

SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY

CONTRACT FOR CONSULTING SERVICES

by and between

Company
Address
City, State ZipCode

South Dakota Science and Technology Authority
630 East Summit Street
Lead, SD 57754

Referred to as "Consultant"

Referred to as "SDSTA"

PROJECT: Learning Management System
SDSTA Contract #2017-12

THIS CONTRACT, made effective the Xst day of Month, 201X, is made for the described services with the Consultant for the consideration stated herein. The Consultant represents itself as competent and qualified to accomplish the specific requirements of this contract to the satisfaction of the SDSTA. Incorporated into this Contract are the following exhibits:

Exhibit A: Insurance Requirements
Exhibit B: Scope of Work
Exhibit C: Consultant's Proposal

In consideration of the mutual promises contained herein, the parties agree to the following:

1. Administration: **Name (email)** shall be the SDSTA's designated representative in all matters pertaining to this Contract. **Name (email)** shall be the Consultant's designated representative in all matters pertaining to this Contract.
2. Applicable Law/Jurisdiction: This Contract shall be governed and interpreted according to the laws of the State of South Dakota, and the appropriate forum for any litigation or other dispute resolution pertaining to this contract shall be decided in the state courts of South Dakota. The parties consent to the jurisdiction of such court and hereby waive any claims of lack of personal jurisdiction or inconvenience of the chosen forum.
3. Assignment: This Contract, or any part thereof, may not be assigned, transferred, or subcontracted by the Consultant without the prior written consent of the SDSTA. The Consultant shall not engage the services of any subcontractors without the prior written consent of the SDSTA.
4. Contract Sum: For performance of the work specified in the Contract Documents, SDSTA will reimburse Consultant for time and materials as specified in Consultant's Proposal, attached hereto as Exhibit C. In no event may the total amount paid to Consultant during the term of this Contract exceed **Amount (\$x,xxx)**.

Reimbursement for pre-approved travel expenses, if any, will not exceed Federal Travel Regulations (FTR) standard rates for the applicable travel location.

5. Contract Term: This Contract shall commence on **Month Day, 201X** and shall terminate on **Month Day, 201X**, unless terminated earlier as provided in this Contract.
6. Insurance: During the term of this Agreement, Consultant shall maintain in effect at all times, and provide proof of such coverage to the SDSTA, insurance as described on the attached Exhibit A, which is incorporated herein by this reference. By executing this Contract, Consultant authorizes the SDSTA to make direct inquiry of Consultant's insurer or insurance agent concerning the status of the insurance required by this Contract.
7. Conflict of Interest: No officer or employee of the SDSTA shall participate in any decision relating to this Contract which affects his or her personal interest in any entity in which he or she directly or indirectly has interest. No employee of the SDSTA shall have any interest, direct or indirect, in this Contract or its proceeds.

8. Confidentiality: All reports, plans, specifications, engineering calculations, technical data, miscellaneous drawings, and information contained therein provided to or prepared by Consultant, its owners, officers, employees, agents, consultants, suppliers, and subcontractors in connection with Consultant's performance under this Contract are confidential and the Consultant, its owners, officers, employees, agents, consultants, suppliers, and subcontractors shall not disclose this information to any person, individual, or entity without the express written permission of the SDSTA.
9. Contract Validity/Severability: In the event that any court of competent jurisdiction shall hold any provision of this Contract unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
10. Debarment or Suspension: By signing this Contract, the Consultant certifies to the best of its knowledge and belief that it and all persons associated with the Contract, including persons or corporations who have critical influence on or control over the Contract, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.
11. Entire Contract: This Contract sets forth the entire agreement between the parties and replaces and supersedes all prior arrangements on the subject, whether oral or written, expressed or implied. Documents, information and data provided to the SDSTA pursuant to the terms of this Contract may be subject to examination and review by representatives of the Homestake Mining Company of California pursuant to the terms of the Property Donation Agreement or by representatives of federal, state or local governmental entities, including, but not limited to, the South Dakota Department of Legislative Audit. Anything elsewhere in this Contract to the contrary notwithstanding, any such documents, information or data may become public records open to public inspection.
12. Force Majeure: Neither party shall be liable to the other or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such clauses may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, strikes, embargoes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.
13. Headings: The headings in this document are for convenience of reference only and do not define, describe, extend, or limit the scope or intent of this Contract, or the scope or intent of any provision contained in this Contract, and thus shall not be used in interpretations of this Contract. Except where the context requires otherwise, whenever used the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word "or" has the inclusive meaning represented by the phrase "and/or." Whenever this Contract refers to a number of days, unless otherwise specified such number refers to calendar days. The wording of this Contract shall be deemed to be the wording mutually chosen by the parties and no rule of strict construction shall be applied against any party.
14. Indemnification: Consultant agrees to hold harmless and indemnify the SDSTA, the State of South Dakota, and their officers and employees from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of the negligence, misconduct, error or omission of any officer, agent, subconsultant or employee of Consultant, but only to the extent of such negligence, misconduct, error or omission. This section does not require the Consultant to indemnify the SDSTA or State of South Dakota, or their officers, agents or employees from claims or liability to the extent such claims or liability arise from the acts or omissions of the SDSTA, the State of South Dakota or their officers, agents or employees.
15. Independent Consultant: Consultant warrants that it is regularly engaged in business of which the services provided in this Contract are typical. The parties understand that the SDSTA will file annual information returns as required by the Internal Revenue Service with copies sent to Consultant. Consultant will be responsible for compliance with all applicable laws, rules, and regulations involving but not limited to, employment, labor, worker's compensation, hours of work, working conditions, payment of wages, and payment of taxes, such as unemployment, social security, and other payroll taxes, including other applicable contributions as required by law.

16. Licensing: Consultant shall secure in its name and at its expense all federal, state, and local licenses and permits required for completion of work under this Contract. Consultant shall provide proof of such licensure or permit to the SDSTA upon request.

17. Modification: This Contract may be modified or amended only in writing signed by both parties. The SDSTA, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly.

18. Non-Discrimination: Consultant shall not discriminate and shall comply with applicable laws and SDSTA policies prohibiting discrimination on the basis of race, color, religion, national origin or citizenship status, age, disability, or veteran status. The SDSTA encourages the employment of individuals with disabilities.

19. Notice: All notices, demands and other communications required by the this Contract shall be in writing and shall be deemed to have been duly given if emailed, personally delivered or mailed first class, postage prepaid:

• **If to Consultant:**

Company Name
Attn: Name
Street
City State ZipCode
Email

• **If to SDSTA:**

Mike Headley
Executive Director
630 East Summit Street
Lead, SD 57754
MHeadley@sanfordlab.org

Timothy M. Engel
Counsel for the SDSTA
503 S. Pierre Street, P.O. Box 160
Pierre, SD 57501

Either party may change the addresses set forth for notice herein upon written notice thereof to the other.

20. Ownership of Documents: Any plans, specifications, engineering calculations, technical data, reports, miscellaneous drawings, and all information contained therein provided by the SDSTA, its consultants, employees, contractors and agents to the Consultant for the Consultant's performance of its obligations under this agreement are the property of the SDSTA. They are to be used only with respect to this project and are not to be used for any other project. The Consultant may not retain any such document for its own use, nor disseminate these materials to any person or entity nor may the Consultant use these materials for purposes other than work for the SDSTA, without the express written approval of the SDSTA. The SDSTA shall not unreasonably withhold such approval for dissemination of these materials to subcontractors and suppliers. All documents covered by this article shall be delivered to the SDSTA Representative at the completion of the work.

Project Deliverables: Consultant will provide all working documents relevant to the contract scope upon contract termination or completion including drawings, specifications, software files, and other instruments of service. Reuse of any documents pertaining to this project by the SDSTA on extensions of this project or on any other project shall be at the SDSTA's risk. The SDSTA agrees to defend, indemnify, and hold harmless Consultant from all claims, damages, and expenses including attorney's fees arising out of such reuse of the documents by the SDSTA or by other acting through the SDSTA.

21. Payments to Consultant: SDSTA shall make payments on a monthly basis for work accomplished in accordance with this Contract. Payment will be made upon receipt of Invoice or Payment Request Form. Invoices or Payment Request Forms are to be addressed to South Dakota Science and Technology Authority, 630 East Summit Street, Lead, SD, 57754, and may be submitted by email to: ap@sanfordlab.org. If possible, invoices are to be submitted to the SDSTA on the **3rd day** of the month for work performed in the previous month. Invoices received after the 3rd day of the month will be considered to have been received the following month. Final Invoices or Payment Request Forms must be received

within thirty days of completion of this Contract. No payments will be made for invoices received later than thirty days past the ending date of this Contract.

Reimbursement for pre-approved travel expenses, if any, will not exceed Federal Travel Regulations (FTR) standard rates for the applicable travel location. Lodging expenses will be reimbursed at FTR rates or the actual lodging cost, whichever is less; airfare shall be reimbursed at the actual cost of a coach class ticket. No additional burdens or overheads will be applied to travel expense reimbursements.

22. Publicity, Publication: Unless otherwise provided by law or the SDSTA, title and possession of all data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for with SDSTA funds shall vest with the SDSTA. Consultant shall at all times obtain the written approval of the SDSTA before Consultant makes any statement bearing on the work performed or data collected under this Contract to the press, or issues any material for publication through any medium of communication. If Consultant publishes a work dealing with any aspect of performance under this Contract, or of the results and accomplishments attained in such performance, the SDSTA shall have a royalty free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and authorize others to use the publication.

23. Record Keeping, Audit, and Inspection of Records: Consultant shall maintain books, records, and other compilations of data pertaining to the requirements of this Contract to the extent and in such detail as shall properly constitute claims for payment. All such records shall be kept for a period of seven years or for longer period if specified herein. All retention periods start on the first day after the final payment of the Contract. If any litigation, claim, negotiation, audit, or other such action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. The SDSTA or the grantor agency (if any), or any of their authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records, and other compilations of Consultant's data pertaining to this Contract. Such access shall include on-site audits.

24. Scope of Work: The Consultant agrees to perform the Scope of Work as described in Exhibit C, hereby incorporated by reference.

25. Termination:

A. This Contract depends upon the continued availability of appropriated funds. This Contract will be terminated by the SDSTA if the appropriated funds or grant expenditure authority is discontinued. Termination for this reason is not a default by the SDSTA nor does it give rise to a claim against the SDSTA. Termination for this cause shall be treated in the manner set forth in paragraph B of this article.

B. The SDSTA may terminate this Contract at any time without cause, in whole or in part, upon giving Consultant notice of such termination. Upon such termination, Consultant shall immediately cease work and remove from the project site all of its labor forces and such of its materials as the SDSTA elects not to purchase or to assume. Consultant shall receive as full compensation for termination and assignment all amounts then otherwise due under the terms of this Contract, and amounts due for work performed subsequent to the latest request for payment through the date of termination.

C. If Consultant is in default under the provisions of this Contract, the SDSTA may, without prejudice to any other right or remedy and upon written notice to the Consultant, terminate the Contract.

26. Professional Judgment: Consultant intends to serve as the SDSTA's professional representative for those services as defined in this agreement and to provide advice and consultation to the SDSTA as a professional exercising the same degree of care and skill as would be exercised by others in the same profession in South Dakota. Any opinions of probably project cost, approvals, and other decisions made by Consultant for the SDSTA are rendered on the basis of experience and qualifications and represent Consultant's professional judgment.

IN WITNESS HERETO, the parties signify their agreement by signatures affixed below on the day and year above first written.

COMPANY

**SOUTH DAKOTA SCIENCE AND
TECHNOLOGY AUTHORITY**

By: _____
Name _____ Date _____
Title _____

Mike Headley _____ Date _____
Executive Director

EXHIBIT A
INSURANCE REQUIREMENTS

A. Minimum Insurance

Prior to the commencement of work, the Contractor will procure and maintain the following insurance:

1. Business automobile liability insurance with limits not less than \$1 million per occurrence. Such insurance shall include coverage for owned, non-owned and hired automobiles.
2. Workers compensation insurance as required by South Dakota law.

B. Special Provisions Applicable to All Coverages

1. The Contractor or Project Sponsor must provide the South Dakota Science and Technology Authority 30 days' notice of cancellation/material change, reserving the right to obtain replacement coverage if Contractor does not and deducting the cost from the contract total.
2. Self-insured retentions and/or deductibles greater than \$50,000.00 must be declared and approved by the Authority.

C. Evidence of Insurance

Prior to commencement of work, the Contractor or Project Sponsor shall furnish the South Dakota Science and Technology Authority with certificates evidencing compliance with the insurance requirements above. The Contractor or Project Sponsor must agree to provide complete, certified copies of all required insurance policies if requested by the Authority.

D. Acceptability of Insurers

Insurance shall be placed with insurers acceptable to the South Dakota Science and Technology Authority.

EXHIBIT B
SCOPE OF WORK

(SEE RFP)

EXHIBIT C
CONSULTANT'S PROPOSAL

