

STATE OF COLORADO
Colorado Department of Education
Memorandum of Understanding with
Data Recognition Corporation
for
Colorado High School Equivalency Examination

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1. PARTIES

This Memorandum of Understanding (hereinafter called "MoU") is entered into by and between Data Recognition Corporation, 13490 Bass Lake Rd., Maple Grove, MN 55311 (hereinafter called "DRC"), and the STATE OF COLORADO acting by and through the Colorado Department of Education, 201 East Colfax, Denver, Colorado 80203, (hereinafter referred to as CDE, the "State" or "Department"). DRC and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE

This MoU shall not be effective or enforceable until it is approved and signed by the State (hereinafter called the "Effective Date").

3. RECITALS

A. Authority

The high school equivalency examination is authorized by C.R.S. Section 22-33-102 (8.5). Under C.R.S. Section 22-2-112(2), the Colorado Department of Education (CDE) is authorized to “establish requirements enabling residents of this state who are seventeen years of age or older or who are sixteen years of age and satisfy the requirements of section 22-33-104.7 to successfully complete a high school equivalency examination.”

B. Purpose

The purpose of this MoU is for DRC to provide a high school equivalency examination, for use in Colorado, aligned to the Colorado Academic Standards in English language arts (reading, writing, and communicating), mathematics, science, and social studies.

C. References

All references in this MoU to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

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

A. Exhibits and other Attachments. The following documents are attached hereto and incorporated by reference herein:

Exhibit A, Statement of Work

Exhibit B, Privacy and Security Terms

EXHIBIT C, Colorado Administrative, Testing Center and Vendor’s Testing Fee

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

C. “High school equivalency examination” means the state-board-approved battery of tests that are designed to measure the major outcomes and concepts generally associated with four years of high school education and that are administered at a testing center that has been approved by the department of education based on geographic need and testing volume. Definition as per, C.R.S. Section 22-33-102 (8.5).

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

E. “Party” means the State or DRC and Parties means both the State and DRC.

- F. “Review” means examining DRC’s Work to ensure that it is adequate, accurate, correct, and in accordance with the standards described in this MoU.
- G. “Services” means the required services to be performed by DRC pursuant to this MoU.
- H. “State Fiscal Year” or “SFY” means the twelve (12) month period beginning on July 1st of a year and ending on June 30th of the following year.
- I. “Subcontractor” means third-parties, if any, engaged by DRC to aid in performance of its obligations.
- J. “Work” means the tasks and activities DRC is required to perform to fulfill its obligations under this MoU, including the performance of the Services and delivery of the Goods.
- K. “Work Product” means the tangible or intangible results of DRC’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.

Any terms used herein which are defined in Exhibit A, Statement of Work shall be construed and interpreted as defined therein.

5. TERM

The Parties’ respective performances under this MoU shall commence on the Effective Date. This MoU shall expire on December 31, 2019, unless sooner terminated or further extended as specified elsewhere herein.

6. STATEMENT OF WORK

A. Goods and Services

DRC shall procure Goods and Services necessary to complete the Work.

B. Independent Contractor

All persons employed by DRC or Subcontractors to perform Work under this MoU shall be DRC’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 MoU.

7. REPORTING NOTIFICATION

Reports required under this MoU shall be in accordance with the procedures and in such form as prescribed by the State and as described in **Exhibit A**.

A. Litigation Reporting

Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency, related to this MoU or which may affect DRC’s ability to perform its obligations hereunder, DRC shall notify the State of such action 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 Commissioner of the Department.

B. Noncompliance

DRC's failure to provide reports and notify the State in a timely manner in accordance with this §7 may result in termination as provided under this MoU.

8. DRC RECORDS

A. Maintenance

DRC shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes, and other written materials, electronic media files and electronic communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. DRC shall maintain such records until the last to occur of: (i) a period of three (3) years after the date this MoU expires or is sooner terminated, or (ii) a period of three (3) years after the resolution of any pending MoU matters, or (iv) if an audit is occurring, or DRC 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"). All such records, documents, communications and other materials shall be the property of the State, and shall be maintained by DRC in a central location and DRC shall be custodian on behalf of the State.

B. Inspection

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

C. Monitoring

DRC shall permit the State, the federal government and any other duly authorized agent of a government agency, in their sole discretion, to monitor all activities conducted by DRC pursuant to the terms of this MoU using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedure. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with DRC's performance hereunder.

D. Final Audit Report

If an audit is performed on DRC's records for any fiscal year covering a portion of the term of this MoU, DRC shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

9. CONFIDENTIAL INFORMATION

DRC shall comply with the provisions of this §9 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, CRS §24-72-101, et seq.

A. DRC Ownership. TASC Test Materials including but not limited to TASC PBT, TASC CBT, the Documentation, DRC's proprietary online assessment system platform ("Platform"), TASC Test Training Materials, online Materials such as Special Accommodations Forms, and all related content (collectively "TASC Test Materials") and such TASC Test information that is online ("TASC Test Services") are the property of DRC and its licensors and are protected by United States and international copyright laws and conventions. All copyright, patent, trademark and other proprietary rights in TASC Test Materials and Services, including all software, text, graphics, test items, norms, multimedia assets, design elements, and all other materials, data, information, and domain names originated or used by DRC are reserved to DRC and its licensors. The State shall not modify the TASC Test Materials or reproduce, create derivative works, upload, post, transmit, or distribute any TASC Test Materials, or reverse engineer, decompile, derive or disable any code. DRC grants to the State ("Licensee") a non-exclusive, non-transferable right and license to access TASC Test Services via the TASC Test website and a right to designate end users of TASC Test Services for educational purposes anytime during the Term. State acknowledges, agrees, and accepts that this license extends only to TASC Test Services and to end users from the State, designated in this MOU. This license will, at all times, be subject to this MOU and to the then-current "DRC Privacy Policy". Licensee agrees it will inform end users that their use of the TASC Test Website and TASC Test Services are subject to these limitations, and that it will use its best efforts to ensure their compliance. This License does not and shall not be construed in any way to transfer any ownership rights or title in the TASC Test Information or any TASC Test Materials to the State, TASC Test Registrants, or other vendors.

B. Data Ownership

DRC shall maintain ownership of the high school equivalency data and all data will be considered the intellectual property of DRC. DRC shall be responsible for maintaining processes to ensure data security and privacy in accordance with FERPA and state data privacy requirements as outlined in Exhibit B. DRC shall be responsible for handling any and all requests for data, including but not limited to requests from educators, test centers, and the media. CDE will not retain any

right, title or interest in the re-disclosure of any data, except as outlined for state data management purposes. CDE reserves the right to review data at least fifteen (15) days before release of any report using tester participation or outcome data, individual or aggregate, if the report is to be released publicly; the Department's review will be limited to ensuring that the publication contains no confidential tester information and that the intended purpose has been adhered to. DRC shall not pass on the costs for these, or any other, services to CDE.

C. Confidentiality

Except as is required by the Colorado Open Records Act, CRS §24-72-101 and other applicable laws, both parties shall keep all records and information confidential of the other party 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 DRC shall be immediately forwarded to the State's principal representative. See Section 16B regarding CORA requests of DRC information.

D. Notification

DRC shall notify its agents, employees, Subcontractors and assigns who may come into contact with State records or other 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.

E. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by DRC or its agents in any way, except as authorized by this MoU or approved in writing by the State. DRC 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 DRC or its agents, except as permitted in this MoU or approved in writing by the State.

F. Disclosure-Liability

Disclosure of State records or other confidential information by DRC for any reason may be cause for legal action by third parties against DRC, the State or their respective agents. DRC shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by DRC, or its employees, agents, Subcontractors, or assignees pursuant to this §9.

10. CONFLICTS OF INTEREST

- A. DRC 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 DRC's obligations hereunder. DRC acknowledges that with respect to this MoU, even the appearance of a conflict of interest is harmful to the State's interests.

Absent the State's prior written approval, DRC shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of DRC's obligations to the State hereunder. If a conflict or appearance exists, or if DRC is uncertain whether a conflict or the appearance of a conflict of interest exists, DRC 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 MoU.

11. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

B. Legal Authority – DRC Signatory

DRC warrants that it possesses the legal authority to enter into this MoU and that it has taken all actions required by its procedures, and bylaws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this MoU, or any part thereof, and to bind DRC to its terms. If requested by the State, DRC shall provide the State with proof of DRC's authority to enter into this MoU within five (5) days of receiving such request.

C. Licenses, Permits, Etc.

DRC 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. DRC warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this MoU, without reimbursement by the State or other adjustment in the MoU. Additionally, all employees, agents, and Subcontractors of DRC performing Services under this MoU shall hold all required licenses or certifications, if any, to perform their responsibilities. DRC, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements

necessary for DRC to properly perform the terms of this MoU is a material breach by DRC and constitutes grounds for termination of this MoU.

12. INSURANCE

DRC and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this MoU. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to DRC and the State.

A. DRC

i. Non-Public Entities

If DRC is not a "public entity" within the meaning of the GIA, DRC shall obtain and maintain during the term of this MoU insurance coverage and policies meeting the requirements set forth in §12.B.

B. DRCs – Subcontractors

DRC shall require each MoU with Subcontractors other than those that are public entities, providing Goods or Services in connection with this MoU, to include insurance requirements substantially similar to the following:

i. Cyber Privacy Liability

- a. DRC agrees to maintain Cyber Privacy Insurance for claims and losses with respect to network, internet (cloud) or other data disclosure risks (such as data breaches, releases of confidential information, unauthorized access/use of information, and identity theft) with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.**

ii. Additional Insured

The State shall be named as additional insured on the insurance policy required of DRC and any Subcontractors hereunder.

iii. Primacy of Coverage

Coverage required of DRC and Subcontractor shall be primary over any insurance or self-insurance program carried by DRC or the State.

iv. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to DRC and DRC shall forward such notice to the State in accordance with §14 (Notices and Representatives) within seven days of DRC's receipt of such notice.

v. Subrogation Waiver

All insurance policies in any way related to this MoU and secured and maintained by DRC or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under

subrogation or otherwise, against DRC or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

DRC and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven (7) business days of the Effective Date of this MoU. No later than fifteen (15) days prior to the expiration date of any such coverage, DRC and each Subcontractor shall deliver to the State or DRC certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this MoU or any subcontract, DRC and each Subcontractor shall, within ten (10) days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. TERMINATION

CDE may terminate this MoU by giving DRC thirty (30) days' notice if it is deemed by CDE that DRC is not fulfilling the requirements of the program as specified in the MoU, or if the program is generating less than satisfactory results.

14. 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.

For the State: Michelle Liu, Postsecondary Readiness Coordinator
Colorado Department of Education
201 E. Colfax Ave.
Denver, CO 80203
liu_m@cde.state.co.us

With a copy to:	Misti Ruthven, Director of Postsecondary Readiness
	Colorado Department of Education 201 E. Colfax Ave. Denver, CO 80203 Ruthven_M@cde.state.co.us

For DRC: Data Recognition Corporation
Attn: General Counsel
13490 Bass Lake Road
Maple Grove MN 55311

With a copy to

Data Recognition Corporation
Attn: Manager, Contracts
20 Ryan Ranch Road
Monterey CA 93940

15. 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 Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, and the risk management statutes, CRS §24-30-1501, *et seq.*, as now or hereafter amended.

16. GENERAL PROVISIONS

A. Assignment and Subcontracts

DRC's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer or subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by DRC or the State are subject to all of the provisions hereof. DRC shall be solely responsible for all of the Work performed under this MoU, regardless of whether Subcontractors are used and for all aspects of subcontracting arrangements and performance. Copies of any and all subcontracts entered into by DRC to perform its obligations hereunder shall be in writing and submitted to the State upon request. Any and all subcontracts entered into by DRC related to its performance hereunder shall require the Subcontractor to perform in accordance with the terms and conditions of this MoU and to comply with all applicable federal and state laws. Any and all subcontracts shall include a provision that such subcontracts are governed by the laws of the State of Colorado.

B. Binding Effect

Except as otherwise provided in §16.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 MoU are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

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

E. Entire Understanding

This MoU represents the complete integration of all understandings between the Parties regarding the Work and all prior representations and understandings, oral or written, related to the Work are merged herein. Prior or contemporaneous

additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification

DRC shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by DRC, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this MoU; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits or actions related to this MoU shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

i. By the Parties

Except as specifically provided in this MoU, modifications of this MoU shall not be effective unless agreed to in writing by the Parties in an amendment to this MoU, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this MoU, other than MoU amendments, shall conform to the policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law

This MoU 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 MoU on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

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

- i. Colorado Special Provisions**
- ii. Exhibit B, Privacy and Security Provisions**
- iii. The provisions of the main body of this MoU**
- iv. Exhibit A, Statement of Work**

J. Severability

Provided this MoU 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.

K. Survival of Certain MoU Terms

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

L. Service Outside of the State of Colorado and/or the United States

DRC shall provide written notice to the State if DRC intends to perform, or subcontract for the performance of Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by DRC to provide notice to the State under this provision shall constitute a material breach of the MoU.

M. Legal Residents

DRC certifies that it shall comply with the provisions of Section 8-17.5-101, C.R.S. et seq. DRC shall not knowingly engage an illegal alien to perform work under this MoU, or enter into a contract with a subcontractor that fails to certify to DRC that the subcontractor shall not knowingly engage an illegal alien to perform work under this MoU. DRC represents, warrants, and agrees that it (i) will verify that it does not engage any illegal aliens through participation in the federal Basic Pilot Employment Verification Program and (ii) otherwise will comply with the requirements of Section 8-17.5-102(2)(b), C.R.S. DRC shall comply with all reasonable requests made in the course of an investigation under Section 8-17.5-102, C.R.S. Failure to comply with any requirement of this provision or Section 8-17.5-101 et seq. C.R.S. shall be cause for termination for breach and DRC shall be liable for actual and consequential damages.

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

N. Third Party Beneficiaries

Enforcement of this MoU 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 MoU are incidental to the MoU, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach under a term, provision, or requirement of this MoU, 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.

P. CORA Disclosure

To the extent not prohibited by federal law, this MoU and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq. This MOU and DRC's Examination Policies and Procedures submitted pursuant to this MoU shall not be considered Confidential. All test-taker PII is confidential. In the event that the Contractor submits information to the Department which it deems to be Confidential, it shall include a letter, to the Department's representative listed in this MoU, indicating what portion of the Colorado Open Records Act at Colorado Open Records Act, C.R.S. Title 24, Article 72, Part 2, as amended applies to the suggested confidential/proprietary information. In the event a third party request documents through CORA and the request is for information that Contractor has indicated it deems confidential, the State agrees to notify DRC in writing prior to the disclosure if the State determines the information is not confidential. In the event the Department determines the information is confidential per CORA, the Department will not disclose the information.

17. ADDITIONAL GENERAL PROVISIONS

A. Compliance with Applicable Law

DRC shall at all times during the execution of this MoU strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this MoU. DRC shall also require compliance with these statutes and regulations in subcontracts and subgrants permitted under this MoU. The federal laws and regulations include:

Age Discrimination Act of 1975, as amended	42 U.S.C. 6101, et seq.
Age Discrimination in Employment Act of 1967	29 U.S.C. 621-634
Americans with Disabilities Act of 1990 (ADA)	42 U.S.C. 12101, et seq.
Clean Air Act	42 U.S.C. 7401, et seq.
Equal Employment Opportunity	E.O. 11246, as amended by E.O. 11375, amending E.O. 11246 and as supplemented by 41

	C.F.R. Part 60
Equal Pay Act of 1963	29 U.S.C. 206(d)
Federal Water Pollution Control Act, as amended	33 U.S.C. 1251, et seq.
Immigration Reform and Control Act of 1986	8 U.S.C. 1324b
Section 504 of the Rehabilitation Act of 1973, as amended	29 U.S.C. 794
Title VI of the Civil Rights Act of 1964, as amended	42 U.S.C. 2000d, et seq.
Title VII of the Civil Rights Act of 1964	42 U.S.C. 2000e
Title IX of the Education Amendments of 1972, as amended	20 U.S.C. 1681

State laws include:

Civil Rights Division	Section 24-34-301, CRS, <i>et seq.</i>
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DRC also shall comply with any and all laws and regulations prohibiting discrimination in the specific program(s) which is/are the subject of this MoU. In consideration of and for the purpose of obtaining any and all federal and/or state financial assistance, DRC makes the following assurances, upon which the State relies.

- i. DRC shall not discriminate against any person on the basis of race, color, national origin, age, sex, religion or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of Work under this MoU.
- ii. At all times during the performance of this MoU, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by DRC, or be subjected to any discrimination by DRC.

DRC shall take all necessary affirmative steps, as required by 45 C.F.R. 92.36(e), Colorado Executive Order and Procurement Rules, to assure that small and minority businesses and women's business enterprises are used, when possible, as sources of supplies, equipment, construction, and services purchased under this MoU.

B. Disputes

Except as herein specifically provided otherwise, disputes concerning the performance of this MoU which cannot be resolved by the designated MoU representatives shall be referred in writing to a senior departmental management

staff designated by the State and a senior manager designated by DRC. Failing resolution at that level, disputes shall be presented in writing to the Commissioner of the State and DRC's Chief Executive Officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

C. Lobbying

DRC certifies, to the best of his or her knowledge and belief, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal MoU, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative MoU, and the extension, continuation, renewal, amendment, or modification of any Federal MoU, grant, loan, or cooperative MoU.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this Federal MoU, grant, loan, or cooperative MoU, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Contracts) and that all subrecipients shall certify and disclose accordingly.
- iv. This certification is a material representation of fact upon which reliance was placed when the transaction was made or entered into. Submission of the certification is a requisite for making or entering into transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

18. **COLORADO SPECIAL PROVISIONS**

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

- A. **GOVERNMENTAL IMMUNITY.** No term or condition of this MoU 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, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- B. **INDEPENDENT CONTRACTOR.** DRC shall perform its duties hereunder as an independent contractor and not as an employee. Neither DRC nor any agent or

employee of DRC shall be deemed to be an agent or employee of the State. DRC 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 DRC or any of its agents or employees. Unemployment insurance benefits will be available to DRC and its employees and agents only if such coverage is made available by DRC or a third party. DRC shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this MoU. DRC shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. DRC 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.

- C. **COMPLIANCE WITH LAW.** DRC 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.
- D. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this MoU. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this MoU, to the extent capable of execution.
- E. **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.
- F. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this MoU shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. DRC hereby certifies and warrants that, during the term of this MoU and any extensions, DRC has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that DRC is in violation of this provision, the State may exercise any remedy available at law or in equity or under this MoU, including, without limitation, immediate termination of this MoU and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- G. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§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 MoU. DRC has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of DRC's services and DRC shall not employ any person having such known interests.

- H. **PUBLIC CONTRACTS FOR SERVICES. CRS §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]* DRC certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this MoU and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this MoU, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), DRC shall not knowingly employ or contract with an illegal alien to perform work under this MoU or enter into a MoU with a subcontractor that fails to certify to DRC that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this MoU. DRC (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this MoU is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if DRC has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this MoU, (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 CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If DRC participates in the Department program, DRC shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that DRC has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If DRC fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this MoU for breach and, if so terminated, DRC shall be liable for damages.
- I. **PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** DRC, 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 CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this MoU.

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS MOU

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



<p>Party: Data Recognition Corporation</p> <p>By: _____</p> <p>Title: <u>Mark Limbach, Vice President - Finance</u></p> <p> _____ *Signature</p> <p>Date: <u>3/15/16</u></p>	<p>STATE OF COLORADO</p> <p>John W. Hickenlooper, GOVERNOR</p> <p>Department of Education</p> <p>Rich Crandall, CPA, MBA, SNS, Commissioner</p> <p> _____ By: Rich Crandall, CPA, MBA, SNS, Commissioner</p> <p>Date: <u>3/21/16</u></p>
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EXHIBIT A, STATEMENT OF WORK

SECTION 1.0 DRC RESPONSIBILITIES

1.1. EXAMINATION

- 1.1.1. DRC shall provide the Department with a high school equivalency examination aligned to the Colorado Academic Standards in English language arts (reading, writing, and communicating), mathematics, science, and social studies. The assessment shall be aligned to and measure mastery of the Colorado Academic Standards in these content areas. DRC shall have developed the examination with content experts and psychometricians.
- 1.1.2. DRC shall be solely responsible for the development of the examination, scoring of the examination, and examination accommodation reviews, approvals, and arrangements.
- 1.1.3. DRC shall deliver the examination in a computer-based format. In addition, DRC shall deliver the examination in paper to meet the accommodation needs of testers. DRC, at its sole discretion, may provide a paper examination for persons who have no accommodation needs but would prefer to take a paper examination. In the event that the Department directs DRC to provide paper examinations only for accommodation needs, DRC shall cease providing paper examinations for those who prefer paper and shall only provide paper examinations as needed for accommodations.
- 1.1.4. The examination shall be available and the examination must meet the Colorado Academic Standards by the Effective Date of this MoU.
- 1.1.5. DRC shall make available and deliver the examination in English and at least one (1) language in addition to English.
- 1.1.6. DRC shall make available and deliver the examination to meet accommodation needs of testers, including but not limited to, options for Braille, Large-Print, and via an audio version.
- 1.1.7. DRC shall provide an official score report to testers, via the Department approved credentialing service, containing elements to assist employers and/or postsecondary institutions to interpret the results.
- 1.1.8. DRC is responsible for providing a secure, user friendly registration process for testers, including: ability for tester to schedule and pay for content area tests individually, collecting all testing fees as outlined in the "Cost and Fees" section of this MoU, scheduling testing date and time, and requesting accommodations.
- 1.1.9. Credibility and Recognition of Exam
 - 1.1.9.1. DRC shall provide an examination that is nationally portable and broadly accepted by employers and postsecondary institutions. DRC must also have policies in place maintaining the reliability and integrity of the test (e.g. re-testing policies, multiple forms, test administration security, etc.). DRC shall work with

state and national stakeholders to ensure recognition and acceptance of the examination as a valid high school equivalency examination.

- 1.1.10. Within ten (10) Business Days of the execution of this MoU, DRC shall provide to the Department DRC's Examination Policies and Procedures, not to be in conflict with any other of this MoU's provisions, that shall contain at a minimum, all of the following:
 - 1.1.10.1. Details regarding test content and design.
 - 1.1.10.2. A description of each subject test, including length and question types.
 - 1.1.10.3. Information on the number of forms of the test that will be available in each language for paper based testing and computer based testing, and the policy recommended for the number of re-tests a tester can take.
 - 1.1.10.4. An explanation of the policies, procedures, and costs for retakes, including whether a form can be retaken.
 - 1.1.10.5. An outline of DRC's cost of the full battery of tests and individual tests.
 - 1.1.10.6. An outline of DRC's required start-up or ongoing costs for testing centers to administer the examination.
 - 1.1.10.7. A description of all available payment options for test takers, correctional test centers, and other local agencies.
 - 1.1.10.8. A description of the process for validating and determining cut scores for individual tests and for the full-battery of tests.
 - 1.1.10.9. A recommended cut score for high school equivalency based on norm-referencing of a population of recent high school graduates.
 - 1.1.10.10. Information on the establishment and recommendation of a cut score for college and career readiness, reflecting that the test taker achieved a score which demonstrates readiness for entry into college credit bearing courses without the need for remediation.
 - 1.1.10.11. A description of the process by which examination is scored, including differences in scoring various item types, and how reliability of scoring is ensured. Provide specific detail for scoring of any open-response items.
 - 1.1.10.12. A description of the process and timetable by which scores will be reported to test takers.
 - 1.1.10.13. A description of the system to provide customer service support for testers during registration and to resolve complaints/issues in a timely manner.
 - 1.1.10.14. An explanation of the procedures for the verification of tester identity to prevent fraudulent activity, and ensuring tester meets eligibility requirements of DRC and state. Colorado allows testing without restriction at age seventeen (17) and with jurisdictional approval at age sixteen (16).
 - 1.1.10.15. Information on the official practice test forms in each language version supported by the examination.

- 1.1.10.16. An explanation of the alignment to the operational examination: how it is predictive of how a test taker will perform on the actual examination, and what diagnostic information will be provided to assist the test taker in preparing for the actual examination.
- 1.1.10.17. A description of the technology needed by test centers, both public and correctional facilities, including but not limited to computer requirements, the required operating system, software needs, availability to scan paper-based documentation for scoring, and required security systems.
- 1.1.10.18. An explanation of how DRC will approve and verify testing centers meet DRC's requirements for examination administration, including ensuring secure delivery of the examination at testing centers approved by the Department, including certifying/approving testing administrators, maintaining security of tests, individual results, and any tester PII.
- 1.1.10.19. An explanation of how DRC will support delivery of the examination in a manner compatible with the administrative needs of correctional facilities approved by CDE to administer the examination, including an alternative registration process for correctional testers unable to self-register.
- 1.1.10.20. For paper-based testing, if applicable:
 - 1.1.10.20.1. A description of DRC's policies and procedures with regard to shipping, storage, and handling of secure test materials, including test booklets and answer sheets.
 - 1.1.10.20.2. An explanation of how DRC will verify comparability of the test under computer-based and paper-based administrative conditions and any differences in scoring and reporting between computer-based and paper-based testing.
- 1.1.10.21. Outline the review and decision process and timeline to determine eligibility for accommodations, and describe the information and application materials for individuals with disabilities, including accommodation guidelines for advocates, diagnosticians, and test takers.
- 1.1.10.22. Describe the available accommodations for examinees with disabilities including, but not limited to: attention deficit/hyperactivity, psychological or psychiatric disabilities, learning or other cognitive disabilities, physical/chronic health disabilities, intellectual disabilities.
- 1.1.10.23. Outline who is responsible for any incurred costs for providing accommodated testing, such as providing scribes and readers.
- 1.1.10.24. For paper-based test, if applicable: Include any differences in accommodations procedures and available accommodations between computer-based and paper-based testing.
- 1.1.10.25. Provide information on the availability of preparation materials, including practice tests, for education programs and prospective testers, including any costs.

- 1.1.10.26. Describe availability for training of educators on materials related to the examination, including availability of support for adult educators to provide instruction integrating exam preparation with financial literacy and career pathways.
- 1.1.10.27. Describe training provided for test administration staff regarding the technical aspects of test administration and accommodations, ordering materials, delivery, and scoring.
- 1.1.10.28. Explain process and costs associated for adult educators to acquire vouchers to cover costs for the exam and/or official practice test for testers.
- 1.1.10.29. Describe how DRC will ensure the operational test, paper-based and/or computer-based, will be kept secure, including regulations and procedures to ensure integrity of the tests and testing process. Describe procedures regarding test compromises, irregularities, and cheating.
- 1.1.10.30. Explain any opportunities to highlight the importance and increased support nationally and/or statewide for adult education and high school equivalency examination.
- 1.1.11. DRC shall deliver DRC's Examination Policies and Procedures to the Department for review, with assurances that the Policies and Procedures do not conflict with any other provisions within this MoU.
- 1.1.12. DRC is solely responsible for ensuring DRC Examination Policies and Procedures for administration of the examination are adhered to by testing centers, testers, and any other stakeholders.
- 1.1.13. DRC shall comply with all requirements of the most recently submitted version of the Examination Policies and Procedures.
- 1.1.14. In the event that the Department determines that DRC's Examination Policies and Procedures conflict with the requirements of this MoU and notifies DRC, DRC shall update its Policies and Procedures to remove the conflict. DRC shall then resubmit the Policies and Procedures to the Department for review.
- 1.1.15. Any changes or updates to DRC's Examination Policies and Procedures, must be provided to the Department for review.

1.2. COST AND FEES:

- 1.2.1. The Colorado high school equivalency examination program is supported by fees assessed to test takers for the assessment.
- 1.2.2. DRC shall include and collect as part of the testing price for testers: the cost of the test, scoring, state fees, testing center fees, accommodations reviews/arrangements, test center administrator approvals, test center validation, and data management.
- 1.2.3. DRC shall not pass on the costs for these, or any other, services to CDE.
- 1.2.4. DRC shall collect all testing fees from testers during the registration process which include, but are not limited to, DRC fee for the examination, testing center fees, and state fees.

- 1.2.5. DRC shall develop and follow processes to track and redistribute corresponding fees back to testing centers and the state on a monthly basis.
- 1.2.5.1. DRC shall provide to the Department, a State of Colorado Administrative Fee for each examination provided. The Colorado Administrative fee shall be as listed in EXHIBIT C, Colorado Administrative, Testing Center and Vendor's Testing Fee.
- 1.2.5.2. Monthly, by the fifteenth each month, DRC shall electronically deposit the total amount received for the State of Colorado Administrative Fee for all tests that month into an account as designated by the Department. DRC shall notify the Department via e-mail that a deposit has been made.
- 1.2.5.3. DRC shall provide to testing centers a Testing Center Fee for each examination provided. The Testing Center Fee shall be as listed EXHIBIT C, Colorado Administrative, Testing Center and Vendor's Testing Fee.
- 1.2.5.4. DRC shall remit payment to testing centers for the testing center fees collected in a manner agreed upon between the testing center and DRC.
- 1.2.6. DRC fee must cover all costs associated with the administration of the examination, including but not limited to, cost of developing, updating, and providing the examination, accommodations reviews and arrangements, test center administrator training and approvals, test center validation and monitoring, and data management.
- 1.2.7. In no event, will the Department pay DRC to perform any services under this Contract. In addition, the State shall NOT be liable to DRC for any delay in, or failure of performance of, any covenant or promise contained in this MoU.

1.3. DATA OWNERSHIP

- 1.3.1. Data Ownership and Security; State Data Management; and Data Review by CDE: DRC shall maintain ownership of the data and all data shall be considered the intellectual property of DRC. DRC shall maintain processes to ensure data security and privacy in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g and 34 C.F.R. Part 99, and state data privacy requirements as outlined in Exhibit B. DRC shall handle any and all requests for data, including but not limited to requests from educators, test centers, and the media. CDE will not retain any right, title or interest in the re-disclosure of any data, except as outlined for state data management purposes as outlined below. DRC shall not pass on the costs for these, or any other, services to CDE.
- 1.3.2. DRC shall provide CDE with access to data only for the purposes required for the state administration of the high school equivalency examination. This includes providing data to the credentialing service approved by CDE, state approval of sixteen (16) year old testers, and data required to meet state and federal reporting requirements. DRC shall not pass on the costs for these, or any other, services to CDE.
- 1.3.2.1. Within one (1) year of the Effective Date of this MoU, DRC shall provide and follow a method for allowing the submission of the state required information for approval of sixteen (16) year old testers through DRC's tester registration system.

- 1.3.2.2. DRC shall provide CDE with state and federal required data reports including, but not limited to:
 - 1.3.2.2.1. Annual reports on overall Colorado tester participation and outcomes.
 - 1.3.2.2.2. Quarterly reports on participation and outcomes by testing center.
 - 1.3.2.2.3. Fiscal year data of individuals who passed the examination and earned state credential.
- 1.3.3. CDE reserves the right to review data at least fifteen (15) days before release of any report using tester participation or outcome data, individual or aggregate, if the report is to be released publicly; the state's review will be limited to ensuring that the publication contains no confidential tester information and that the intended purpose has been adhered to. DRC shall not pass on the costs for these, or any other, services to CDE.
- 1.4. EXAMINATION NORMING AND CUT SCORES:**
 - 1.4.1. DRC shall have normed, validated, and tested the reliability of the examination to determine its accuracy in measuring high school equivalency performance standards and for setting cut scores.
 - 1.4.2. DRC shall provide recommended cut scores for high school equivalency based on norm-referencing of a population of recent high school graduates, as well as the establishment of a cut score for college and career readiness, reflecting that the test taker achieved a score which demonstrates readiness for entry into college credit bearing courses without the need for remediation.
- 1.5. TESTER SUPPORT AND REGISTRATION:**
 - 1.5.1. DRC shall provide a secure, user friendly registration process for testers, including: ability for testers to schedule and pay for content area tests individually, collecting all testing fees as outlined above in Cost & Fees section, scheduling testing date & time, and requesting accommodations.
 - 1.5.1.1. DRC shall, as part of the tester registration process, collect state required information from testers upon registration and/or scheduling of the examination, as provided by the state.
 - 1.5.2. DRC shall provide customer service support for testers during registration and to resolve complaints/issues in a timely manner.
 - 1.5.3. DRC shall communicate to testers any applicable information regarding the high school equivalency examination, including but not limited to policies, procedures, promotions, and resources.
- 1.6. TESTER VERIFICATION AND ELIGIBILITY:**
 - 1.6.1. DRC shall develop procedures and shall ensure that procedures are followed for the verification of tester identity to prevent fraudulent activity, and to ensure tester meets eligibility requirements of DRC and state. In determining eligibility based on age, DRC shall allow testing without restriction at age seventeen (17) and with state

approval at age sixteen (16), per Colorado law (C.R.S. Sections 22-33-104, 22-38-104, 18-1.3-204 and 19-2-207).

1.7. OFFICIAL PRACTICE TESTS:

- 1.7.1. DRC shall provide a minimum of two (2) official practice test forms in each language version supported by the examination. Official practice tests shall be aligned to the operational examination and be predictive of how a test taker will perform on the actual examination. The official practice test shall provide a diagnostic report to assist the test taker in preparing for the actual examination.

1.8. TESTING CENTER SUPPORT:

- 1.8.1. DRC shall ensure secure delivery of the examination at testing centers approved by DRC and CDE (C.R.S. Section 22-33-102 (8.5)), including certifying and training test administration staff, maintaining security of tests and individual results, and any tester personally identifiable information (PII). DRC shall reconcile any testing center fees to be dispersed to the testing center and provide customer service to resolve complaints/issues in a timely matter.
 - 1.8.1.1. DRC shall inform state-approved testing centers of DRC's required testing administration policies and procedures. DRC shall verify that the testing center will meet DRC's requirements prior to administering the examination.
 - 1.8.1.2. DRC shall ensure testing centers provide a secure testing environment and comply with DRC's testing administration policies and procedures.
 - 1.8.1.3. DRC shall monitor testing center security, including, but not limited to DRC's requirements for onsite monitoring visits.
 - 1.8.1.4. DRC shall ensure secure test administration, including verification that regulations and procedures to ensure integrity of the tests and testing process are followed by testing centers. DRC shall manage procedures regarding test compromises, irregularities, and cheating.
 - 1.8.1.5. DRC shall approve, provide training, and ongoing professional development for test center administrators, examiners, and proctors.
- 1.8.2. DRC shall communicate to testing centers any applicable information regarding the high school equivalency examination, including but not limited to policies, procedures, promotions, and resources.

1.9. CORRECTIONAL TESTING CENTER SUPPORT:

- 1.9.1. DRC is responsible for delivering the examination in a manner compatible with the administrative needs of correctional facilities approved by CDE and DRC to administer the examination, including an alternative registration process for correctional testers unable to self-register.

1.10. ACCOMMODATIONS:

1.10.1 DRC is responsible for the review and approval of accommodations, including opportunity for appeal, for testers with documented disabilities under the Americans with Disabilities Act as amended. Requests for accommodations must be reviewed DRC in a timely manner, and provide a decision on tester requests within 30 days. DRC shall provide all necessary accommodations to comply with state and federal law. DRC assumes responsibility and liability for accommodation request process and decisions.

- 1.10.1.1. DRC is solely responsible for all accommodations requests, including any needs for resolution of questions, issues, and/or requests.
- 1.10.1.2. DRC shall coordinate with the testing center to provide any accommodations during testing as approved by DRC.

1.11. PROFESSIONAL DEVELOPMENT:

- 1.11.1. DRC shall provide professional development resources, as it relates to testing and in alignment with career pathways and financial literacy, to the state at all levels, including educators, test center administration staff, program administrators and state staff to assist in the transition for testers to college and career.
 - 1.11.1.1. DRC shall make vouchers for the operational exam and official practice tests available for purchase for adult education programs.
 - 1.11.1.2. Annually, DRC shall provide at least one (1) training to support in-state professional development for educators, test center administration staff, program administrators and state staff.
- 1.11.2. DRC shall communicate to various state personnel, including educators, test center administration staff, program administrators and state staff any applicable information regarding the high school equivalency examination, including but not limited to policies, procedures, promotions, and resources.

1.12. STATE SUPPORT:

- 1.12.1. DRC shall provide personnel to work closely with CDE to manage the contract, including but not limited to DRC providing technical assistance, tracking tester outcomes and success data, managing process for certification of approved testing centers meeting technical requirements of DRC, and approving and training test administrators. DRC shall not pass on the costs for these, or any other, services to CDE.
 - 1.12.1.1. Within six (6) months of execution of this MoU, DRC shall provide the Department with a timeline and process by which DRC will create a crosswalk between the various high school equivalency examinations, as well as a crosswalk between DRC's examination and other college and career readiness examinations (e.g. ACT, SAT).

SECTION 2.0 DEPARTMENTAL RESPONSIBILITIES

- 2.1.1. The Department will be responsible for the following administrative tasks:

- 2.1.1.1. The Department will approve testing centers in the state to administer the high school equivalency examination, based on location and volume.
- 2.1.1.1.1. Per Section 1.8, DRC is responsible for ensuring state approved testing centers can meet DRC's test administration requirements prior to administration of the high school equivalency examination.
- 2.1.1.2. The Department will approve any sixteen (16) year old testers per state requirements prior to being allowed to take the high school equivalency examination.
- 2.1.1.3. The Department will establish a standard state fee and testing center fee by module for the administration of the high school equivalency exam.
- 2.1.1.4. The Department will provide to DRC the state required information requested from testers for DRC to collect upon tester registration/scheduling of examination.
- 2.1.1.5. The Department will establish state specific testing guidelines and policies as appropriate. This includes, but is not limited to:
 - 2.1.1.5.1. Residency requirements.
 - 2.1.1.5.2. Age requirements.
 - 2.1.1.5.3. Allowance for the combination of language scores.
- 2.1.1.6. The Department will manage, via a Department approved credentialing service, the issuance of score reports/transcripts and the state high school equivalency credential to testers who successfully complete and pass the examination.
- 2.1.1.7. The Department will support communications to testing centers, educators, and testers regarding DRC's testing policies and procedures.
- 2.1.1.8. In the event that DRC schedules an annual conference and pays for all costs associated with a Department representative's travel and attendance at the conference, a Department representative will attend DRC's annual conference.
- 2.1.2. The Department, at its sole discretion, may perform additional administrative tasks, but the Department expressly disclaims any responsibility for administrative tasks if they are not included in the list in Section 2.1.1.
- 2.1.3. The Department will not conduct any of the following administrative tasks:
 - 2.1.3.1. Enforcement of DRC policies/procedures for test administration.
 - 2.1.3.1.1. As noted in Section 2.1.1.7, the State will communicate information but is not responsible for enforcement.
 - 2.1.3.2. Verification of test center ability to provide secure testing & comply with DRC's requirements.
 - 2.1.3.3. Approval and/or training of test center administrators, examiners, and/or proctors.
 - 2.1.3.4. Inspection of testing centers, including but not limited to site or monitoring visits, review of security and/or examination receiving plans.

- 2.1.3.5. Review, approval, or resolution of accommodation requests.
- 2.1.3.6. Ownership of Data.
- 2.1.3.7. Attending DRC annual conference without DRC's financial support.
- 2.1.3.8. Or anything otherwise outlined in DRC responsibilities.

Exhibit B, Privacy and Security

DEFINITIONS

“Covered Information” means Personally Identifiable Information (PII); High School Equivalency Test-Taker Data, and in the event that DRC obtains or is provided it, Student Data; in any media or format that is created or provided by a user (High School Equivalency Test-Taker, the State, a school district, a local education agency, a student, or the student’s parent or legal guardian) to a DRC in the course of the user’s use of DRC’s web site, service or application; or is gathered by a DRC from any source and contains student PII or Student Data.

“High School Equivalency Test-Taker Data” means any data collected and related to an individual outside of the K-12 education system, most likely an adult, who registers, prepares for, or takes any test supplied or owned by DRC who is seeking to obtain a high school equivalency credential through DRC’s examination. DRC will at all times maintain reasonable security measures to protect the data. In addition, DRC will have full rights to access and use any of the High School Equivalency Test-Taker data only as agreed to by the individual.

“Incident” means an accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources of the State pursuant to C.R.S. Section 24-37.5-401 et seq. Incidents include, but are not limited to (i) successful attempts to gain unauthorized access to a State system, State Information, or High School Equivalency Test-Taker Data regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.

“Personally Identifiable Information (PII) Data” means all information about an individual that could reasonably be used to identify such individual as defined in C.R.S. Section 24-72-501(2) and includes, but is not limited to, any combination of (i) first and last name, (ii) first name or first initial and last name, (iii) residence or other physical address, (iv) electronic mail address, (v) telephone number, (vi) birth date, (vii) credit card information, (viii) social security number, (ix) driver’s license number, (x) identification card number, or (xi) any other information that identifies an individual personally.

“State Confidential Information” means all information, data, records, and documentary materials which are of a sensitive nature and belong to the State regardless of physical form or characteristics, including but not limited to any non-public State records, sensitive State data, protected State data, State personnel records, PII and other information or data concerning individuals, which has been communicated, furnished, or disclosed by the State to DRC. Notwithstanding the foregoing, State Confidential Information shall not include State Records.

“Student Data” means data that is collected and stored by DRC at the individual level and is included in an individual’s educational record and includes assessment results, including participation information, courses taken and completed, credits earned and other transcript information; course grades and grade point average; grade level and expected graduation year; degree, diploma credential attainment or other school exit information; attendance and mobility information between and within Colorado school districts; special education data and special education discipline reports limited to object information that is sufficient to produce the federal Title IV annual incident report; student gender, race, and ethnicity; and program participation information required by state or federal law.

“State Information” means the combination of State Confidential Information and State Records. Notwithstanding anything contained herein, this definition shall not include High School Equivalency Test-Taker.

“State Records” means all information, data, records, and documentary materials which are not sensitive and belong to the State regardless of physical form or characteristics, including but not limited to any public State records, non-sensitive State data, and other information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished or disclosed by the State to DRC which (i) is subject to disclosure pursuant to the Colorado Open Records Act, C.R.S. Sections 24-72-200.1, et seq.; (ii) is already known to DRC without restrictions at the time of its disclosure by DRC; (iii) is or subsequently becomes publicly available without breach of any obligation owed by DRC to the State; (iv) is disclosed to DRC, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information. Notwithstanding the foregoing, State Records shall not include State Confidential Information.

“Summary or De-identified Data” means data on public school students that has all identifiers enumerated in the definitions of PII and Student Data removed.

CONFIDENTIAL INFORMATION-STATE RECORDS

The Department does not intend to provide DRC with State Information in DRC's performance of the services listed in this MoU. However, in the event that DRC is provided or obtains State Information, DRC shall comply with and shall cause each of its Subcontractors and any other party performing Work under this Contract to comply with the provisions of this Section if it becomes privy to State Information in connection with its performance. In addition, this Section applies to High School Equivalency Test-Taker Data as specified in this Section.

Notwithstanding anything contained herein to the contrary, including but not limited to restrictions on transfer, use, destruction requirements, liability, etc., GEDTS shall have all rights in the High School Equivalency Test-Taker Data to the extent the High School Equivalency Test-Taker requests, acknowledges or agrees.

A. Confidentiality

DRC shall comply with all laws and regulations concerning confidentiality of information, data, records and documentary materials which are of a sensitive nature including PII and other information or data concerning test-takers. Any request or demand by a third party for State Information in the possession of DRC shall be immediately forwarded to the State's principal representative. DRC shall abide by data notifications and access to DRC's High School Equivalency Test-Taker Data as listed in Section 1.3 of Exhibit A.

B. Notification

DRC shall provide its agents, employees, Subcontractors, and assigns who may come into contact with State Information or High School Equivalency Test-Taker Data with a written explanation of the confidentiality requirements herein, to which they are subject, before permitting them to access such State Information or High School Equivalency Test-Taker Data.

C. Use, Security, and Retention

State Information and High School Equivalency Test-Taker Data of any kind shall be stored, processed, or transferred only in or to facilities located within the United States, and shall not be distributed or sold to any third party, retained in any files or otherwise, or used by DRC or its agents in any way, except as authorized by this Contract, by law, or approved in writing by the State. DRC shall provide and maintain a secure environment that ensures confidentiality of all State Confidential Information and High School Equivalency Test-Taker Data wherever located. Neither DRC nor its Subcontractors shall have any rights to use or access any CDE or other State agency data or information, except with the prior approval of the State.

D. Protection

DRC is responsible for the protection and security of all State Information provided to it by the State and all High School Equivalency Test-Taker Data. If DRC provides physical or logical storage, processing or transmission of, or retains, stores, or is given, State Information and/or High School Equivalency Test-Taker Data, DRC shall, and shall cause its Subcontractors to, (i) provide physical and logical protection for all related hardware, software, applications, and data that meet or exceed industry standards and requirements as set forth in this Contract; (ii) maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), and annual security testing; (iii) comply with State and federal regulations and guidelines related to overall security, confidentiality, integrity, availability, and auditing; (iv) ensure that security is not compromised by unauthorized access to computers, program, software, databases, or other electronic environments; and (v) shall promptly report all Incidents to a representative of CDE. DRC shall provide the State with access, subject to DRC's reasonable access security requirements, upon seven (7) days' advance written notice, during normal business hours for the purpose of inspecting and monitoring access and use of State Information and High School Equivalency Test-Taker Data, maintaining State systems, and evaluating physical and logical security control effectiveness.

E. Compliance

DRC shall review, on a semi-annual basis, all OIS policies and procedures which OIS has promulgated pursuant to C.R.S. Sections 24-37.5-401 through 406 and 8 C.C.R. Section 1501-5 and posted at <http://oit.state.co.us/ois>, to ensure compliance with the standards and guidelines published therein. DRC shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee.

F. Background Checks

DRC shall perform, and shall cause its Subcontractors to perform, in a form reasonably acceptable to the State, current background checks on all of its respective employees and agents performing services or having access to State Information or High School Equivalency Test-Taker Data provided under this Contract. A background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access to State Information or High School Equivalency Test-Taker Data shall be deemed to be current.

G. Delivery and Support

The State, in its sole discretion, may securely deliver State Information directly to the facility where such data is used to perform the Work. State Information and High School Equivalency Test-Taker Data is not to be maintained or forwarded to or from any other facility or location except for the authorized and approved purposes of backup and disaster recovery purposes.

H. Incident Notice

If DRC becomes aware of an Incident involving any State Information or High School Equivalency Test-Taker Data, it shall notify the State immediately. DRC shall recover the data, remediate the Incident and, as necessary, involve law enforcement. The State, at its sole discretion, may assist in the remediation and recovery process. Unless DRC can establish that DRC or any of its Subcontractors is not the cause or source of the Incident, DRC shall be responsible for the cost of notifying each person whose personal information may have been compromised by the Incident.

I. Incident Remediation

DRC shall be responsible for determining the cause of an Incident, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. DRC shall present its analysis and remediation plan to the State within ten (10) days of notifying the State of an Incident. The State reserves the right to adjust this plan, in its sole discretion. If DRC cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and DRC shall reimburse the State for the reasonable costs thereof.

J. Incident Liability

Disclosure of State Information by DRC or any Subcontractor for any reason may be cause for legal action by third parties against DRC, the State, or their respective agents. Disclosure of High School Equivalency Test-Taker Data by DRC or any Subcontractor for any reason may be cause for legal action by third parties against DRC or their respective agents. DRC shall indemnify, save, and hold harmless the State, its employees, and agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by DRC, or its employees, agents, Subcontractors, or assignees pursuant to this Section X. Notwithstanding any other provision of this Contract, DRC shall be liable to the State for all consequential and incident damages arising from an Incident caused by DRC or its Subcontractors.

K. End-of-Agreement Data Handling

Upon request by the State made before or within sixty (60) days after the effective date of termination of the Contract, DRC shall make available to the State a complete and secure (i.e. encrypted and appropriately authenticated) download file of all data, including, but not limited to, all State Information, High School Equivalency Test-Taker Data, schema and transformation definitions, or delimited text files with documented, detailed schema definitions along with attachments in its native format. The Parties agree that on the termination of the provision of data processing services, DRC shall, at the choice of the State, return all State Information provided by the State to DRC, and the copies thereof, to the State, or DRC shall destroy all such State Information and certify to the State that it has done so. If legislation imposed upon DRC prevents it from returning or destroying all or part of the State Information provided by the State to DRC, DRC warrants that it will guarantee the confidentiality of all State Information provided by the State to DRC and will not actively process such data anymore.

L. Disposition of Data

The State retains the right to use DRC's established operational services to access and retrieve State Information and High School Equivalency Test-Taker stored on DRC's infrastructure for the state administrative uses as specified in Exhibit A, Statement of Work. DRC and Subcontractor warrant that upon request of the State or of the supervisory authority, DRC shall submit its data processing facilities for an audit of the measures referred to in Section X.D. The State reserves all right, title, and interest, including all intellectual property and proprietary rights, in and to State Information.

M. Safeguarding PII Data

If DRC or any of its Subcontractors will or may receive PII Data under this Contract, DRC shall provide for the security of such PII Data, in a form acceptable to the State, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. DRC shall take full responsibility for the security of all PII Data in its possession or in the possession of its Subcontractors, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof.

N. Data Security Assurances

1. Strong access control must be in place. All data must be at a minimum protected with a complex password, workstations and other data processing devices must automatically lock when not in use, and must be manually locked when left unattended. Passwords must be confidential and sharing of passwords is prohibited, must not be written down or stored in an insecure location, and periodically changed and not reused or a reasonable time period.
2. Unused and terminated user accounts must be disabled and/or deleted immediately; account inactivity must be periodically assessed for potential stale accounts.
3. Care must be exercised in inadvertently sharing data on display screens, during demonstrations or presentations, or when sharing screen shots for troubleshooting or other purposes.
4. Systems must be in place for logging and monitoring access and use of data.
5. At a minimum, annual intrusion penetration/vulnerability testing will be implemented.
6. Laptop/mobile device password locks and full disk/storage encryption are required.
7. Data at rest on central computing systems must be encrypted; any backup, backup media, removable media, tape or other copies must also be encrypted, and not used to transport data.
8. Mandatory annual Security awareness training on how to handle PII is required.
9. Appropriate endpoint security anti-virus and anti-malware software must be installed and maintained on computers accessing or processing PII.
10. Transmitting data must occur via a secure method such as Secure File Transfer Protocol (SFTP) or comparable and never sent via email or transported on removable media.

11. Physical security in buildings housing PII, along with controlled physical access to buildings and/or data centers.
12. Ability to suppress small N-sizes for aggregated student data reports is required.
13. After prescribed use is concluded, data disposal policies must apply for cleaning up all data. This includes secure scrubbing and securely overwriting data from storage, or physically destroying the storage media.
14. Devices used to copy or scan hard copies of data must have encrypted storage and have storage devices appropriately scrubbed when equipment is retired. Hard copy containing PPI is discouraged and must be physically secured, not left unattended, and physically destroyed.
15. All data processing systems, servers, laptops, PCs, and mobile devices must be regularly scanned and have all security patches applied in a timely manner.
16. Data stored in cloud based systems must be protected in the same manner as local data, as described throughout this document. Use of free cloud based services is prohibited, and secondary encryption must be used as appropriate to protect data in cloud storage.
17. Cloud environments, when employed, must be fully documented and open to CDE inspection and verification.
18. Access to cloud based computing environments is only permitted via restricted access, by VPN or least privileged access lists, and never accessible directly via the Internet.

O. Transparency Requirements

If DRC operates an internet website, an on-line service, including cloud computing services, an on-line application or a mobile application that uses, creates or acquires Covered Information, DRC shall not knowingly engage in any of the following activities with respect to its web site, service or application:

1. Use Covered Information, including persistent unique identifiers, created or gathered by DRC's web site, service or application, to amass a profile about a public school student or test-taker.
2. Sell Covered Information, including PII to any third party.
3. Disclose Covered Information to any party unless the disclosure is:
 - a. Reasonably necessary in furtherance of a public school purpose of the web site, service or application and the recipient of the Covered Information contractually agrees to comply with the requirements herein and to not further disclose the Covered Information,

- b. Required by state or federal law,
 - c. Necessary to respond to or participate in a judicial or administrative proceeding,
 - d. To protect the safety of users or security of DRC's website, service or application, or
 - e. To the extent required by law, to provide Covered Information to law enforcement agencies or for an investigation of a matter of public safety.
4. DRC may not gather or use Covered Information from any source unless it has demonstrated a specific legitimate educational purpose.
 5. DRC acknowledges that the State will post the Contract for this work to its website.
 6. DRC agrees to provide transparency to parents, school districts and the public about its collection and use of Covered Information including:
 - a. Post on DRC's website contact information for DRC or Subcontractor that collects or generates Covered Information,
 - b. Post on DRC's website the types of Covered Information that is collected or generated by DRC, its Subcontractors or disclosed to a third party and how DRC shares and uses the Covered Information,
 - c. Post on DRC's website the educational purpose(s) for which the Covered Information is used,
 - d. Post on DRC's website its policies and procedures regarding retention and disposal of Covered Information,
 - e. Upon request, provide a school district or local education agency with information about the specific data elements that are collected or generated by DRC, DRC's security policies and any other data that is merged with Covered Information that it collects or generates,
 - f. Provide notice on its website to the public before making changes to its privacy policies,
 - g. Facilitate student's, test-taker's and guardians'/parents' access, as required by law, to and correction of Covered Information,
 - h. Respond to CDE when an interested party reports an alleged violation of privacy or security laws, and
 - i. Post on DRC's website whether or not DRC has signed the Student Privacy Pledge posted at studentprivacypledge.org.

EXHIBIT C, Colorado Administrative, Testing Center and Vendor's Testing Fee

DRC: TASC

TABLE I: Fee breakdown for public testing centers

For public testing centers, there will be a standard state fee of \$7.50/content area test and a standard test center fee of \$10.00/content area test. The state and test center fees will remain the same for any retakes of content area tests. DRC may determine a differentiated DRC fee for retakes as documented in DRC's Examination Policies and Procedures per Exhibit A, Statement of Work, 1.1.10.4.

Public (per Content Area)					
	2016	2017	2018	2019	Retakes
State Fee	\$7.50	\$7.50	\$7.50	\$7.50	\$7.50
DRC Fee	\$10.40	\$10.80	\$11.20	\$12.20	<i>As determined by DRC policies</i>
Test Center Fee	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Test-Taker Price	\$27.90	\$28.30	\$28.70	\$29.70	
Complete Battery Test Taker Price (for all five content areas)	\$139.50	\$141.50	\$143.50	\$148.50	

TABLE II: Fee breakdown for corrections testing centers

For corrections testing centers, there will be a standard state fee of \$1.25/content area test. The state fee will remain the same for any retakes of content area tests. DRC may determine a differentiated DRC fee for retakes as documented in DRC's Examination Policies and Procedures per Exhibit A, Statement of Work, 1.1.10.4.

Corrections (per Content Area)					
	2016	2017	2018	2019	Retakes
State Fee	\$1.25	\$1.25	\$1.25	\$1.25	\$1.25
DRC Fee	\$10.40	\$10.80	\$11.20	\$12.20	<i>As determined by DRC policies</i>
Test-Taker Price	\$11.65	\$12.05	\$12.45	\$13.45	
Complete Battery Test Taker Price (for all five content areas)	\$58.25	\$60.25	\$62.25	\$67.25	