

STATE OF COLORADO
Colorado Department of Education
Contract with
The Board of Regents of the University of Wisconsin System, on behalf of the
University of Wisconsin-Madison’s Wisconsin Center for Education Research

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I. PARTIES

This contract, is entered into by and between the State of Colorado, for the use and benefit of the Colorado Department of Education, 201 East Colfax, Denver, Colorado 80203, hereinafter referred to as CDE or State, and the Board of Regents of the University of Wisconsin System, on behalf of the University of Wisconsin-Madison’s Wisconsin Center for Education Research, 1025 W. Johnson Street, Madison, WI 53706 hereinafter referred to as the Contractor or WIDA or WCER.

II. EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

This Contract shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the Effective Date). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not

limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

III. RECITALS

A. Authority, Appropriation, and Approval

Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Contract.

IV. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

“Assessing Comprehension and Communication in English State-to-State for English Language Learners” (ACCESS for ELLs®) means a large-scale test that addresses the World-Class Instructional Design and Assessment (WIDA) Consortium’s English Language Proficiency Standards that form the core approach to instructing and testing English language learners designed to measure English language proficiency.

“Contract” means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

“Contract Funds” means funds available for payment by the State to Contractor pursuant to this Contract.

“Core Package” means the educational services offered by WCER under the name WIDA Consortium to WIDA Consortium Members, namely: technical assistance and professional development associated with implementing the WIDA English Language Proficiency Standards for English Language Learners in pre-kindergarten through grade 12; the printing, distributing, scoring and reporting of the ACCESS for ELLs English language test; the WIDA ACCESS Placement Test (W-APT), and technical assistance and professional development associated with administering and interpreting the ACCESS for ELLs English language test and test results.

“Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in Section VI below.

“Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the Services Contractor renders hereunder.

“Party” means the State or Contractor and “Parties” means both the State and Contractor

“Review” means examining Contractor’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in Section VI below.

“Services” means the required services to be performed by Contractor pursuant to this Contract.

“Subcontractor” means third-parties, if any, engaged by Contractor to aid in performance of its obligations.

“WCER” means Wisconsin Center for Education Research at the University of Wisconsin-Madison.

“WIDA Consortium” means the operational unit of the Wisconsin Center for Education Research at the University of Wisconsin-Madison, which offers educational services related to English language learners and academic English language proficiency for pre-kindergarten through grade 12.

“WIDA Consortium Member” means any state educational agency that approves and/or purchases the Core Package of WIDA Consortium educational services to satisfy the state and local educational agencies requirements of Title I and Title III of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (NCLB), which pertain to: the academic assessment of limited English proficient students; the academic assessment of English language proficiency; the development and meeting of annual measurable achievement objectives for limited English proficient students and the building and enhancement of capacity to offer programs that assist limited English proficient students in obtaining academic English language proficiency.

“WIDA Consortium Board” means the Board that serves as an advisory board to the WIDA Consortium operational leadership, the operation of which is set forth in Exhibit A, attached hereto and incorporated herein by reference.

“Work” means the tasks and activities Contractor is required to perform to fulfill its obligations under this Contract, including the performance of the Services and delivery of the Goods.

“Work Product” means the tangible or intangible results of Contractor’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

V. TERM AND EARLY TERMINATION

A. Initial Term-Work Commencement

The Parties' respective performances under this Contract shall commence on the later of either the Effective Date or September 1, 2012. This Contract shall terminate on August 31, 2013, unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Contractor, may unilaterally extend the term of this Contract for a period not to exceed two months if the Parties are negotiating a replacement Contract (and not merely seeking a term extension) at or near the end of any initial term or renewal term. The provisions of this Contract in effect when such notice is given shall remain in effect during the two-month extension. The two-month extension shall immediately terminate when and if a replacement Contract is approved and signed by the Colorado State Controller.

VI. STATEMENT OF WORK

A. Background

1. WCER is the organizational home of the WIDA Consortium (WIDA), a multi-state coalition of state departments of education that acts in collaboration to research, design and implement a standards-based educational system that promotes equitable educational opportunities for English language learners in pre-kindergarten through grade twelve. The WIDA English Language Proficiency Standards form the base of this system. The WIDA English Language Proficiency Standards include the four recognized domains of speaking, listening, reading, and writing, and are based on the academic language content of preK-12 students.
2. Title I of the Federal Elementary and Secondary Education Act (The No Child Left Behind Act of 2001 or NCLB) requires local educational agencies (LEAs) to provide an annual assessment of English proficiency for all students with limited English proficiency in schools served by the State educational agency (SEA).
3. Title III of NCLB requires LEAs to provide an evaluation to its SEA, which is used by the LEAs and SEA to: improve programs and activities; determine the effectiveness of programs and activities in assisting children who are limited English proficient to attain English proficiency (using State-approved evaluation measures) and meet challenging State academic content and student academic achievement standards; and determine whether or not to continue funding for specific programs or activities.
4. WCER offers evaluation services, on behalf of WIDA, that are designed to assess the progress of children in attaining English proficiency, including a child's level

of comprehension in the four recognized domains of speaking, listening, reading, and writing, and that are aligned with the WIDA English language proficiency standards. As part of these evaluation services WCER offers the English language test, Assessing Communication and Comprehension in English State to State for English Language Learners under the brand name ACCESS for ELLs.

5. CDE has selected the ACCESS for ELLs English language test as an evaluation measure available to meet CDE's and Colorado's LEAs' Title I and III requirements.
 6. CDE wishes to join WIDA in order to acquire the annual administration of ACCESS for ELLs and related evaluation services of WCER and WCER, having the requisite expertise, wishes to provide CDE with ACCESS for ELLs administration and related evaluation services.
- B. WCER shall provide the professional services listed in paragraphs B.1 through 3 below. The professional services set forth below shall be performed: using the requisite degree of skill, care and diligence; and in accordance with professional standards consistent with nationally recognized contractors performing similar professional services.
1. WCER shall administer and score the Assessing Comprehension and Communication in English State-to-State (ACCESS) for English Language Learners (ELLs) English language proficiency assessment for the 2012–2013 testing year.
 - a. WCER shall coordinate, secure and oversee the printing, distribution, scoring and reporting Subcontractor, currently MetriTech Inc., for the ACCESS for ELLs test and other WIDA Consortium assessments (the "Printing, Distribution, Scoring and Reporting (PDSR) Subcontractor"). The PDSR Subcontractor may include up to an additional 10% of test booklets in its distribution to LEAs in order to accommodate fluctuations in ELL populations in larger districts. In addition to the per student charge for ACCESS for ELLs testing services, CDE shall be responsible for actual printing and distribution costs of unused tests printed and distributed in excess of 115% of the number of actual students tested.
 - b. WCER, through the PDSR Subcontractor, will use best efforts to provide error free printing, distribution, scoring and reporting of the ACCESS for ELLs test. WCER shall correct and provide replacement materials for any errors in the test booklets that materially affect the reliability or validity of the test at no cost to CDE and Colorado's LEAs. WCER shall issue an errata sheet for all errors that do not materially affect the reliability or validity of the test at no cost to CDE and Colorado's LEAs.
 - c. CDE shall determine each year, through consultation with the PDSR Subcontractor, the testing year window dates, e.g. pre-coding, test

ordering, test delivery, test window, etc. CDE shall be responsible for informing Colorado's LEAs of the annual testing year window dates and the LEAs' corresponding task responsibilities, e.g. online ordering and corrections submissions. CDE shall take steps to encourage accurate ordering by Colorado's LEAs in order to prevent over-ordering of test booklets.

- d. LEAs shall return tests to the PDSR Subcontractor for scoring and reporting. Reports will be available eight weeks after the receipt of all test materials by the PDSR contractor.
- e. WCER shall provide the WIDA ACCESS Placement Test (W-APT) for determining appropriate initial placement of English language learners for the length of the contract. WCER will make the W-APT available as a paper and pencil assessment for five grade spans (kindergarten, 1-2, 3-5, 6-8, 9-12). The W-APT shall be implemented as an assessment that is locally administered and scored by a test administrator. WCER shall provide the W-APT in a PDF format on WIDA's secure website to be downloaded, printed, and duplicated for use by district or school staff as needed. WCER will also provide districts and schools the option of purchasing a reproducible master copy of the W-APT, which shall be outside the scope of this Contract.

2. WCER shall provide technical assistance and professional development to and in consultation with CDE.

a. Technical Assistance

- 1) Technical assistance (TA) shall consist of providing CDE with analysis and consultation concerning Colorado's ACCESS for ELLs test score data in relation to CDE's and Colorado's LEAs' Title I and III requirements.
- 2) Up to eight hours per testing year of TA are included in the price of the ACCESS for ELLs assessment. The included hours of TA do not include any on-site visits. CDE may obtain additional TA as needed at the daily rate specified in the Paragraph VII. below. CDE shall amend this Contract to obtain additional TA.

b. Professional Development

- 1) The Parties shall cooperatively develop a plan for delivering professional development (PD) activities related to the administration of the ACCESS for ELLs assessment and use and classroom implementation of the WIDA English language proficiency (ELP) Standards by Colorado educators. The activities shall be geared toward helping CDE and Colorado's LEAs' meet

their Title I and III requirements.

- 2) Up to and including 12 on-site days per testing year of PD are included in the price of the ACCESS for ELLs assessment, plus two half-days of Web-based training in the first year of membership.
 - a) WCER will send electronic copies of all course materials for included PD days to CDE in advance of the training. The electronic materials will include printing instructions and room set-up instructions. CDE shall be responsible for any participant registration and making and distributing all necessary hard copies of course materials.
 - b) Additional charges for materials may apply and some materials, for example, CESA 7 Data Retreat® materials are not available from WCER.
 - c) Certain PD offerings from WIDA that are priced per participant are not available using these included days. Current offerings priced per participant include CLIMBS training, Summer Academies, and Trainer Certification.
 - d) CDE is responsible for local expenses (e.g., rental of meeting space, participants per diems, substitute teachers, etc.).
 - e) If CDE cancels a jointly scheduled PD day for which WCER has incurred non-cancelable costs, then CDE may either reimburse WCER for the incurred costs and reschedule the PD day or it may elect to relinquish the PD day altogether at no additional cost to CDE.
 - f) CDE may obtain additional PD as needed at the daily rate specified in the Section VII. CDE shall amend this Contract to obtain additional PD.
- C. CDE is entitled to one seat on the WIDA Consortium Board and to participate in WIDA Consortium Board activities. The operation of the WIDA Consortium Board is set forth in Exhibit A, WIDA Consortium Board.
- D. Employees

All persons employed by Contractor or Subcontractors to perform Work under this Contract shall be Contractor's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Contract.

VII. PAYMENTS TO CONTRACTOR

A. The State shall, in accordance with the provisions of this section, pay Contractor in the amounts and using the methods set forth below: For Services rendered, CDE shall pay WCER the following fees:

- 1. Colorado’s estimated test population for spring 2013 is 107,000 students. For the spring 2012/13 testing year, CDE shall pay \$23 per student. The estimated ACCESS for ELLs cost is \$2,461,000 for SFY 2012-2013.
- 2. CDE agrees to pay the yearly ACCESS for ELLs costs as follows:

Testing Year	Base Price – Per Test Scored	Estimate Tested Population	Total Estimate Cost
2012-2013	\$23	107,000	\$2,461,000

- 3. WCER will invoice CDE for test development and pre-operational costs based on fifty percent (50%) of the estimated testing population on or before December 1 and CDE shall pay on or before Jan 15.
- 4. WCER shall invoice CDE for the balance of the cost, based on the actual number of students tested, upon completion and delivery of the annual test reports and CDE shall pay within 45 calendar days.
- 5. CDE shall reimburse WCER for the printing and distribution costs of unused tests ordered in excess of 15% of the total number of tests used and scored and CDE shall pay within 45 calendar days.
- 6. The actual rate for additional PD services above the 12 days of PD included as part of the payment of yearly ACCESS for ELLs costs for 2012–2013 is \$4,000 for each single day of PD and for the first of several, consecutive days of PD. Each subsequent, consecutive day of PD is \$2,500. These prices are inclusive of time and travel expenses.
- 7. This rate applies only to purchases of PD services made by CDE and is not extended to LEAs.
- 8. The daily rate for additional TA above the 8 hours of TA per testing year included as part of the payment of yearly ACCESS for ELLs costs shall is not-to-exceed \$5,500 for the period September 1, 2012 through August 31, 2013.
- 9. WCER may use up to 1.5% of the total contract amount, which is built into the “Base Price-Per Test Scored” and will not result in increased costs to State, to cover the cost of the following events and activities which will be conducted in compliance with UW-Madison cost regulations and policies governing meals and alcoholic beverages. Documentation for these expenses will be retained for three years and will be available for review if requested. Events and activities include: WIDA-Sponsored events at key professional conferences to discuss WIDA

activities and services, working dinners with SEA or potential SEA partners or other key WIDA Consortium partners, and other events intended to further the WIDA Consortium's goals and objectives.

B. Payment

1. Advance, Interim and Final Payments

Any advance payment allowed under this Contract shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. Contractor shall initiate any payment requests by submitting invoices to the State in the form and manner set forth in approved by the State.

2. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

3. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. If federal funds are used to fund this Contract, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

4. Erroneous Payments

At the State's sole discretion, payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not

be paid to any party other than the State.

VIII. REPORTING – NOTIFICATION

Reports, Evaluations, and Reviews required under this Section VIII. shall be in accordance with the procedures of and in such form as prescribed by the State.

A. Performance, Progress, Personnel, and Funds

State shall submit a report to the Contractor upon expiration or sooner termination of this Contract, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the State of such action and upon CDE's request, shall work with the Wisconsin Attorney General's office to obtain and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Deputy Commissioner of CDE.

C. Noncompliance

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this Section may result in the delay of payment of funds and/or termination as provided under this Contract.

D. Subcontracts

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws.

IX. CONTRACTOR RECORDS

A. Maintenance

Contractor shall make, keep, maintain, and allow inspection by the State of a complete file of all records pertaining to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: (i) a period of three years after the date this Contract expires or is sooner terminated, or (ii) final payment is made hereunder, or (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has

been completed and its findings have been resolved (collectively, the Record Retention Period).

B. Inspection

Contractor shall permit the State, the federal government and any other duly authorized agent of a State or federal governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period for a period of three years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State, upon reasonable request, reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the State may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

X. CONFIDENTIAL INFORMATION-STATE RECORDS

Contractor shall comply with the provisions of this Section if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, C.R.S. Section 24-72-101, *et seq.*

A. Confidentiality

Contractor shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Contractor shall be immediately forwarded to the State's principal representative.

B. Notification

Contractor shall notify its agent, employees, Subcontractors and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Contract or

approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Contract or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents.

XI. EDUCATION RECORD RELEASE AND DATA USE

A. The Family Education Rights and Privacy Act (FERPA) allows educational agencies and institutions to disclose personally identifiable information (FERPA Confidential Data) from the education records of students, without consent of students or parents, to authorized representatives of SEAs in order to evaluate and comply with these federal programs and legal requirements. 20 U.S.C. Sections 1232g(b)(1)(C) and (b)(3) and 34 C.F.R. Sections 99.31(a)(3) and § 99.35.

B. Acknowledgment of Release of FERPA Confidential Data and Description of Use

1. The parties acknowledge that CDE is releasing FERPA Confidential Data to WCER for the purposes outlined in Section XI.D.8 below, and that the release of CDE FERPA Confidential Data to WCER is necessary for the completion of the administration and scoring of the ACCESS for ELLs English language proficiency assessment. The list of data fields of personally identifiable information to be disclosed is attached to this Contract as Exhibit B. WCER shall notify CDE and CDE shall provide written consent, if approved, of any changes to the list of disclosed information necessary for the administration and scoring of the ACCESS for ELLs English language proficiency assessment.
2. WCER will use personally identifiable information from education records to facilitate the administration, scoring and reporting of individual student assessments and to connect student records from year to year in order to establish a longitudinal data set that can be used for the evaluation purposes described in Section XI.B.8. Once student records are connected, only de-identified data and/or aggregated data will be used for evaluation activities.

C. Designation of Authority

CDE hereby designates WCER and its subcontractors as authorized representatives of CDE with respect to the administration and scoring of the ACCESS for ELLs English language proficiency assessment and, specifically, the use of personally identifiable information disclosed under this Contract.

D. Receiving Institution Obligations. WCER agrees to abide by the following guidelines.

1. WCER shall not share these FERPA Confidential Data with anyone, except those employees of WCER's WIDA Consortium and WIDA Consortium's subcontractors, including MetriTech, Inc. ("Authorized Users") that are directly involved and have a legitimate interest in providing administration and scoring of the ACCESS for ELLs English language proficiency assessment according to the terms of the Contract.
2. WCER shall require all Authorized Users to comply with FERPA and other applicable state and federal student privacy law. WCER shall require and maintain confidentiality agreements with each Authorized User of FERPA Confidential Data. A copy of the current WCER employee confidentiality agreement is attached to this agreement as Exhibit C.
3. WCER shall protect FERPA Confidential Data in a manner that does not permit personal identification of students and their parents by anyone except those bound by this Contract and CDE. WCER shall store all FERPA Confidential Data on secure data servers using current industry best practices. WCER shall notify CDE as soon as practicable if it learns of any security breach to the server containing the FERPA Confidential Data or of any disclosure of FERPA Confidential Data to anyone other than WCER Authorized Users or the CDE officials authorized to receive FERPA Confidential Data. WCER shall cooperate and take all reasonable means prescribed by CDE to secure any breaches as soon as practicable.
4. WCER shall not redisclose CDE FERPA Confidential Data to any other party without the prior consent of the parent or eligible student.
5. WCER certifies that it has the capacity to restrict access to FERPA Confidential Data solely to Authorized Users and ensure that the FERPA Confidential Data is accessed only for the purposes described in this Contract. A copy of WCER's Standard Security Policies and Procedures is attached to this Contract as Exhibit D.
6. WCER shall destroy all FERPA Confidential Data within 45 days after it is no longer needed to perform the administration and scoring of the ACCESS for ELLs English language proficiency assessment described in this Contract, upon CDE's request or upon termination of this Contract, whichever occurs first or unless otherwise agreed upon in writing. WCER shall provide written verification of the data destruction to CDE within 45 days after the data is destroyed.
7. WCER shall permit CDE, at CDE's cost, to audit, upon reasonable request, that it is complying with the Standard Security Policies and Procedures in Exhibit D and/or that it has destroyed the data as verified.
8. WCER shall collect and use these FERPA Confidential Data only for the purpose to help CDE carry out an audit or evaluation of federal and state supported education programs and to comply with the federal legal requirements related to

the activities outlined in the Contract, including but not limited to, activities related to the development, administration, scoring and reporting of the annual assessment of student English proficiency, activities related to the evaluation of federally-supported education programs and activities related to English language instruction, acquisition, assessment and achievement; and the development of accountability measures and models for limited English proficient children that relate to these children's development and attainment of English proficiency while meeting challenging state academic content and student academic achievement standards.

9. WCER shall obtain prior written approval from CDE before accessing FERPA Confidential Data for activities beyond the scope specified herein, but consistent with CDE's federal and state requirements. Any FERPA Confidential Data collected by WCER under activities approved by CDE under Section XI.D.8, which is not regularly collected within the scope of this Section, but is consistent with the activities of Section XI.D.8, shall be subject to the terms and conditions of this Contract.
10. WCER shall obtain from the University of Wisconsin-Madison Institutional Review Board either approval or a determination of exemption for all research conducted using FERPA Confidential Data where required by law and/or University policy.
11. If WCER becomes legally compelled to disclose any FERPA Confidential Data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), WCER shall use all reasonable efforts to provide CDE with prior notice before disclosure so that CDE may seek a protective order or other appropriate remedy to prevent the disclosure; provided, however, that WCER will use all reasonable efforts to maintain the confidentiality of FERPA Confidential Data. If a protective order or other remedy is not obtained prior to when any legally compelled disclosure is required, WCER will only disclose that portion of FERPA Confidential Data that it is legally required to disclose.

E. Permission to Use data.

CDE acknowledges that by entering this Contract it is approving, in writing, WCER's use of these FERPA Confidential Data within the scope of purposes outlined in Section XI.D.8, above.

F. Transfer Protocol.

The Parties shall work cooperatively to determine the proper medium and method for the transfer of FERPA Confidential Data between each other. The party receiving FERPA Confidential Data shall confirm the transfer of FERPA Confidential Data and notify the transferring party as soon as practicable of any discrepancies between the actual data transferred and the data described in this Contract.

G. Data Custodians.

The following individuals are the designated data custodians for their respective entities:

WCER – WIDA Consortium
H. Gary Cook
Research Director
1025 W. Johnson St., MD#23
Madison, WI 53706
608.890.0471
hcook@wisc.edu

MetriTech, Inc.
Susan Feldman
Vice President of Operations
4106 Fieldstone Road
Champaign, IL 61822
217.398.4868
sfeldman@metritech.com

CDE
Jessica Allen
201 East Colfax
Denver, CO 80203
303.866.6281
Allen_j@cde.state.co.us

H. Remedies

WCER acknowledges that the release of FERPA Confidential Data to anyone other than Authorized Users on its part may result in irreparable and continuing damage to CDE for which money damages may not provide adequate relief. In the event of a release of FERPA Confidential Data by WCER, CDE, in addition to any other rights and remedies available to it at law or in equity, may be entitled to preliminary and permanent injunctions, enjoining and restraining the release.

XII. CONFLICTS OF INTEREST

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the State hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Contract.

XIII. REPRESENTATIONS AND WARRANTIES

Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Contract.

A. Standard and Manner of Performance

Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession and in the sequence and manner set forth in this Contract.

B. Legal Authority – Contractor Signatory

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this Contract within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Contract is a material breach by Contractor and constitutes grounds for termination of this Contract.

D. The Parties acknowledge the Colorado Legislature, the Colorado Board of Education, CDE and Colorado's LEAs set and implement the educational policy for the State of Colorado, including, but not limited to, the determination of how CDE and Colorado's LEAs will meet Colorado's and Colorado LEAs' federal requirements under NCLB.

E. THE WIDA WORKS AND RELATED SERVICES OFFERED UNDER THIS CONTRACT WERE DEVELOPED AS PART OF THE NON-PROFIT RESEARCH AND EDUCATIONAL ACTIVITIES OF THE UNIVERSITY OF WISCONSIN-MADISON, AND ARE PROVIDED TO CDE AS PART OF THE UNIVERSITY'S MISSION OF OUTREACH AND SERVICE TO THE EDUCATIONAL COMMUNITY. THE UNIVERSITY HAS NO REASON TO BELIEVE THAT THE WIDA WORKS INFRINGE ON THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, OR ARE UNFIT FOR THE PURPOSES DESCRIBED IN THIS CONTRACT; HOWEVER, DUE TO THE NON-COMMERCIAL NATURE OF THE UNIVERSITY IT CAN NOT PROVIDE WARRANTIES FOR THE WIDA WORKS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Neither

Party shall be liable under this CONTRACT for any special, consequential, indirect or incidental damages, except for damages arising out of bodily injury (including death) and damage to tangible property.

XIV. INSURANCE

The State of Wisconsin is self-funded for Wisconsin state liability purposes. The Wisconsin state's Self-funded Liability Program provides coverage against claims made as the result of the negligent acts of WCER officers, employees and agents. The Wisconsin state's liability protection is afforded under Wisconsin Statute 895.46 (1) and extends to all WCER employees in the course and scope of their duties.

WCER agrees to provide liability protection for its officers, employees and agents while acting within the scope of their employment. WCER further agrees to hold harmless CDE, its officers, agents and employees from any and all liability, including claims, demands, losses, costs, damages, and expenses of every kind and description (including death), or damages to persons or property arising out of or in connection with or occurring during the course of this Contract where such liability is founded upon or grows out of the acts or omissions of any of the officers, employees or agents of the WCER system while acting within the scope of their employment where protection is afforded by ss. 893.82 and 895.46(1), Wis. Stats.

XV. BREACH

In addition to any breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in Section XVI. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

XVI. REMEDIES

If Contractor is in breach under any provision of this Contract, the State shall have all of the remedies listed in this Section in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in Section XV. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

1. State's Rights.

The State may terminate this entire Contract. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State.

b. Payments

The State shall reimburse Contractor only for accepted performance and for non-cancellable costs which were preapproved by the State up to the date of termination. If, after termination by the State, it is determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Contract by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services.

2. Contractor's Rights.

The Contractor may terminate this entire Contract. Exercise by the Contractor of this right shall not be a breach of its obligations hereunder. State shall continue

performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State.

b. Payments

The State shall reimburse Contractor only for accepted performance and for non-cancellable costs which were preapproved by the State up to the date of termination.

B. Early Termination in the Public Interest

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by Section XVI.A or as otherwise specifically provided for herein.

1. Method and Content

The State shall notify Contractor of such termination. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

2. Obligations and Rights

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in Section XVI.A.1.

3. Payments

If this Contract is terminated by the State pursuant to this Section XVI.B, Contractor shall be paid for accepted performance up to the date of termination and for non-cancellable costs which were preapproved by the State.

C. Remedies Not Involving Termination

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

1. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

2. Withhold Payment

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

3. Deny Payment

Deny payment for those obligations not performed, that due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

4. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at Contractor's option (a) obtain for the State or Contractor the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

XVII. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State:

Heather Villalobos Pavia
Department of Education
201 East Colfax
Denver, Colorado 80203
(303) 866-6118
villalobos-pavia_h@cde.state.co.us

Contractor:

Becki Kohl, Project Administrator
WIDA Consortium at Wisconsin Center for Education Research
University of Wisconsin - Madison
1025 West Johnson St., MD #23
Madison, WI 53706
608-890-2550
rtkohl@wisc.edu
www.wida.us

XVIII. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

- A. WCER and the Board of Regents of the University of Wisconsin System, on behalf of the WIDA Consortium, own the copyrights of all works covered under this Contract (collectively the “WIDA Works”). This Contract does not convey any exclusive rights, title or interest in or to the WIDA Works to CDE. Because WCER makes these materials available to all WIDA Consortium member states, CDE shall not take any actions that would limit or restrict access to the materials by other states or otherwise adversely affect the proprietary nature of the WIDA Works.
- B. Unless otherwise expressed in writing, CDE shall retain all rights in training and other materials developed by CDE. Any specific works that WCER develops and delivers solely for CDE shall be expressly agreed upon in writing through an amendment to this Contract and shall be on a work made for hire basis with CDE retaining ownership of the works.
- C. The WIDA Works includes the following works:
1. ACCESS for ELLs English language proficiency test (“ACCESS for ELLs”);
 2. WIDA ACCESS Placement Test English language proficiency placement test (“W-APT”);
 3. WIDA English language proficiency standards and Resource Guide (“WIDA ELP Standards”), including future editions;
 4. ACCESS for ELLs Training Toolkit and administration manuals (“WIDA Training Toolkit”);

5. WIDA Consortium professional development materials (“WIDA PD Materials”); and
 6. ACCESS for ELLs technical documents and research reports.
- D. WCER hereby grants CDE the right to use the WIDA Works for State of Colorado and LEA educational purposes within the State of Colorado only and subject to the following conditions:
1. CDE’s license to use the ACCESS for ELLs is subject to the payment of the required fees set forth in Section VII and shall remain in effect as long as CDE elects to use the ACCESS for ELLs for State of Colorado and LEA educational purposes. CDE acknowledges that ACCESS for ELLs is a secure test, as that term is defined in 37 C.F.R. Section 202.20(b)(4). CDE shall implement statewide policies and procedures to ensure that the security of the test is maintained. CDE shall immediately notify WCER if it learns of any breach or threatened breach of test security. WCER will print and distribute the ACCESS for ELLs for CDE in accordance with the Section VI. The ACCESS for ELLs shall not be copied, modified, distributed or displayed, including electronic storage or retrieval, in any manner without express written permission from WCER and the appropriate security measures in place.
 2. CDE’s license to use the W-APT is not subject to any separate fee and shall remain in effect as long as CDE elects to use the ACCESS for ELLs. W-APT is a semi-secure test, meaning it is made available from a password-protected secure website. WCER will make W-APT available electronically in PDF format. CDE, LEAs and individual schools in CDE’s state may print and duplicate the W-APT for use by LEA or school staff as needed. The W-APT shall not be modified or publically displayed, including electronic storage or retrieval, in any manner without express written permission from WCER.
 3. CDE’s license to use the WIDA ELP Standards is not subject to any separate fee and shall remain in effect as long as CDE and/or the Colorado State Board of Education elects to use the WIDA ELP Standards as the State’s English language development Standards. WCER will make the WIDA ELP Standards available electronically in PDF format from the WIDA Consortium website. WCER will publically display and provide the WIDA ELP Standards for download free of charge for personal and educational purposes. Educational purposes shall include LEA and individual school/teacher use within the State of Colorado. This license does not include the right for CDE or any LEA within the State of Colorado to copy and distribute the WIDA ELP Standards beyond de minimis use (de minimis use is less than 100 copies per presentation). WCER will publish or license to publish full color bound copies of the WIDA ELP Standards and make available to CDE, LEAs and other educators within the State of Colorado at a lower WIDA Consortium member rate. If CDE elects to purchase such color bound copies, it shall amend this Contract to include such. LEAs are responsible for their own purchases which are outside the scope of this Contract. The WIDA ELP Standards

shall not be modified or publically displayed for electronic storage and retrieval in any manner without express written permission from WCER. However, linking to the WIDA Consortium website and stating the free availability of the WIDA ELP Standards is encouraged. WCER will grant additional permissions upon request but CDE acknowledges that WCER may include additional reasonable restrictions for quality control purposes depending on the nature of the request.

4. CDE's license to use the WIDA Training Toolkit is not subject to any separate fee and shall remain in effect as long as CDE elects to use the ACCESS for ELLs. WCER will make the WIDA Training Toolkit available electronically from the password-protected section of the WIDA Consortium website. CDE may use, including copying and distributing, the WIDA Training Toolkit and its individual components for CDE training purposes. CDE may modify individual components of the WIDA Training Toolkit for state specific policy and procedural needs and state specific presentations. CDE may not modify any technical information related to the test. CDE shall not publically distribute or display, including electronic storage or retrieval, any training materials from the WIDA Training Toolkit that contain any secure test items or other secure test materials.
 5. CDE's license to use the WIDA PD Materials is not subject to any separate fee and shall remain in effect as long as CDE elects to use the WIDA ELP Standards. WCER will make the WIDA PD Materials available electronically to CDE prior to any PD. CDE will be responsible for copying and distributing WIDA PD Materials to participants of CDE sponsored PD offerings. The WIDA PD Materials shall not be modified or publically displayed for electronic storage and retrieval in any manner without express written permission from WCER.
 6. CDE's license to use the ACCESS for ELLs technical documents and research reports is not subject to any separate fee and shall remain in effect as long as CDE elects to use the ACCESS for ELLs. WCER will make the ACCESS for ELLs technical documents and research reports available electronically to CDE from the public area of the WIDA Consortium website. All confidential and proprietary information will be removed from the ACCESS for ELLs technical documents and research reports that are posted in the public area of the WIDA Consortium website. CDE will receive an individual electronic copy of all ACCESS for ELLs technical documents and research reports, including those documents and reports containing confidential and proprietary information. The ACCESS for ELLs technical documents and research reports shall not be modified and no documents or reports containing confidential and proprietary information shall be publically displayed, including electronic storage and retrieval in any manner.
- E. CDE shall remove as soon as practicable any WIDA Works that it publically displays, including electronic storage and retrieval systems, that WCER determines, in its sole discretion, contain confidential or proprietary information.
- F. WIDA, the WIDA Consortium logo, WIDA MODEL and ACCESS for ELLs are trademarks of the Board of Regents of the University of Wisconsin System (collectively

the “WIDA Trademarks). Any use of the WIDA Trademarks shall inure to the benefit of WCER. CDE acknowledges that WCER may, from time-to-time, issue trademark and copyright use guidelines and policies in order to maintain the proper use and integrity of the WIDA Trademarks and WIDA Works and the quality of WCER services and products. CDE shall assist WCER in implementing any trademark and copyright use guidelines for all uses by CDE and Colorado’s LEAs.

XIX. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act Section 24-10-101, *et seq.* and the risk management statutes, C.R.S. Section 24-30-1501, *et seq.*, as amended.

XX. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this Section applies.

Contractor agrees to be governed, and to abide, by the provisions of C.R.S. Section 24-102-205, Section 24-102-206, Section 24-103-601, Section 24-103.5-101 and Section 24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor’s performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including C.R.S. Section 24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor’s performance shall be part of the normal contract administration process and Contractor’s performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor’s obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor’s obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDE, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (C.R.S. Section 24-105-102(6)), or (b) under C.R.S. Section-105-102(6), exercising the debarment protest and appeal rights provided in C.R.S. Sections 24-109-106, 107, 201 or 202, which may

result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

XXI. GENERAL PROVISIONS

A. Assignment and Subcontracts

Contractor's rights and obligations hereunder may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. All assignments approved by the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in Section XXI.A, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Modification

1. By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by both parties in an amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules.

2. By Operation of Law

This Contract is subject to such modifications as may be required by changes in

federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

G. Order of Precedence

The provisions of this Contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions.
2. The provisions of the main body of this Contract.

H. Severability

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Contract in accordance with its intent.

I. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Contractor fails to perform or comply as required.

J. Taxes

1. The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under C.R.S. Sections 39-26-101 and 201 *et seq.* Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

K. Third Party Beneficiaries

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

L. Waiver

Waiver of any breach under a term, provision, or requirement of this Contract, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

M. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards under C.R.S. Section 24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, C.R.S. Sections 24-72-101, *et seq.*

N. Debarred or Suspended Entities.

Contractor shall not enter into any contract or subcontract in connection with this Contract with a party that has been debarred or suspended from contracting with the Federal Government or the State of Colorado. See Excluded Parties List System at <https://www.epls.gov>

O. Dispute Resolution

In the event of a disagreement regarding the terms or implementation of this Contract, the Parties agree to discuss their dispute in good faith and make best efforts to achieve a mutually agreed-upon resolution. Each Party shall notify the other Party immediately upon receiving information at any time that lack of continued governmental funding or any other set of circumstances may prevent continuation of this Contract.

P. Wisconsin Sovereign Immunity

CDE acknowledges that WCER is a research center/sub-unit of the University of Wisconsin System and therefore, is an agency of the State of Wisconsin Government. Nothing in this Contract shall be construed as waiving the sovereign immunity of the State of Colorado or the State of Wisconsin.

Q. Wisconsin Federal Funding Certification

WCER receives federal funds and is therefore subject to federal regulations regarding federal fund recipients. WCER certifies that it complies with all federal funding certifications and assurances required by the U.S. Office of Management and Budget. WCER further certifies that it is in compliance with the Federal Immigration Reform and Control Act and that it verifies the employment eligibility of all of its employees.

COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Contracts except where noted in italics.

1. CONTROLLER'S APPROVAL. C.R.S. Section 24-30-202 (1).

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. C.R.S. Section 24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY.

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. Section Section 1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any contract, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. RESERVED.

7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds.

If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST. C.R.S. Sections 24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. C.R.S. Sections 24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements] Subject to C.R.S. Section 24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in C.R.S. Section 39-21-101, *et seq.*; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. C.R.S. Section 8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services]. Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Contract and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State program established pursuant to C.R.S. Section 8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. Section 8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or C.R.S. Section 8-17.5-101 *et seq.*, the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. Section 24-76.5-101.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of C.R.S. Section 24-76.5-101 *et seq.*, and (c) has produced one form of identification required by C.R.S. Section 24-76.5-103 prior to the effective date of this Contract.

SPs Effective 1/1/09

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR:

The Board of Regents of the University of Wisconsin System, on Behalf of the University of Wisconsin-Madison's Wisconsin Center for Education Research

By: Martha Kerven

Title: Asst. Vice Chancellor

[Signature]

*Signature
Date: 8/27/12

STATE OF COLORADO

John W. Hickenlooper, GOVERNOR

Department of Education
Robert Hammond, Commissioner

[Signature]
Robert Hammond, Commissioner

Date: 9-7-12

LEGAL REVIEW

John W. Suthers, Attorney General

By: _____
Signature - Assistant Attorney General

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER

David J. McDermott, CPA

By: [Signature]

Date: 9-10-2012

Exhibit A

WIDA Consortium Board

1. Definitions.

- a. SEA – “SEA” means state educational agency and includes each state’s education Superintendent.
- b. LEA – “LEA” means local educational agency and includes any educational agency within a WIDA Consortium Member state subject to the requirements of Titles I and III of NCLB.
- c. WCER – “WCER” means Wisconsin Center for Education Research at the University of Wisconsin-Madison.
- d. WIDA Consortium – “WIDA Consortium” means the operational unit of the Wisconsin Center for Education Research at the University of Wisconsin-Madison, which offers educational services related to English language learners and academic English language proficiency for pre-kindergarten through grade 12.
- e. WIDA Consortium Member – “WIDA Consortium Member” means any state educational agency that approves and/or purchases the Core Package of WIDA Consortium educational services to satisfy the state and local educational agencies requirements of Title I and Title III of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (NCLB), which pertain to: the academic assessment of limited English proficient students; the academic assessment of English language proficiency; the development and meeting of annual measurable achievement objectives for limited English proficient students and the building and enhancement of capacity to offer programs that assist limited English proficient students in obtaining academic English language proficiency.
- f. WIDA Consortium Board Member – “WIDA Consortium Board Member” means any person appointed to the WIDA Consortium Board according to the Board Member Appointment subsection below, *see sec. 3a.*
- g. Core Package - “Core Package” means the educational services offered by WCER under the name WIDA Consortium to WIDA Consortium Members, namely: technical assistance and professional development associated with implementing the *WIDA English Language Proficiency Standards for English Language Learners in Pre-Kindergarten through Grade 12*; the printing, distributing, scoring and reporting of the ACCESS for ELLs English language test; the WIDA ACCESS Placement Test (W-APT), and technical assistance and professional development associated with administering and interpreting the ACCESS for ELLs English language test and test results. WIDA Consortium Members all receive the same Core Package of educational services. Individual member States may contract with WCER to obtain enhancements to the Core Package for additional charges.

2. Purpose.

- a. Advisory - The WIDA Consortium Board serves as an advisory board to the WIDA Consortium operational leadership. The WIDA Consortium leadership solicits input on and the WIDA Consortium Board offers guidance and support on

the annual offering of the Core Package of WIDA Consortium educational services.

- b. Collaborative - The WIDA Consortium Board provides an organized opportunity for SEAs to associate and address common issues relating to English language learners, the academic English language proficiency of pre-kindergarten through grade 12 students and other issues related to SEA and LEA requirements of Titles I and III of NCLB.

3. Structure.

a. Board Member Appointment

- i. WIDA Consortium Member – Each WIDA Consortium Member should appoint one SEA representative to the WIDA Consortium Board.

- ii. Additional Appointments

- 1. Wisconsin and Illinois – The SEAs of Wisconsin (WDPI) and Illinois (ISBE) are each entitled to appoint one additional representative to the WIDA Consortium Board. The additional appointee may be either a state or local educational agency employee.
- 2. Rotating LEA Appointments – The WIDA Consortium Board will consist of two LEA representatives. Each WIDA Consortium Member other than WDPI and ISBE is entitled, based on its respective WIDA Consortium membership seniority, *see* sec. 6 below, to appoint one LEA representative for a term of two years.

- b. Term of WIDA Consortium Board Members – Other than the Rotating LEA Appointments, who serve two year terms, each WIDA Consortium Board Member will serve until replaced by their respective SEA or until their SEA is no longer a WIDA Consortium Member.

- c. Removal of WIDA Consortium Board Members - WIDA Consortium Board Members may only be removed by their respective SEA. An SEA will appoint a successor member to the WIDA Consortium Board if that SEA removes its appointed member.

- d. Compensation – Members of the WIDA Consortium Board do not receive compensation.

4. Operations.

- a. General - WCER, through the WIDA Consortium will facilitate the activities of the WIDA Consortium Board. WCER will provide the necessary personnel to serve as a liaison between the WIDA Consortium Board Members and the WIDA Consortium.

- b. Meetings – the WIDA Consortium will hold the following WIDA Consortium Board meetings:

- i. Annual Meeting - WCER will conduct an annual gathering of the WIDA Consortium Board. The gathering will be held in late spring.
- ii. Committee Meetings - WCER will conduct committee meetings of the WIDA Consortium Board as provide below in the Committees subsection below, *see* sec 5.c.
- iii. Special Meetings – WCER will conduct special meetings concerning the ongoing development and review of the annual offering of the Core

Package of WIDA Consortium educational services as necessary. WCER may hold special meetings either in person or via teleconference. Attendance at special meetings may be held to a limited number of WIDA Consortium Board Members

c. Communications

- i. General - WCER will provide the necessary infrastructure to facilitate the WIDA Consortium Board activities.
- ii. Meeting Summaries – WCER will maintain meeting notes and provide meeting summaries to the WIDA Consortium Board Members after any WIDA Consortium Board meeting.

d. Costs

- i. General – WCER will pay the costs associated with operating the WIDA Consortium Board.
- ii. Travel Expenses – WCER will pay for/reimburse WIDA Consortium Board Members' travel expenses incurred in connection with attending a WIDA Consortium meeting. If any SEA wants to bring additional people to a WIDA Consortium meeting, that SEA will be responsible for these peoples' travel expenses. In the first year an SEA becomes a WIDA Consortium Member WCER will pay for/reimburse the travel costs of one additional person from that state to attend the WIDA Consortium Board annual meeting. All travel expense reimbursements will be made in accordance with State of Wisconsin guidelines.

- e. Fiscal Impact – The activities of the WIDA Consortium Board will have no direct fiscal impact on individual WIDA Consortium Members without an additional written agreement between the individual WIDA Consortium Members and WCER. If WIDA Consortium Board Members recommend and the WIDA Consortium adopts any changes to the Core Package of WIDA Consortium educational services that affect the price of the Core Package, then no price change will take effect until the individual WIDA Consortium Members execute written agreements with WCER that reflect these changes.

5. Activities.

- a. General – The activities of the WIDA Consortium Board include the following:
 - i. Attendance at the annual WIDA Consortium Board meeting;
 - ii. Participation on WIDA Consortium Board committees as determined by this section; and
 - iii. Participation at special meetings conducted by the WIDA Consortium
- b. WIDA Consortium Board Meetings - WCER, through the WIDA Consortium will coordinate the meetings of the WIDA Consortium Board.
 - i. Meeting Agendum – the WIDA Consortium will set the agenda for any WIDA Consortium Board meetings.
 - ii. Meeting Activities
 1. Presentations – the WIDA Consortium will present updates on WIDA Consortium activities related to the implementation, research and development of the WIDA Consortium Core Package.
 2. Discussion and Review Groups - the WIDA Consortium will facilitate discussion groups on targeted topics related to the

implementation, research and development of the WIDA Consortium Core Package. The discussion groups are an opportunity for WIDA Consortium Board Members to provide input to the WIDA Consortium and to interact and exchange ideas with other SEAs.

3. Policy Orientation and Priority Setting – the WIDA Consortium may poll the WIDA Consortium Board in order to ascertain the position of WIDA Consortium Board members on issues related to the policy orientation and priorities of the implementation, research and development of the Core Package. Each WIDA Consortium Board Member present will receive one vote. The votes will be recorded by the WIDA Consortium.

c. Committees

- i. Executive Committee – The Executive committee is a standing committee:

1. Purpose – The purpose of the Executive Committee is
 - a. To provide input to WIDA Consortium on setting WIDA Consortium Board meeting agendum, and
 - b. To vet policy and priority issues related to the implementation, research and development of the WIDA Consortium Core Package in greater detail than the full WIDA Consortium Board.
2. Makeup – The Executive Committee will consist of one WDPI and one ISBE SEA representative, one SEA representative from each of the five WIDA Consortium Member regions and one LEA representative. The LEA representative will be appointed by the full WIDA Consortium Board. The criteria for selecting the LEA representative include: employment in a large size school district/division; and familiarity with the WIDA Consortium.
3. WIDA Consortium Member Regions – The WIDA Consortium Member regions are as followed:
 - a. Region A – Vermont, Wyoming, South Dakota, Maine, New Hampshire, and Montana.
 - b. Region B – North Dakota, District of Columbia, Mississippi, Delaware, Rhode Island, and Kentucky.
 - c. Region C – Missouri, Alaska, Hawaii, and Alabama.
 - d. Region D – Oklahoma, Pennsylvania, New Jersey, New Mexico, and Maryland.
 - e. Region E – Minnesota, Georgia, Virginia, and North Carolina
4. Meetings – the Executive Committee will meet every year in late Fall at a place to be determined by the committee. The WIDA Consortium may request that the committee meet for a half day meeting the day before the annual WIDA Consortium Board meeting in late spring.

- ii. Ad Hoc Committees – the WIDA Consortium and the WIDA Consortium Board may form ad hoc committees to address specific issues as necessary.

6. WIDA Consortium Membership Seniority

- a. The following table is used to determine when a SEA can appoint an LEA Board member

Member Order	State	Appointment Years
1	Delaware ¹	04/05 and 05/06
2	District of Columbia	04/05 and 05/06
3	Rhode Island	06/07 and 07/08
4	Alabama ²	06/07 and 07/08
5	Vermont ²	08/09 and 09/10
6	New Jersey ²	08/09 and 09/10
7	Maine ²	10/11 and 11/12
8	Georgia ²	10/11 and 11/12
9	New Hampshire ²	12/13 and 13/14
10	Oklahoma	12/13 and 13/14
11	Kentucky	14/15 and 15/16
12	North Dakota	14/15 and 15/16
13	Pennsylvania	16/17 and 17/18
14	Virginia	16/17 and 17/18
15	South Dakota	18/19 and 19/20
16	North Carolina	18/19 and 19/20
17	Mississippi	20/21 and 21/22
18	Hawaii	20/21 and 21/22
19	New Mexico	22/23 and 23/24
20	Wyoming	22/23 and 23/24
21	Missouri	24/25 and 25/26
22	Minnesota	24/25 and 25/26
23	Alaska	26/27 and 27/28
24	Montana	26/27 and 27/28
25	Maryland	28/29 and 29/30
26	New State	28/29 and 29/30
27	New State	30/31 and 31/32
28	Colorado	30/31 and 31/32

¹ Wisconsin is the senior member state, but does not appoint a rotating LEA member.

² Vermont, Maine, New Hampshire and Illinois follow Rhode Island in member seniority. Vermont, Maine and New Hampshire have agreed to stagger their Rotating LEA appointments in order to avoid regional concentration of LEA representation on the Board. Illinois does not appoint a rotating LEA member.

EXHIBIT B

LIST OF PERSONALLY IDENTIFIABLE DATA FIELDS

Field #	Item Detail	Number of Characters	Starting Position	Ending Position	Character Type	Item Description	Example
1	State Name Abbreviation	2	1	2	Alpha	2 character state designation	SS
2	District Name	18	3	20	Alpha	District Name	Sample Dist
3	District Number	15	21	35	Alpha/Numeric	Unique number identifying district within the state	123456
4	School Name	18	36	53	Alpha	School Name	Sample Sch
5	School Number	15	54	68	Alpha/Numeric	Unique number identifying school within the district	123456
6	Student Last Name	18	69	86	Alpha	Student Last Name	Feldman
7	Student First Name	14	87	100	Alpha	Student First Name	Susan
8	Student Middle Initial	1	101	101	Alpha	Student Middle Initial	C
9	Birth Date	8	102	109	Numeric	MMDDYYYY - 01121983 (January 12, 1983) or 00000000 = Unknown	01121983
10	Gender	1	110	110	Alpha	M = Male or F = Female or N = Not Reported	F
11	State Student ID	15	111	125	Alpha/Numeric	Unique State Student ID	1234567890
12	District Student ID	15	126	140	Alpha/Numeric	Unique District Student ID	100645
13	Grade	2	141	142	Numeric	Kindergarten through 12th grade (00 = K, through 12)	00
14	Cluster	1	143	143	Numeric	Kindergarten = 0, 1-2 = 1, 3-5 = 3, 6-8 = 6 and 9-12 = 9	0
15	Tier	1	144	144	Alpha	A, B, C, or a dash will represent Kindergarten	C
16	Ethnicity - Hispanic/Latino	1	145	145	Alpha	H = Hispanic/Latino, N = Not Hispanic	H
17	Race - American Indian/Alaskan Native	1	146	146	Alpha	Y = Yes, N = No	Y
18	Race - Asian	1	147	147	Alpha	Y = Yes, N = No	N
19	Race - Black/African American	1	148	148	Alpha	Y = Yes, N = No	Y
20	Race - Pacific Islander/Hawaiian	1	149	149	Alpha	Y = Yes, N = No	N
21	Race - White	1	150	150	Alpha	Y = Yes, N = No	Y
22	Native Language	4	151	154	Alpha/Numeric	Native Language Code	112
23	Date First Enrolled	8	155	162	Numeric	MMDDYYYY - 01122004 (January 12, 2004) or 00000000 = Unknown, Date student enrolled in US School	01122004
24	Length of Time in LEP/ELL Program	2	163	164	Numeric	Represented in number of years by school year	02
25	Title III Status	1	165	165	Alpha	Y = Yes, or N = No or Blank	N
26	Migrant	1	166	166	Alpha	M = Migrant or N = No or Blank	M
27	IEP Status	1	167	167	Alpha	Y = Yes, or N = No or Blank	N
28	504 Plan	1	168	168	Alpha	Y = Yes, or N = No or Blank	N
29	No Additional Services (NAS)	1	169	169	Alpha	Y = Yes, or N = No or Blank	N
30	Content Area Tutoring (CAT)	1	170	170	Alpha	Y = Yes, or N = No or Blank	Y
31	Developmental Bilingual (DBE)	1	171	171	Alpha	Y = Yes, or N = No or Blank	N
32	Dual Language & Two-Way Immersion (TWI)	1	172	172	Alpha	Y = Yes, or N = No or Blank	N
33	Heritage Language (HLA)	1	173	173	Alpha	Y = Yes, or N = No or Blank	N
34	Sheltered English Instruction (SEI)	1	174	174	Alpha	Y = Yes, or N = No or Blank	N
35	Transitional Bilingual (TBI)	1	175	175	Alpha	Y = Yes, or N = No or Blank	N
36	Content-Based ESL (CBE)	1	176	176	Alpha	Y = Yes, or N = No or Blank	N
37	Structured English Immersion or SDAIE (SEN)	1	177	177	Alpha	Y = Yes, or N = No or Blank	N
38	Pull-Out ESL (POE)	1	178	178	Alpha	Y = Yes, or N = No or Blank	N
39	Inclusionary Support (IS)	1	179	179	Alpha	Y = Yes, or N = No or Blank (Support provided in the mainstream classroom)	N
40	Pull-Out For Individualized Support (PO)	1	180	180	Alpha	Y = Yes, or N = No or Blank (Pulled out of regular classes)	N
41	Self-Contained (SC)	1	181	181	Alpha	Y = Yes, or N = No or Blank (Usually found only in bilingual classrooms)	N
42	Parental Refusal for Services (PR)	1	182	182	Alpha	Y = Yes, or N = No or Blank (Parents have opted out of bilingual/ESL services)	N

Field #	Item Detail	Number of Characters	Starting Position	Ending Position	Character Type	Item Description	Example
43	State Support Delivery is Not Applicable (NA)	1	183	183	Alpha	Y = Yes, or N = No or Blank	N
44	Audio Amplification Device or Noise Buffer (AA)	1	184	184	Alpha	Y = Yes, or N = No or Blank	N
45	Braille test or writer (BR)	1	185	185	Alpha	Y = Yes, or N = No or Blank	N
46	Large Print Booklet (LP)	1	186	186	Alpha	Y = Yes, or N = No or Blank	N
47	Magnification or Low Vision aids (LV)	1	187	187	Alpha	Y = Yes, or N = No or Blank	N
48	Computer Assisted (CA)	1	188	188	Alpha	Y = Yes, or N = No or Blank	Y
49	Modified Presentation Format (PF)	1	189	189	Alpha	Y = Yes, or N = No or Blank	N
50	Scribe (SB)	1	190	190	Alpha	Y = Yes, or N = No or Blank	N
51	Seating Format (SF)	1	191	191	Alpha	Y = Yes, or N = No or Blank	N
52	Modified Test Directions (TD)	1	192	192	Alpha	Y = Yes, or N = No or Blank	N
53	Modified Timing/Scheduling (TS)	1	193	193	Alpha	Y = Yes, or N = No or Blank	N
54	Other Approved Accommodation (OA)	1	194	194	Alpha	Y = Yes, or N = No or Blank	N
55	State Defined Optional Data	10	195	204	Alpha/Numeric	State Designated Additional Data	N
56	District Defined Optional Data	10	205	214	Alpha/Numeric	District Designated Additional Data (this may also be additional State Data)	
57	Booklet Serial Number	10	215	224	Alpha/Numeric	Scored Booklet Serial Number	00KT111111
58	Scoring Center Use	8	225	232	Numeric	MeiriTech Unique Student Identifier	11223344
59	Form Number	6	233	238	Numeric	Unique ACCESS form Identifier	121091
60	Listening Raw Item Responses - Grades 1-12	23	239	261	Numeric	1 through 4, or 9 = Blank	
61	Speaking Raw Item Responses - Grades 1-12	13	262	274	Numeric	0 through 3, 9 = Blank, or 7 = Teacher recorded the field as "7".	
62	Reading Raw Item Responses - Grades 1-12	29	275	303	Numeric	1 through 4, or 9 = Blank	
63	Writing Raw Scores Task 1 - Grades 1-12	3	304	306	Numeric	0 through 6, or 9 = Blank for Linguistic Control, Vocabulary Usage & Language Control	111
64	Writing Raw Scores Task 2 - Grades 1-12	3	307	309	Numeric	0 through 6, or 9 = Blank for Linguistic Control, Vocabulary Usage & Language Control	222
65	Writing Raw Scores Task 3 - Grades 1-12	3	310	312	Numeric	0 through 6, or 9 = Blank for Linguistic Control, Vocabulary Usage & Language Control	333
66	Writing Raw Scores Task 4 - Grades 1-12	3	313	315	Numeric	0 through 6, or 9 = Blank for Linguistic Control, Vocabulary Usage & Language Control - if applicable	444
67	Listening Scored Responses - Grades 1-12	23	316	338	Numeric	0 = Incorrect, 1 = Correct	1
68	Speaking Scored Responses - Grades 1-12	13	339	351	Numeric	0 = Incorrect, 1 = Correct	0
69	Reading Scored Responses - Grades 1-12	29	352	380	Numeric	0 = Incorrect, 1 = Correct	1
70	Listening Scale Score	3	381	383	Alpha/Numeric	100 through 600 or NA	100
71	Speaking Scale Score	3	384	386	Alpha/Numeric	100 through 600 or NA	100
72	Reading Scale Score	3	387	389	Alpha/Numeric	100 through 600 or NA	100
73	Writing Scale Score	3	390	392	Alpha/Numeric	100 through 600 or NA	100
74	Comprehension Score	3	393	395	Alpha/Numeric	100 through 600 - 0.7 Reading + 0.3 Listening Scale Score or NA	100
75	Oral Scale Score	3	396	398	Alpha/Numeric	100 through 600 - 0.5 Listening + 0.5 Speaking Scale Score or NA	100
76	Literacy Scale Score	3	399	401	Alpha/Numeric	100 through 600 - 0.5 Listening + 0.5 Speaking Scale Score or NA	100
77	Composite (Overall) Scale Score	3	402	404	Alpha/Numeric	100 through 600 - 0.35 Reading + 0.35 Writing + 0.15 Listening + 0.15 Speaking or NA	100
78	Listening Proficiency Level	3	405	407	Alpha/Numeric	1.0 through 6.0 or NA	1.0
79	Speaking Proficiency Level	3	408	410	Alpha/Numeric	1.0 through 6.0 or NA	2.0
80	Reading Proficiency Level	3	411	413	Alpha/Numeric	1.0 through 6.0 or NA	3.0
81	Writing Proficiency Level	3	414	416	Alpha/Numeric	1.0 through 6.0 or NA	4.0
82	Comprehension Proficiency Level	3	417	419	Alpha/Numeric	1.0 through 6.0 or NA	5.1
83	Oral Proficiency Level	3	420	422	Alpha/Numeric	1.0 through 6.0 or NA	4.3
84	Literacy Proficiency Level	3	423	425	Alpha/Numeric	1.0 through 6.0 or NA	3.9
85	Composite (Overall) Proficiency Level	3	426	428	Alpha/Numeric	1.0 through 6.0 or NA	3.3

Field #	Item Detail	Number of Characters	Starting Position	Ending Position	Character Type	Item Description	Example
86	Comprehension SI Raw Score	2	429	430	Alpha/Numeric	Items Correct by Standard - 0 to maximum for the grade and tier or X If not applicable	2
87	Comprehension LA Raw Score	2	431	432	Alpha/Numeric	Items Correct by Standard - 0 to maximum for the grade and tier or X If not applicable	4
88	Comprehension Math Raw Score	2	433	434	Alpha/Numeric	Items Correct by Standard - 0 to maximum for the grade and tier or X If not applicable	3
89	Comprehension Science Raw Score	2	435	436	Alpha/Numeric	Items Correct by Standard - 0 to maximum for the grade and tier or X If not applicable	10
90	Comprehension SS Raw Score	2	437	438	Alpha/Numeric	Items Correct by Standard - 0 to maximum for the grade and tier or X If not applicable	5
91	Speaking SI Raw Score	1	439	439	Alpha/Numeric	0 through 3 or X If not applicable	1
92	Speaking LA/SS Raw Score	1	440	440	Alpha/Numeric	0 through 5 or X If not applicable	3
93	Speaking Math/Science Raw Score	1	441	441	Alpha/Numeric	0 through 5 or X If not applicable	5
94	Writing Social Instructional Scores	6	442	447	Alpha/Numeric	0 through 24 for Linguistic Control, Vocabulary Usage and Language Control or X If not applicable	1 1 1
95	Writing Language Arts Scores	6	448	453	Alpha/Numeric	0 through 6 for Linguistic Control, Vocabulary Usage and Language Control or X If not applicable	2 2 2
96	Writing Math/Science Scores	6	454	459	Alpha/Numeric	0 through 6 for Linguistic Control, Vocabulary Usage and Language Control or X If not applicable	3 3 3
97	Writing Language Arts/Social Studies Scores	6	460	465	Alpha/Numeric	0 through 6 for Linguistic Control, Vocabulary Usage and Language Control or X If not applicable	4 4 4
98	Absent - Listening	1	466	466	Alpha	Y = Yes Absent, N = No - Not Absent	N
99	Absent - Speaking	1	467	467	Alpha	Y = Yes Absent, N = No - Not Absent	N
100	Absent - Reading	1	468	468	Alpha	Y = Yes Absent, N = No - Not Absent	N
101	Absent - Writing	1	469	469	Alpha	Y = Yes Absent, N = No - Not Absent	N
102	Invalid - Listening	1	470	470	Alpha	Y = Yes Invalid, N = No - Not Invalid	N
103	Invalid - Speaking	1	471	471	Alpha	Y = Yes Invalid, N = No - Not Invalid	N
104	Invalid - Reading	1	472	472	Alpha	Y = Yes Invalid, N = No - Not Invalid	N
105	Invalid - Writing	1	473	473	Alpha	Y = Yes Invalid, N = No - Not Invalid	N
106	Declined - Listening	1	474	474	Alpha	Y = Yes Declined, N = No - Not Declined	N
107	Declined - Speaking	1	475	475	Alpha	Y = Yes Declined, N = No - Not Declined	N
108	Declined - Reading	1	476	476	Alpha	Y = Yes Declined, N = No - Not Declined	N
109	Declined - Writing	1	477	477	Alpha	Y = Yes Declined, N = No - Not Declined	N
110	Exemplar Special Ed/504 - Listening	1	478	478	Alpha	Y = Yes Exemplar, N = No - Not Exemplar	N
111	Exemplar Special Ed/504 - Speaking	1	479	479	Alpha	Y = Yes Exemplar, N = No - Not Exemplar	N
112	Exemplar Special Ed/504 - Reading	1	480	480	Alpha	Y = Yes Exemplar, N = No - Not Exemplar	N
113	Exemplar Special Ed/504 - Writing	1	481	481	Alpha	Y = Yes Exemplar, N = No - Not Exemplar	N
114	Listening Confidence - High Score	3	482	484	Numeric	High End of Score Confidence Range - 100 through 600 or NA	600
115	Listening Confidence - Low Score	3	485	487	Numeric	Low End of Score Confidence Range - 100 through 600 or NA	100
116	Speaking Confidence - High Score	3	488	490	Numeric	High End of Score Confidence Range - 100 through 600 or NA	600
117	Speaking Confidence - Low Score	3	491	493	Numeric	Low End of Score Confidence Range - 100 through 600 or NA	100
118	Reading Confidence - High Score	3	494	496	Numeric	High End of Score Confidence Range - 100 through 600 or NA	600
119	Reading Confidence - Low Score	3	497	499	Numeric	Low End of Score Confidence Range - 100 through 600 or NA	100
120	Writing Confidence - High Score	3	500	502	Numeric	High End of Score Confidence Range - 100 through 600 or NA	600
121	Writing Confidence - Low Score	3	503	505	Numeric	Low End of Score Confidence Range - 100 through 600 or NA	100
122	Comprehension Confidence - High Score	3	506	508	Numeric	High End of Score Confidence Range - 100 through 600 or NA	600
123	Comprehension Confidence - Low Score	3	509	511	Numeric	Low End of Score Confidence Range - 100 through 600 or NA	100
124	Oral Confidence - High Score	3	512	514	Numeric	High End of Score Confidence Range - 100 through 600 or NA	600
125	Oral Confidence - Low Score	3	515	517	Numeric	Low End of Score Confidence Range - 100 through 600 or NA	100
126	Literacy Confidence - High Score	3	518	520	Numeric	High End of Score Confidence Range - 100 through 600 or NA	600
127	Literacy Confidence - Low Score	3	521	523	Numeric	Low End of Score Confidence Range - 100 through 600 or NA	100
128	Composite (Overall) Confidence - High Score	3	524	526	Numeric	High End of Score Confidence Range - 100 through 600 or NA	600

Field #	Item Detail	Number of Characters	Starting Position	Ending Position	Character Type	Item Description	Example
129	Composite (Overall) Confidence - Low Score	3	527	529	Numeric	Low End of Score Confidence Range - 100 through 600 or NA	100
130	Listening Proficiency Level - Kindergarten Instructional	3	530	532	Alpha/Numeric	1.0 through 6.0 or NA	1.0
131	Speaking Proficiency Level - Kindergarten Instructional	3	533	535	Alpha/Numeric	1.0 through 6.0 or NA	2.0
132	Reading Proficiency Level - Kindergarten Instructional	3	536	538	Alpha/Numeric	1.0 through 6.0 or NA	3.0
133	Writing Proficiency Level - Kindergarten Instructional	3	539	541	Alpha/Numeric	1.0 through 6.0 or NA	4.0
134	Comprehension Proficiency Level - K Instructional	3	542	544	Alpha/Numeric	1.0 through 6.0 or NA	5.1
135	Oral Proficiency Level - Kindergarten Instructional	3	545	547	Alpha/Numeric	1.0 through 6.0 or NA	4.3
136	Literacy Proficiency Level - Kindergarten Instructional	3	548	550	Alpha/Numeric	1.0 through 6.0 or NA	3.9
137	Composite (Overall) Proficiency Level - K Instructional	3	551	553	Alpha/Numeric	1.0 through 6.0 or NA	3.3
138	Kindergarten Listening Raw Item Responses	30	554	583	Numeric	1 through 4, or 9 = Blank	
139	Kindergarten Speaking Raw Item Responses	10	584	593	Numeric	0 through 2, 9 = Blank or skipped, or 7 = Teacher recorded the field as "7".	
140	Kindergarten Reading Raw Item Responses	30	594	623	Numeric	1 through 4, or 9 = Blank or skipped	
141	Kindergarten Writing Raw Item Responses	11	624	634	Numeric	0 through 6, or 9 = Blank or skipped	
142	Kindergarten Listening Scored Responses	30	635	664	Numeric	0 = Incorrect, 1 = Correct	1
143	Kindergarten Speaking Scored Responses	10	665	674	Numeric	0 = Incorrect, 1 = Correct	0
144	Kindergarten Reading Scored Responses	30	675	704	Numeric	0 = Incorrect, 1 = Correct	1
145	Kindergarten Writing Scored Responses	6	705	710	Numeric	0 through 6	
146	Pre-ID Label Used	1	711	711	Numeric	1 = Yes, 0 = No	1

Changes to the WIDA Data File Structure for 2012:

Additional Field:

- Field added:
146: Pre-ID Label Used



Exhibit C

WIDA Consortium Employee Confidentiality Agreement

The purpose of this agreement is for employees of the Wisconsin Center for Education Research at the University of Wisconsin-Madison (“WCER”) to understand and acknowledge their responsibilities to protect and safeguard the restricted use of confidential information to which they have access during their employment.

To perform the responsibilities of my job at WCER, I therefore agree as follows:

1. I understand and acknowledge that “confidential information” includes the following:
 - a. Education records directly related to an individual student, which contain personally identifiable information;
 - b. Secure tests as defined by U.S. copyright law, 37 *CFR* 202.20(b)(4); and
 - c. Proprietary information of WCER, its employees, and certain third parties with which WCER enters contractual relations, the information, of which,
 - i. derives independent economic value, whether actual or potential, from not being generally known to the public;
 - ii. is not readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
 - iii. is the subject of reasonable efforts by its owner to maintain its secrecy.
2. I understand and acknowledge that “disclosure” means to permit access to or the release, transfer or other communication of confidential information to any party, by any means.
3. I understand and acknowledge that because of my employment with WCER that I may have access to confidential information of WCER, its employees and third parties with which WCER enters contractual relations and that but for my employment with WCER, these parties would not disclose to me or authorize my use of their confidential information.
4. I understand and acknowledge that the disclosure and maintenance of education records is subject to University of Wisconsin System policy, and state and federal student privacy laws, including the federal Family Educational Rights and Privacy Act; that the disclosure of secure tests and their related contents is subject to federal copyright law and state trade secret law; that the disclosure of proprietary information is subject to state trade secret law; and that my employer may enter agreements with third parties that include the obligation of maintaining the confidentiality of confidential information.
5. During my employment and after the termination of my employment, I shall maintain the confidentiality of confidential information and will not reproduce or disclose the contents of any confidential information to any third party and will only use this confidential information as directed by WCER and solely for purposes authorized within the scope of my employment with WCER.
6. I understand and acknowledge that unauthorized disclosure of confidential information could be highly damaging to WCER, its employees, third parties with which WCER

enters contractual relations, and the students and parents of the students to whom this information belongs or pertains; and that disclosure of secure test materials to third parties could adversely affect the validity of the test items, results or the commercial value of the secure test materials.

7. In order to maintain the confidentiality of confidential information:
 - a. I shall take all reasonable precautions and follow all reasonable measures specified by WCER to protect confidential information in a manner that does not permit disclosure to anyone except those authorized to receive confidential information, including the safeguarding of WCER IT system passwords and identifications.
 - b. I shall not remove materials containing confidential information from WCER or WCER sanctioned servers unless authorized to do so.
 - c. I shall submit for review by appropriate personnel a copy of any report, article or public statement that concerns the use of confidential information prior to its dissemination in order to assure that no confidential information will be disclosed.
 - d. Upon termination of any project or as requested by my supervisor, I shall return any confidential information and copies to WCER; or, if I destroy any confidential information, either upon request by WCER or the owner of the information or as required by law, I shall create a written record certifying the destruction of the confidential information.
 - e. I shall notify my supervisor if:
 - i. I learn of any unauthorized or accidental disclosures of confidential information;
 - ii. I am asked to disclose confidential information to a proposed recipient who I am unaware is authorized to receive the information; and
 - iii. I have questions relating to what constitutes confidential information.
8. I understand and acknowledge that WCER, any third parties with which WCER enters contractual relations, or any other party affected by a breach or threatened breach of this agreement by me will be entitled to injunctive and other equitable relief in addition to any available remedy of law. Any unauthorized use or disclosure of confidential information to unauthorized persons may be cause for disciplinary and legal action.

I have read this agreement and understand the condition of employment.

Signature of Employee

Date

Print Name

Date

Supervisor

Date

Exhibit D: WCER Standard Security Policies and Procedures

a) *Information Technology Asset Identification*

We uniquely identify each machine with physical asset numbers and maintain a database of the type and model of the device, the user to whom the machine was allocated, and the operating system. We scan machines that are attached to the School of Education domain during login and determine whether the machine requires security patches. Security patches are managed through a Windows System Update Service that runs on a centrally managed server. This allows us to identify machines at risk for attack based on the presence or absence of updates. All login activity is logged on the local machine as well as on the active directory domain server.

In addition to computer hardware, we also maintain a database to track all network hardware. This allows us to track down any failed device or compromised system and either repair it or isolate from the rest of the network. Our network topology map displays the departmental network hardware, e.g. hubs, switches, etc., and how the departmental network connects to the University networking backbone. We monitor this network in real time for outages. Network technicians are notified of outages by pager. We also maintain spares for all key hardware to minimize downtime from equipment failure.

b) *IT Security Policies and Procedures*

We have an overarching security policy for Wisconsin Center for Education Research that explicitly outlines the rights and responsibilities of users and makes clear the need for increased levels of security for research and administrative data. Users are also required to sign a form that acknowledges their understanding of the university's *IT Appropriate Use Policy*¹ as part of the procedure to create a network account. As a part of our user-level security policy, we require that users create and use complex passwords (at least 8 characters, no part of their names, mixed case, and including at least one number or punctuation mark). All passwords must be changed every 90 days and the systems do not allow passwords to be reused.

At the technical level, IT administrators have crafted access policies for users and devices in different organizational units within the School of Education. These policies are based on best practices for the various operating systems (as identified by third-party security organizations such as SANS or CIAC).

c) *Security Practices for Sensitive Data*

Depending on the sensitivity of the data and the requirements of the data provider, we implement additional security policies at the group (organizational unit) or

¹ <http://www.doit.wisc.edu/security/policies/> for general best practices as well as appropriate use, password, and networked device policies.

sub-group level. These policies can be created to restrict access to particular machines or storage areas or can limit the access of particular individuals to meet narrow security requirements. We have supported a number of U.S. Department of Education-funded studies and are familiar with National Center for Education Statistics (NCES) security practices and audit procedures. We have never failed an NCES audit.

In many cases, when working with administrative and other individual student data, we follow NCES data security practices and create mapping tables for translating between sensitive identifiers (student or staff IDs, social security numbers, etc.) and internally created identifiers. The sensitive data is kept in encrypted tables and is only accessible by database administrators. These database administrators have no research duties and do not allow research access to the original data. The administrators only view encrypted versions of the original data using typical data management tools. Original media files or other data transport media are kept offline on optical or other media in a lock box in a fireproof tape safe. Only the database administrators have access to this lockbox.

d) Use Anti-virus and Security Update Software

We require that all systems attached to our network use anti-virus software and that they subscribe to appropriate auto-update services for critical security patches (depending on operating system). Scans are done periodically on all operating systems for which anti-virus software exists. We also remotely monitor the status of virus definitions on client machines that are attached to our domains to make sure that the update function is working.

e) Transportation of Data.

We normally only transport data in encrypted Zip archives on either tape or CD-ROM disk. Network file transmission is performed between secure ftp/scp or secure socket link (SSL) http sites.

f) Backups of Data

We use Tivoli Storage Manager as our enterprise backup system. The default policy keeps the last 6 versions of every file on the system. We also keep any deleted file for for approximately (until backup tapes are reused) 90 days after it was deleted. In order to improve restore times, we cache the last 2 terabytes of backup on disk to speed restores of recently deleted or overwritten files. We keep a copy of all backup tapes in our online tape library to insure that all files will be readily retrievable. The servers themselves and the backup system are in a locked server room in a secure facility. The original backup tapes are transferred on a daily basis to a large fire safe in a different area of the facility. Backups are tested quarterly to ensure the integrity of the data. An additional disaster recovery safeguard is that our central campus IT department uses TSM to do its own backup and to provide fee for service backup for other units. We have a cooperative agreement in place to use each other's as a remote recovery site in the

event of catastrophic loss.

g) *Ensure the Physical Security of IT Resources*

Logon to workstations is limited to named users. Logon to servers is restricted to named operators in the Technical Services unit. We have 45 minutes of battery power for all systems server and backup systems. The server room also has an emergency air conditioning system to ensure that servers and related support systems do not overheat in the event of a cooling failure. The server room is behind a series of locked doors in an alarmed space. Disposal policies ensure that all data is removed from machines and overwritten with random data before they are redeployed or disposed of.

h) *Perform Periodic Vulnerability Scanning*

WCER IT staff schedule periodic vulnerability scans of all WCER servers connected to the University campus network. The vulnerability scans include selective probes of communication services, operating systems, and applications to identify system weaknesses that could be exploited by intruders to gain access to the network. Responsibility for taking follow-up action to correct vulnerabilities, e.g., applying security patches to operating systems, is assigned to Computer Services support staff.

i) *Firewall Policy*

The School of Education has implemented a school-wide hardware firewall. Responsibility for maintaining the firewall, updated firewall policies, and periodically reviewing firewall logs is shared between the Dean's IT office and the senior administrators of WCER Technical Services. We currently do not require host-based (software) firewalls for remote machines. The network is segmented into multiple security zones with varying levels of trust and access. The server and network gear network segment has a default policy of *deny all unless specifically allowed*. We are able to create virtual networks between any given ports in the School of Education to ensure secure transmission between machines.