In addition, the Recipient shall make all records pertaining to activities under the grant available for audit purposes. The Recipient will require any sub-recipient or contractors to comply with the requirements of this agreement and ensure that the Agency has access to any sub-recipient or contractors for purposes of evaluating, monitoring or reviewing other operations or records as they relate to this grant. When entering into a sub-award, the

Recipient shall ensure that the sub-recipient agreement contains any clause required by Federal Statute or Executive Order and their implementing regulations. Records pertaining to this grant shall be retained by the Recipient for a period of three years from the date of the submission of the annual financial status report, as required under 2 CFR 200.334.

NONCOMPLIANCE AND TERMINATION

Noncompliance: As provided in 2 CFR 200.340, the Agency may unilaterally terminate this grant agreement or recover, withhold, or disallow costs of up to 100 percent of the funds made available under the agreement if the Recipient fails to comply with any term of the agreement. The Agency will consider failure to comply with the reporting requirements of this agreement to be a material failure to comply with the agreement and a basis for termination. If the Agency decides to take action against the Recipient for noncompliance under this agreement, the Agency will provide the recipient written notice of the basis for its determination.

In the event that an award is suspended and corrective action is not taken within 90 days of the suspension effective date, the Agency may issue a notice of termination. No costs that are incurred during the suspension period or after the effective date of termination will be allowable, except those that are specifically authorized by the suspension or termination notice or those that, in the opinion of the Agency, could not have been reasonably avoided.

Within 30 days of the termination date, the Recipient shall furnish to the Agency a summary of progress achieved under the award, an itemized accounting of charges incurred against award funds and cost sharing prior to the effective date of the suspension or termination, and a separate accounting and justification for any costs that may have been incurred after this date.

OTHER REQUIREMENTS

Liabilities: The Recipient may not seek any financial recourse from the Agency as a result of any liabilities the Recipient may incur for bodily injury or personal property damage resulting from negligent acts, errors, or omissions of the Recipient, their officers, agents or employees, or if applicable its sub-Recipients or their officers, agents, or employees, in performing this agreement. Liabilities of the United States are governed by the Federal Tort Claims Act, 28 U.S.C. 2671 et seq.

South Dakota Department of Education

A. GRANT AGREEMENT TERMS AND CONDITIONS

1. RISK ASSESSMENTS, MONITORING AND REMEDIES:

   Risk assessments will be ongoing throughout the project period. Sub-Recipient agrees to allow the State to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the State, monitoring may include but is not limited to the following: On-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied.

   Sub-Recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

The State shall evaluate each subrecipient's fraud risk and risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring.

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including but not limited to: Temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate.

2. RETENTION AND INSPECTION OF RECORDS:

The Sub-Recipient agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, and statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient shall retain such records for a period of three years after the date of the submission of the final expenditure report.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three-year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition. When records are transferred to or maintained by the Federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State) to form the basis for negotiation of the rate, then the three -year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The State, through any authorized representative, shall have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and shall have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers and documents. State Proprietary Information, which shall include all information disclosed to the Sub-Recipient by the State, shall be retained in Sub-Recipient's secondary and backup systems and shall remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment under this Agreement shall be returned to the State within thirty days after written notification to the Sub-Recipient.

3. AUDIT REQUIREMENTS:

If Sub-Recipient expends $1,000,000 or more in federal awards during the Sub-Recipient's fiscal year ($750,000 for fiscal years on or before September 30, 2024), the Sub-Recipient must have an audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
A-133 Coordinator
427 South Chapelle
% 500 East Capitol
Pierre, SD 57501-5070

If the Sub-Recipient expends less than $1,000,000 during any Sub-Recipient fiscal year ($750,000 for fiscal years on or before September 30, 2024), the State may perform a more limited program or performance audit related to the completion of the Agreement objects, the eligibility of services or costs, and adherence to Agreement provisions.

Audits shall be completed and filed with the Department of Legislative Audit by the end of the ninth month following end of the fiscal year being audited.

For either an entity-wide, independent financial audit or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the State or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely resolved.

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business for audit by personnel authorized by the State. The State and/or federal agency has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

4. SUB-RECIPIENT ATTESTATION:

By signing this Agreement, Sub-Recipient attests to the following requirements as set forth in SDCL § 1-56-10:

(A) A conflict-of-interest policy is enforced within the recipient's or sub-recipient's organization.

(B) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website.

(C) An effective internal control system is employed by the recipient's or sub-recipient's organization; and.

(D) If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

Sub-Recipient certifies that its internal control system includes cybersecurity and other measures to safeguard information.

Sub-Recipient certifies that it will take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information.

Whenever applying for funds, requesting payment, and submitting financial reports, Sub-Recipient asserts the following:

> I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729-3730 and 3801-3812.

Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were provided to the State and resolved to their satisfaction prior to signing this Agreement.

If Sub-recipient is a non-state agency they agree to disclose to the State, in writing, any conflicts of interest that exist under the Sub-recipient’s conflict of interest policy. The State will publicly post any disclosed conflicts of interest along with the corresponding grant agreement on the OpenSD website.

In the event of a significant change in the conflict-of-interest policy, sub-recipient agrees to provide immediate notice of such change to the State and provide a copy of the new conflict of interest policy. Sub-recipient understands that any change in the conflict-of-interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

5. CLOSEOUT:

For purposes of this Agreement, "Date of Completion" shall mean the date when the Agreement expires pursuant to its terms or is terminated in accordance with paragraph 11.

The Sub-Recipient shall submit a final financial report to the State. Within the limits of the Agreement amount, the State may make upward or downward cost adjustments on the basis of the information contained in the report. Agreement obligations will remain in force until all final reports are reviewed and approved by the State.

The Sub-Recipient, along with the final financial report, will refund to the State any unexpended funds or unobligated (unencumbered) cash advances.

All outstanding obligations (encumbered funds) which have not been paid out as of the Date of Completion must be liquidated prior to the submission of the final report.

Whether or not audits were conducted during the Agreement term, a final financial and compliance audit may be initiated up to three years after the date the State approves the final financial report.

If either the final financial report or the final audit discloses an overpayment to the Sub-Recipient, the State may, at its option, either require the Sub-Recipient to repay the overpayment to the State or deduct the amount of overpayment from monies due the Sub-Recipient under this Agreement or under any other agreement between the Sub-Recipient and the State.

The Sub-Recipient shall provide, along with the final financial report, a written accounting of property acquired with Agreement funds or received from the State.

6. ASSURANCE REQUIREMENTS:

The Sub-Recipient agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

Sub-Recipient will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

Sub-Recipient will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874) and the Contract Work Hours and Safety

Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub agreements.

Sub-Recipient will comply with the Elementary and Secondary Education Act of 1965 Section 8546 (20 U.S.C § 7926) prohibiting the aiding and abetting of sexual abuse.

7. SUB-RECIPIENT IDENTIFICATION:

   Upon execution of this Agreement, Sub-Recipient will provide the State with Sub-Recipient's Employer Identification Number, Federal Tax Identification Number or Social Security Number.

8. USE OF EQUIPMENT, SUPPLIES AND FACILITIES:

   Sub-Recipient will not use State equipment, supplies or facilities.

9. THIRD PARTY BENEFICIARIES:

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

10. COST PRINCIPLES:

    If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

11. TERMINATION:

    This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination. Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive including but not limited to the indemnification, controlling law and venue, and sovereign immunity provisions.

12. FUNDING:

    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 the law or federal funds reduction, 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.

13. ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned without the express prior written consent of the State. 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.

14. CONTROLLING LAW AND VENUE:

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

15. MERGER:

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.

16. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

17. NOTICE:

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 the Division being contracted with on behalf of the State, and by the Sub-Recipient, 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.

18. SUBCONTRTACTORS/SUB-RECIPIENTS:

The Sub-Recipient will not use subcontractors or other sub-recipients to perform work under this Agreement without the express prior written consent from the State. The State reserves the right to complete a risk assessment on any proposed sub-contractor or sub-recipient and to reject any person or entity presenting insufficient skills or inappropriate behavior.

The Sub-Recipient will include provisions in its subcontracts or sub-grants requiring its subcontractors and sub-recipients 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 Sub-Recipient will cause its subcontractors, sub-recipients, 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. The State, at its option, may require the vetting of any subcontractors and sub-recipients. The Sub-Recipient is required to assist in this process as needed.

19. STATE'S RIGHT TO REJECT

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

20. CONFLICT-OF-INTEREST:

Sub-Recipient agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing and approved, in writing, by the State. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict-of-interest resolution process set forth in SDCL § 5-18A-17 through 5-18A-17.6.

21. TERMS:

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination.

22. CERTIFICATIONS:

A. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Sub-Recipient certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement it 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.

B. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:

By entering into this Agreement, Sub-Recipient certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Sub-Recipient further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

C. COMPLIANCE WITH SDCL CH. 5-18A:

Sub-Recipient certifies and agrees that the following information is correct:

The bidder or offeror is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The successful bidder or offeror further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

23. INDEMNIFICATION:

Sub-Recipient agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief that may arise at least in part as a result of an act or omission in performing services under this Agreement. Sub-Recipient shall defend the State of South Dakota, its officers, agents, and employees against any claim, including any claim, action, suit, or other proceeding related to the claim. Sub-Recipient's obligation to indemnify includes the payment of attorney fees and other costs of defense. In defending the State of South Dakota, its officers, agents, and employees, Sub-Recipient shall engage other professionals, subject to the written approval of the State which shall not be unreasonably withheld. Notwithstanding the foregoing, the State may, in its sole discretion and at the expense of Sub-Recipient, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Sub-Recipient in the defense. This section does not require Sub-Recipient to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the State, its officers, agents or employees.

24. SOVEREIGN IMMUNITY:

Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers or employees.

25. HEADINGS:

The headings in this Agreement are for convenience and reference only and shall not govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

26. PROPERTY MANAGEMENT STANDARDS:

The Sub-Recipient agrees to observe Federal Government uniform standards governing the utilization of property whose cost was charged to a project supported by a Federal grant.

27. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding the State's rules, regulations, and policies to the Sub-Recipient and to assist in the correction of problem areas identified by the State's monitoring activities.

28. LICENSING AND STANDARD COMPLIANCE:

The Sub-Recipient agrees to comply in full with all federal, state, tribal, and local statutes, regulations ordinances, guidelines, permits, requirements and other standards applicable to the service provided under this Agreement and will be solely responsible for obtaining information regarding the foregoing. The Sub-Recipient will maintain effective internal controls in managing the federal award. Liability resulting from the failure to comply with all federal, state, tribal and local statutes, regulations, ordinances, guidelines, permits, requirements and standards is assumed entirely by the Sub-Recipient.

29. INSURANCE:

At all times during the term of this Agreement, Sub-Recipient shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE:

The Sub-Recipient shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than $1,000,000 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. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not herby waive sovereign immunity for discretionary conduct as provided by law.

B. BUSINESS AUTOMOBILE LIABILITY:

The Sub-Recipient shall maintain business automobile liability insurance or an equivalent form with a limit of not less than $500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insured but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not herby waive sovereign immunity for discretionary conduct as provided by law.

C. WORKER'S COMPENSATION INSURANCE:

The Sub-Recipient shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. PROFESSIONAL LIABILITY INSURANCE:

Sub-Recipient agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than one million dollars ($1,000,000).

Before beginning work under this Agreement, Sub-Recipient shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement including naming the State of South Dakota, its officers and employees, as additional insureds, as set forth above. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Sub-Recipient agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Sub-Recipient shall furnish copies of insurance policies if requested by the State.

30. WORK PRODUCT

Sub-Recipient hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, state proprietary information, state data, end user data, Personal Health Information as defined in 45 CFR 160.103, and all information contained therein provided to the State by the Sub-Recipient in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Sub-Recipient without the written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Agreement will not 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 work for government purposes.

Sub-Recipient agrees to return all information received from the State to State's custody upon the end of the term of this contract, unless otherwise agreed in a writing signed by both parties.

31. PUBLICITY:

The Sub-Recipient shall not without the written consent of the State advertise, publicly announce or provide to any other person information relating to the existence or details of the Agreement or use the State's name in any format for any promotion, publicity, marketing or advertising purpose. The Sub-Recipient with written consent of the State when issuing statements, press releases, request for proposals, bid solicitations, and other documents describing projects or programs funded, pursuant to this Agreement, in who or in part with federal funds, the Sub-Recipient shall, state:

- the percentage of the total cost of the program or project which is financed with federal funds;
- the dollar amount of federal funds for the project or program; and
- the percentage and dollar amount of the total costs of the project or program that will be funded by nongovernment sources.

32. STANDARDS OF WORK:

Sub-Recipient agrees to implement the subaward and perform pursuant to the requirements of the Agreement in a manner consistent with that level of care and skill ordinarily exercised by sub-recipients currently practicing under similar conditions, particularly in reference to restricted or sponsored programs.

33. ADMINISTRATIVE CONSIDERATIONS:

Where policies of Sub-Recipient differ from those of the State, such as travel reimbursement, fringe benefits, indirect costs, etc., the policies of the Sub-Recipient shall be applicable to cost incurrences under the Agreement provided such policies comply with awarding agency regulations.

34. DISCLOSURE OF INFORMATION:

Any confidential information or personally identifiable information (PII) acquired by Sub-Recipient during the course of the subaward shall not be disclosed by Sub-Recipient to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever without the prior written consent of the State, either during the term of the Agreement or in the event of termination of the Agreement for any reasons whatsoever. Sub-Recipient agrees to abide by applicable federal regulations regarding confidential information and research standards, as appropriate, for federally supported projects.

35. INDEPENDENT CONTRACTOR/SUB-RECIPIENT:

While performing services hereunder, the Sub-Recipient is an independent and not an officer, agent or employee of the State of South Dakota. The Sub-Recipient will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number; UEI Number; and SAM registration upon execution of this Agreement.

36. MONITORING PLAN AND REPORTING:

The State will monitor Sub-Recipient to ensure compliance with program requirements and identify any failures in the administration and performance of the award. The monitoring plan will also serve to identify whether the Sub-Recipient needs technical assistance. In addition to program performance, the State will monitor financial performance. Monitoring will be used to document allowable and unallowable costs, time and effort reporting and travel. Monitoring also will be used to follow up on findings identified in an earlier monitoring visit, from document reviews or after an audit to ensure that sub-recipient took corrective action. As appropriate, the cooperative audit resolution process may be applied. The monitor plan may include on-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. For reporting, the uniform guidance requires the State and Sub-Recipient use OMB-approved government-wide standard information collections when providing performance and data in reports.

37. CONSIDERATION:

The State will pay for all services performed by the Sub-Recipient under this grant agreement as follows:

Compensation: The Sub-Recipient will be paid using the cost reimbursement method of payment. Invoices will state the period for which reimbursement is being requested, and will itemize the cost. All deliverables and reports defined in paragraph 3 is to be submitted to the State for the compensation defined herein. If applicable, travel expenses shall be in accordance with the Sub-Recipient's travel reimbursement policy. Sub-Recipient shall not be entitled to receive any additional or separate compensation from the State in connection with the project without prior written approval of the State.

38. TERMS OF PAYMENT:

Invoices: The State will pay the Sub-Recipient after the Sub-Recipient presents an itemized invoice for the services actually performed and the State accepts the invoiced services. Each invoice must reference the Agreement number. Payment will be made consistent with SDCL Ch. 5-26. Sub-Recipient acknowledges that it would be difficult or impracticable for the State to provide the notice disagreement provided for by SDCL 5-26-5 within the thirty days provided by that section. Accordingly, Sub-Recipient hereby waives the application of that section to this Agreement.

Upon submitting each invoice, pursuant to 2 CFR 200.415 of the Uniform Grant Guidance, the Sub-Recipient is required to certify the following:

"By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

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 Sub-Recipient 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 Sub-Recipient is not entitled. If Sub-Recipient fails to make such a timely refund, the State shall charge Sub-Recipient one percent (1%) per month on the amount due until paid in full.

Claims for payment must be submitted on an invoice within forty-five (45) days of the date upon which the Sub-Recipient 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 (45) days, then written notice and 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 Sub-Recipient to abide by this paragraph shall relieve the State of any obligation to pay for such claim.

39. CONFIDENTIALITY OF INFORMATION:

For the purpose of this paragraph, "State Proprietary Information" shall include all information, regardless of its format, disclosed to the Sub-Recipient by the State. Sub-Recipient 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. Sub-Recipient shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information and who have been instructed that such information is or may be confidential under state or federal law. Sub-Recipient 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. Sub-Recipient shall protect confidentiality of 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 Sub-Recipient; (ii) was known to Sub-Recipient without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Sub-Recipient without the benefit or influence of the State's information; or (v) becomes known to Sub-Recipient without restriction from a source not connected to the State of South Dakota. State Proprietary Information may include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Sub-Recipient understands that State Proprietary Information may be confidential and protected under applicable state or federal law and agrees to immediately notify the State if the Information is disclosed, either intentionally or inadvertently. Sub-Recipient acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws, including but not limited to posting this Agreement on the State of South Dakota's website. If work assignments performed in the course of this Agreement require additional security requirements or clearance, Sub-Recipient agrees that its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.

Sub-Recipient agrees to remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality paragraph and to immediately notify the State of such matter.

Sub-Recipient will comply with any other confidentiality measures and terms included in the Agreement.

Upon termination of this Agreement, if not already done so as part of the services performed under the Agreement, Sub-Recipient agrees to return to the State, at Sub-Recipient's cost, any State Proprietary Information or documentation maintained by Sub-Recipient regarding the services provided hereunder in a format readily useable by the State as mutually agreed by Sub-Recipient and State.

Sub-recipient acknowledges that the State shares general information, including performance information, about Sub-recipient among and between other State agencies upon request of such agencies for the purpose of making determinations of the risk involved with potential, subsequent grant awards and for other purposes. Sub-recipient expressly consents and agrees to such uses by the State.

40. Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

41. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

SD Department of Education
General Assurances & State Attestation

Assurance is hereby given that, to the extent applicable:

- The STATE shall hold the SUB-RECIPIENT to the provisions within the application Code of Federal Regulations (CFR) that govern the funds passed through the STATE to the SUB-RECIPIENT. The CFRs include, but are not limited to: Title 7 – Agriculture (7 CFR), Title 34 – Education (34 CFR) and Title 36 – Parks, Forests, & Public Property (36 CFR). The SUB-RECIPIENT assures it will adhere to the applicable CFR based on the source of the funds received from the STATE.
- That the SUB-RECIPIENT will accept funds in accordance with applicable Federal and State statutes, regulations, executive orders, program plans, applications, and awards, and administer the programs in compliance with all provisions of such statutes, executive orders, regulations, applications, policies, agreements, and amendments hereto.
- That the control of funds provided to the SUB-RECIPIENT under each program and title to property acquired with those funds will be in a designated eligible recipient and that a designated eligible recipient will administer those funds and property.
- That the SUB-RECIPIENT has the necessary legal authority to apply for and receive the proposed grant or sub-grant and enter into the agreement.
- The SUB-RECIPIENT will comply with all state and federal requirements, as applicable, for internal controls to ensure compliance with federal and state statutes, regulations, and terms and conditions of the award.
- The SUB-RECIPIENT shall establish safeguards to prohibit employees from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- That the SUB-RECIPIENT will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid under each program. A clear audit trail must be maintained for each source of funding. Receipts, expenditures and disbursements must be separately accounted for from each source of funds.
- That the SUB-RECIPIENT will maintain Time and Effort documentation for all employees whose salaries are:
    - Paid in whole or in part with federal funds 2 CFR 200.430(i)(1) or
    - Used to meet a match/cost share requirement 2 CFR 200.430(i)(4).
- The SUB-RECIPIENT will comply with Federal, State, and local procurement policies. In addition, equipment and supplies purchased for use in a Federal or State program will comply with the provisions of 2 CFR 200.318.
- The SUB-RECIPIENT shall maintain a specific inventory of any item purchased with federal grants funds until transfer, replacement, or disposition takes place. The SUB-RECIPIENT that cannot produce a piece of equipment purchased with federal funds during an audit review risks an audit finding, even if the purchase was allowable under the relevant federal grant program. This inventory must, at a minimum, include the following information, as set forth in 2 CFR 200.313(d):
    - Description of the item/property;
    - Serial number, model number, or other identification number (bar code or local identifying number);
    - Funding source of the item/property;
    - Titleholder;
    - Acquisition date;
    - Acquisition cost of the item/property;

- Records showing the maintenance procedures to keep item/property in good condition;
- Percentage of federal participation in the cost of the item/property;
- Location, use, and condition of the item/property, and date information was reported; and;
- All pertinent information on the ultimate transfer, replacement, or disposition (including date of disposal and the sale of the item/property, if applicable) when the item/property is retired from service.

A physical inventory of equipment item/property must be taken and the results reconciled with the inventory property records at least once every two (2) years to:

- Confirm the equipment item/property was found at the location indicated;
- Assess condition of the equipment item/property; and
- Verify equipment item/property is located in a secure environment that can be locked when not in use.

An inventory control system and records showing maintenance procedures must be developed and implemented to ensure adequate safeguards to prevent loss, damage or theft of the item/property. Any loss, damage, or theft must be investigated and fully documented by local law enforcement officials. This specific inventory information must be updated as equipment item/property is purged or new purchases are made. Disposition of equipment acquired with federal grant funds, but that is no longer needed for the original project or program or for other activities currently or previously supported by federal funds, must be in accordance with grant requirements. In the absence of the specific instructions of the federal grant, equipment valued at $10,000 or less may be retained, sold or otherwise disposed of with no further federal obligation. Please refer to 2 CFR 200.313(e), and the guidance for the specific grant program for additional detailed information as it applies to the grant.

- That the SUB-RECIPIENT will make reports to the STATE as may be reasonably by necessary to enable the STATE to perform their duties (e.g. completion report, other required reports by a program).
- That the SUB-RECIPIENT will maintain records, including the records required under Section 443(a) of the General Education Provisions Act (GEPA), 20 U.S.C. § 21F, and provide access to those records as the STATE, SD Department of Legislative Audit, Federal Program Personnel, and the Comptroller General or any of their authorized representatives in the conduct of audits authorized by Federal Law or State Statute. This cooperation includes access without unreasonable restrictions to its records and personnel for the purpose of obtaining relevant information.
- That the SUB-RECIPIENT will provide reasonable opportunities for participation by teachers, parents, and other interested agencies, organizations and individuals in the planning for and operation of each program.
- That in the case of any project involving construction, the project is not inconsistent with overall State plans for the construction of school facilities, if applicable; and in developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed under Section 504 of the Rehabilitation Act of 1973 and applicable provisions of Chapter 4 of Title 34, A.R.S., in order to ensure that facilities constructed with Federal (which become subsequently State) funds are accessible to and usable by handicapped individuals.
- That the SUB-RECIPIENT has adopted effective procedures for: Acquiring and disseminating to teachers and administrators participating in each program, significant information resulting from educational research, demonstration and similar projects; and Adopting, if appropriate, promising educational practices development through those projects.
- That no person shall, on the ground of race, color, national origin, handicap, or sex be excluded from participation, be denied benefits, or otherwise be subjected to discrimination under any program or activity for which the SUB-RECIPIENT receives federal financial assistance. Admissions policies for private schools are understood and agreed to be part of such programs. The SUB-RECIPIENT agrees to assure

compliance with but limited to: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq*.) USDA regulations at 7 CFR Part 15, Nondiscrimination, and Department of Justice regulations at 28 CFR Part 42, Nondiscrimination; Equal Employment Opportunity: Policies And Procedures; Title IX of the Education Amendments of 1972 (U.S.C. § 1681-1683 and 1685-1686) USDA regulations at 7 CFR Part 15a, Education Programs or Activities Receiving or Benefiting from Federal Financial Assistance; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C §794); the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.) The Sub-recipient assures that it will immediately take any measures necessary to effectuate the requirements in these laws, regulations, and directives. The Sub-recipient gives this assurance inconsideration of and for the purpose of obtaining the funds provided under this agreement.; the American with Disabilities Act (ADA) of 1990 (42 U.S.C. §12101 et seq.) which prohibits discrimination on the basis of disability in employment (Title I), state & local government services (Title II), places of public accommodation and commercial facilities (Title III). (42 U.S.C. 12101-12213); the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) as amended; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (P.L. 91-616), as amended; §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 22-3 and 290 ee 3), as amended; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 *et seq.*), as amended; 7 CFR Part 15: "Nondiscrimination"; any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

- SUB-RECIPIENT will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- SUB-RECIPIENT will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- SUB-RECIPIENT will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub agreements.
- SUB-RECIPIENT will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
- SUB-RECIPIENT will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 *et seq.*); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

- SUB-RECIPIENT will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- SUB-RECIPIENT will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
- SUB-RECIPIENT will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- SUB-RECIPIENT will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- SUB-RECIPIENT will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead- based paint in construction or rehabilitation of residence structures.
- The SUB-RECIPIENT shall provide a drug-free workplace as required by 2 CFR Part 421: USDA "Requirements for Drug-Free Workplace (Financial Assistance)" and the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Sub-recipients, as defined at 34 CFR Part 85, Sections 85.605 and 85.610. The SUB-RECIPIENT certifies that it will or will continue to provide a drug-free workplace by:
    - Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the SUB-RECIPIENT's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
    - Establishing an on-going drug-free awareness program to inform employees about:
        - The dangers of drug abuse in the workplace;
        - The Sub-recipient's policy of maintaining a drug-free workplace;
        - Any available drug counseling, rehabilitation, and employee assistance program; and
        - The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
    - Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement.
    - Notifying the employee in the statement that, as a condition of employment under the grant, the employee will:
        - Abide by the terms of the statement; and
        - Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
    - Notifying the agency, in writing, within 10 calendar days after receiving from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington DC 20202-4248. Notice shall include the identification number(s) of each affected grant;
    - Taking one of the following actions, within 30 calendar days of receiving notice, with respect to any employee who is so convicted:
        - Taking appropriate personnel action against such an employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

        - Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
    - Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- SUB-RECIPIENT will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Ch. 62 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- That the SUB-RECIPIENT may not uses its Federal or State funding to pay for any of the following: A. Religious worship, instruction, or proselytization. B. Equipment or supplies to be used for activities specified, herein. C. Construction, remodeling, repair, operation, or maintenance of any facility or part of any facility to be used for any of the activities specified in paragraph 13A, herein. D. An activity or school or department of divinity. A school or department of divinity is defined in 34 C.F.R. § 76.532(b).
- That no Federal funding may be used for the acquisition of real property unless specifically permitted by the authorizing statute or implementing regulations for the program.
- That the SUB-RECIPIENT may not count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program.
- That the SUB-RECIPIENT shall, to the extent possible, coordinate each of its projects with other activities that are in the same geographic area served by the project and that serves similar purposes and target groups.
- That the SUB-RECIPIENT shall, to the extent possible, if its project includes activities to improve the basic skills of children, youth, or adults, coordinate its project with other basic skills activities that are in the same geographic area served by the project. Basic skills mean reading, mathematics, and effective communication, both written and oral.
- That the SUB-RECIPIENT shall continue its coordination with the STATE during the length of the project period.
- The SUB-RECIPIENT shall initiate and complete the work within the applicable time frame after receipt of award from the STATE.
- The SUB-RECIPIENT shall cooperate in any evaluation by the STATE.
- That if a program so requires, the SUB-RECIPIENT shall make provisions for the participation of children enrolled in private schools in the area to be served. Such provision shall: A. Provide private school students with a genuine opportunity for equitable participation. B. Provide an opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs. C. Maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools. D. Comply with the requirements of 34 C.F.R. §76.652 through 76.662.
- Funds will be used to supplement and not supplant State and local funds expended for educational purposes and, to the extent practicable, increase the fiscal effort that would, in the absence of such funds, be made by the SUB-RECIPIENT for education purposes.
- The SUB-RECIPIENT shall be in compliance with all maintenance of effort requirements.
- That the SUB-RECIPIENT will comply with all relevant laws relating to privacy and protection of the individual rights including 34 C.F.R. Part 99 (Family Educational Rights and Privacy Act of 1974).
- That the SUB-RECIPIENT will comply with any applicable federal, state, and local health or safety requirements that apply to the facilities used for a project.
- The SUB-RECIPIENT shall maintain records for 5 years following completion of the activities for which the SUB-RECIPIENT uses the federal or state funding and which show: A. The amount of funds under the

award. B. How the SUB-RECIPIENT uses the funds. C. The total cost of the project. D. The share of total cost provided from other sources.

- If real property or structures are provided or improved with the aid of Federal financial assistance, the SUB-RECIPIENT will comply with applicable statutes, regulations, and the project application in the use, encumbrance, transfer or sale of such property or structure. If personal property is so provided, the SUB-RECIPIENT will comply with applicable statutes, regulations, and the project application in the use, encumbrance, transfer, disposal, and sale of such property.
- That in the event of an audit exception, and upon demand of the STATE, the SUB-RECIPIENT shall immediately reimburse the STATE for that portion of the audit exception attributable under the audit to the SUB-RECIPIENT, but shall also immediately reimburse the STATE expenses in defending the audit exception, including and not limited to travel and attorney's fees, in an amount proportional to the amount of the audit exception attributable to the SUB-RECIPIENT. The SUB-RECIPIENT agrees to hold the STATE harmless for any audit exception arising from the SUB-RECIPIENT's failure to comply with application regulations.
- That the SUB-RECIPIENT is aware of Federal funds granted to it are conditioned upon the availability and appropriation of such funds by the Unites State Congress and are subject to reduction or elimination by the United State Congress at any time, even following award and disbursement of funds. The SUB-RECIPIENT shall hold the STATE harmless for any reduction or elimination of Federal funds granted to it. In the event of non-appropriation and notice, the SUB-RECIPIENT shall immediately cease further expenditures under any project.
- Federal grant recipients, sub recipients and their grant personnel are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. SUB-RECIPIENT must comply with these conditions under Executive Order 13513, "Federal Leadership On Reducing Text Messaging While Driving," October 1, 2009.
- SUB-RECIPIENT shall adopt the provision of the Pro-Children Act of 1994. The act requires that smoking not be permitted in any indoor facility used routinely or regularly for the provision of "children's services" to persons under age 18, if the services are funded by specified federal programs either directly or through state or local governments.
- SUB-RECIPIENT shall adopt a Gun Free Policy, which is in compliance with Gun Free Schools Act SDCL 13-32-4.

By completing this form, you, the recipient or subrecipient, attest to meeting the following requirements per SDCL 1-56-10:

- A conflict of interest policy is enforced within the recipient's or sub-recipient's organization; AND,
- The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website; AND,
- An effective internal control system is employed by the recipient's or sub-recipient's organization; AND,
- If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles (Subpart E), and Audit Requirements for Federal Awards

Consistent with 2 CFR Subtitle A – Office of Management and Budget Guidance for Grants and Agreements and 2 CFR Subtitle B – Federal Agency Regulations for Grant and Agreements, the STATE, shall hold the SUB-RECIPIENT to the provisions established by the STATE which govern the funds and program.

- The SUB-RECIPIENT assures it will adhere to the 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as dictated by the STATE and 2 CFR Part 400 as required by USDA: .

- The SUB-RECIPIENT assures it has a valid Unique Entity Identifier UEI) number before applying for funds and that it will maintain the correct UEI number on file with the STATE (2 CFR 200.300 and 2 CFR Part 25: (Universal Identifier and System for Award Management).
- The SUB-RECIPIENT assures it has a valid and current Central Contractor Registration (CCR) in the System for Award Management (SAM.gov) system (2 CFR 200.300) and that it will maintain the correct CCR expiration date on file with the STATE.
- The SUB-RECIPIENT assures it will adhere to the Single Audit requirements as state by the 2 CFR and assures it recognizes that all Federal expenditures are utilized to determine if a Single Audit is required according to that language.
- The SUB-RECIPIENT assures it will adhere to the Federal Funding Accountability and Transparency Act (FFATA) reporting requirements (2 CFR 200.300) dated September 26, 2006.
- The SUB-RECIPIENT assures it will adhere to the Certifications and representations (2 CFR 200.208) requirements as dictated by the terms and conditions of the Federal/State award.
- The SUB-RECIPIENT assures it will adhere to the 2 CFR Part 417: USDA "Nonprocurement Debarment and Suspension" 2 CFR Part 180: "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non- Procurement)" and the Suspension and Debarment as required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 and defined in 2 CFR 200.212 regulations that prohibit the award of funds to individuals and parties that are ineligible or excluded from participating in Federal assistance programs or activities. The SUB-RECIPIENT certifies that it, its principals, and subcontractors:
    - Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
        - Have not within a three year period preceding this award been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
        - Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses; and
        - Have not within a three year period preceding this grant had one or more public transaction (Federal, State, or local) terminated for cause or default; and
    - The SUB-RECIPIENT shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub recipients shall certify and disclose accordingly.
    - Where the SUB-RECIPIENT is unable to certify to any of the statements in this certification, SUB-RECIPIENT shall immediately notify the STATE.
- The SUB-RECIPIENT assures it will adhere to 2 CFR Part 418 USDA "New Restrictions on Lobbying" and the Lobbying provisions as required by Section 1352, Title 41 Section 22 of the U.S. Code, and implemented as 34 CFR Part 82, for persons entering into a grant or cooperative agreement, as defined at 34 CFR Part 82, Sections 82.105 and 82.110 and established by 2 CFR 200.450. The SUB-RECIPIENT certifies that:
    - No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of

any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The SUB-RECIPIENT shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub recipients shall certify and disclose accordingly.

- The SUB-RECIPIENT assures it will adhere to provisions as required by 2 CFR Part 170: "Reporting Sub-award and Executive Compensation Information"
- The SUB-RECIPIENT assures it will adhere to provisions as required by 2 CFR Part 175: "Award Term for Trafficking in Persons".
- The SUB-RECIPIENT assures it will adhere to provisions as required by 2 CFR Part 415: USDA "General Program Administrative Regulations".
- The SUB-RECIPIENT assures it will adhere to provisions as required by Duncan Hunter National Defense Authorization Act of Fiscal Year 2009, Public Law 110-417.
- The SUB-RECIPIENT assures it will adhere to provisions as required by Sec. 745 and 746 of the Consolidated Appropriations Act, 2017 (Public law 115-31)
- The SUB-RECIPIENT assures it will adhere to provisions as required by Sections 738 and 739 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (Public Law 112-55)
- The SUB-RECIPIENT assures it will adhere to provisions as required by Freedom of Information Act (FOIA). Public access to Federal Financial Assistance records shall not be limited, except when such records must be kept confidential and would have been excepted from disclosure pursuant to the "Freedom of Information" regulation (5 U.S.C. 552).
- The SUB-RECIPIENT assures it will adhere to provisions as required by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 1681 et seq.) and USDA regulations at 7 CFR Part 15a, Education Programs or Activities Receiving or Benefiting from Federal Financial Assistance, and Department of Justice regulations at 28 CFR Part 41, Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap In Federally Assisted Programs
- The SUB-RECIPIENT assures it will adhere to provisions as required by 2 CFR Part 416: USDA "General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments"

"The Program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), DOJ (28) CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Program applicant received Federal financial assistance from USDA; and hereby gives assurance that it will immediately take any measures necessary to fulfill this agreement." "This

assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance." "By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant."