



STATE OF UTAH CONTRACT

UTAH STATE BOARD OF EDUCATION

1. **CONTRACTING PARTIES:** This contract is between the Utah State Board of Education, referred to as the State Entity or USBE, and the following Contractor:

Measurement Incorporated

Name

423 Morris St.

Address

Durham,

NC

27701

City

State

Zip

LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Limited Liability Company
☐ Government Agency

Point of Contact: Henry H. Scherich Phone #: (919) 683-2413 Email: hscherich@measinc.com

Vendor #: VC0000142516 Commodity Code #: 86130, 60100

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide an on-line formative writing tool for Utah students in grades 3-12, as further described herein.
3. **PROCUREMENT:** This contract is entered into as a result of the procurement process of Solicitation #USBE-FT19029-RFP, in FY19.
4. **CONTRACT PERIOD:** Effective Date: 3/7/2019 Termination Date: 3/6/2024, unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options: Five (5) one-year renewals, executable at USBE's option.
5. **CONTRACT COSTS:** CONTRACTOR will be paid a maximum of \$2,620,383.00 (plus \$3,260,177.00 for optional renewal years) for costs authorized by this contract. Additional information regarding cost may be found in the scope of work or other attachments.
6. **ATTACHMENT A:** State of Utah Standard Terms and Conditions
ATTACHMENT B: State of Utah Standard Information Technology Terms and Conditions
ATTACHMENT C: Scope of Work
ATTACHMENT D: Contract Budget

Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.

7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - Utah State Procurement Code, Procurement Rules, and Contractor's response to Solicitation #USBE-FT19029-RFP dated 1/29/2019.
8. Each signatory below represents that he or she has the requisite authority to enter into this contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

Henry H. Scherich 4/11/19
 Contractor's signature Date

Henry H. Scherich, President
 Type or Print Name and Title

UTAH STATE BOARD OF EDUCATION

Scott Jones 7/15/14
 Agency's signature Date

Scott Jones, Deputy Superintendent of Operations
 Type or Print Name and Title

Fay Tan

Agency Contact Person

(801) 538-7748

Telephone Number

Fax Number

fay.tan@schools.utah.gov

Email

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - 1.1. **"Authorized Persons"** means Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who require access to Data and who have a legitimate educational interest in the education records to enable the Contractor to perform its responsibilities under this Contract.
 - 1.2. **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - 1.3. **"Contract"** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
 - 1.4. **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the State Entity and Contractor signed.
 - 1.5. **"Contractor"** means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - 1.6. **"Data"** includes Student Personally Identifiable Information and Educator Data, and may also include Confidential Information.
 - 1.7. **"Destroy"** means to remove Data such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.
 - 1.8. **"Educator Data"** includes, but is not limited to, the educator's name; any unique identifier, including social security number; and other information that, alone or in combination, is linked or linkable to a specific educator.
 - 1.9. **"Incident"** means the potentially unauthorized access to Data that Contractor believes could reasonably result in the use, disclosure or theft of Data within the possession or control of Contractor or Contractor's Subcontractors.
 - 1.10. **"Metadata"** includes all information created manually or automatically to provide meaning or context to other data.
 - 1.11. **"Procurement Item"** means a supply, a service, construction, or technology that Contractor is required to deliver to the State Entity under this Contract.
 - 1.12. **"Response"** means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity's Solicitation.
 - 1.13. **"Solicitation"** means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - 1.14. **"State Entity"** means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
 - 1.15. **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - 1.16. **"Student Personally Identifiable Information" or "PII"** has the same meaning as that found in U.C.A § 53E-9-301, and includes both direct identifiers (such as a student's or other family member's name, address, student number, or biometric number) and indirect identifiers (such as a student's date of birth, place of birth, or mother's maiden name). Indirect identifiers that constitute PII also include metadata or other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
 - 1.17. **"Subcontractors"** means a person under contract with a contractor or another subcontractor to provide services or labor as provided herein or for design or construction, including a trade contractor or specialty contractor.
 - 1.18. **"Targeted Advertising"** means advertising to a student or a student's parent by Contractor if the advertisement is based on information or Data Contractor collected or received under this Contract.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, State Entity staff, or their designees, access to all such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - 6.1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - 6.2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

- 6.3. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State Entity or the State of Utah, unless disclosure has been made to the State Entity.
 8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents, except as to the specific and limited agency created by paragraph 46.2 below, of the State Entity or the State of Utah.
 9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the Contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the State Entity under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
 10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description, including but not limited to any loss of Data and claims arising out of any data breach, arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
 11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
 12. **CONFIDENTIALITY:** During this Contract USBE may disclose Confidential Information to Contractor. Contractor may only use the confidential information and any other information gained by reason of this contract only for the purpose of this contract. Contractor will promptly notify USBE of any potential or actual misuse or misappropriation of PII or confidential information that comes to Contractor's attention. Contractor shall be liable for a breach of Contractor's obligations under this section.
 13. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals of any part of this Contract are not permitted, even if identified elsewhere in this Contract.
 14. **DEBARMENT/SUSPENSION:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
 15. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State Entity, upon thirty (30) days written termination notice being given to the Contractor. The State Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.
 - 15.1. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the State Entity be liable to the Contractor for compensation for any Good neither requested nor accepted by the State Entity. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.
 - 15.2. Following the termination of this Contract, USBE reserves the right to request a complete and secure (i.e. encrypted and appropriately authenticated) download file of all data, including, but not limited to, all Data, schema and transformation definitions, or delimited text files with documented, detailed schema definitions along with attachments in its native format. After USBE has been provided and confirmed as acceptable a complete download, or declines a download and requests immediate destruction, Contractor shall Destroy all Data collected, generated, or inferred as a result of this Contract. Should USBE not request a complete download, Contractor shall Destroy the Data immediately after thirty (30) days post termination of the Contract. The Contractor shall notify USBE in writing of the date upon which all of the Data is destroyed.
 16. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.
 - 16.1. If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Procurement Item(s) properly ordered and/or Services properly performed until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
 17. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
 18. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to the State Entity under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create

no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

18.1. Remedies available to the State Entity under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the State Entity within ten (10) days of any written notification informing Contractor of the Goods not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State Entity may otherwise have under this Contract.

19. CONTRACTOR'S INSURANCE RESPONSIBILITY:

19.1. Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, at a minimum, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies with an AM Best rating of A-VIII or better.

19.2. The Contractor shall maintain the following insurance coverage:

19.2.1. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.

19.2.2. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate per occurrence.

19.2.3. If Contractor will use a vehicle in the performance of this Contract, Contractor shall maintain Commercial Automobile Liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Contract whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.

19.2.4. Protected Information Liability insurance covering all loss of Data and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate.

19.3. USBE shall be named as additional insured on all commercial general liability policies required of Contractor and Subcontractors. Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or USBE.

19.4. The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor. Contractor shall forward such notice to the USBE's contact as listed in the Contract within 7 days of Contractor's receipt of such notice.

19.5. All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or USBE, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

19.6. If Contractor is a "public entity" within the meaning of the Governmental Immunity Act of Utah, U.C.A. § 63G-7-101 et. seq. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor(s) maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

19.7. Contractor shall provide to USBE certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to USBE certificates evidencing Subcontractor insurance coverage required under this Contract within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to USBE certificates showing Subcontractor insurance coverage required under this Agreement within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to USBE certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by USBE, Contractor shall, within 7 Business Days following the request by USBE, supply to USBE evidence satisfactory to USBE of compliance with the provisions of this section.

19.8. The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

20. PUBLIC INFORMATION: Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

21. DELIVERY: All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance, when responsibility will pass to USBE except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

22. ACCEPTANCE AND REJECTION: The State Entity shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the State Entity.

- 22.1.** If Contractor delivers nonconforming Procurement Item(s), the State Entity may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the State Entity to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.
- 23. INVOICING:** Contractor will submit invoices within thirty (30) days of the delivery date of the Procurement Item(s) to USBE. The Contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by USBE will be equal to or lower than the prices listed in this Contract. USBE has the right to adjust or return any invoice reflecting incorrect pricing.
- 24. PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.
- 25. INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
- 26. OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.
- 27. ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity.
- 28. REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.
- 29. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.
- 30. PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity's sole discretion whether to provide approval, which approval must be in writing.
- 31. WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on USBE premises: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) pass a background check prior to entering the premises, if required by USBE. USBE may remove any individual for a violation hereunder.
- 32. CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
- 33. WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
- 34. SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.
- 35. CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
- 36. PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
- 37. ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the substantially prevailing party shall be entitled to its costs and expenses, including reasonable attorney's fees incurred in connection with such action.

- 38. TRAVEL COSTS:** If travel expenses are permitted by the Solicitation, then all travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to Contractor for correction.
- 39. DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The State Entity, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the State Entity appoints such an expert or panel, State Entity and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
- 40. ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
- 41. SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity's right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
- 42. SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
- 43. ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors or omissions in this Contract. The Contractor must promptly notify LEA of any errors or omissions that are discovered.
- 44. ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- 45. GENERAL PROVISIONS:**
- 45.1.** USBE reserves all right, title, and interest, including all intellectual property and proprietary rights, in and to system data, Data, and all related data and content.
 - 45.2.** Contractor is hereby designated as an agent of USBE for the limited purpose of receiving PII to fulfill the purposes of this contract. Contractor may use the PII as provided herein, but may not transfer or otherwise convey PII to any other person, persons or entities.
 - 45.3.** Contractor, as USBE's agent, shall comply with all applicable laws and regulations including but not limited to FERPA, the Utah Family Education Rights and Privacy Act, Utah Code § 53E-9-2 ("UFERPA"), and the Individuals with Disabilities Educational Act, 30 U.S.C. §1400 et seq. and 34 C.F.R. Part 300 ("IDEA").
 - 45.4.** Any terms that by their nature would survive the expiration of, completion, or termination of this Contract shall survive.
 - 45.5.** Contractor shall, upon written request, permit USBE or its designated representatives to perform an assessment, audit, examination, or review of all of Contractor's sites and environments in order to confirm Contractor's compliance with this Contract; associated Contractors or Scopes of Work; and applicable laws and regulations.
 - 45.6.** During the term of this Contract, if USBE requests the Destruction of PII collected, generated or inferred as a result of this Contract, Contractor shall Destroy the information within five (5) calendar days after the date of the request. Contractor shall provide USBE with written confirmation of the date the data was Destroyed.
 - 45.7.** USBE retains the right to use the established operational services to access and retrieve Data stored on Contractor's infrastructure at its sole discretion.
- 46. ACCESS TO DATA:**
- 46.1.** Contractor shall limit access to Data to Authorized Persons only and shall require a non-disclosure agreement be signed by all Authorized Persons prior to being granted access to Data.
 - 46.2.** Contractor shall maintain past and current lists of all Authorized Persons, maintain each non-disclosure agreement, and shall permit inspection of the same by USBE upon request.
 - 46.3.** Contractor shall maintain an audit trail for the duration of this Contract, which reflects the granting and revoking of access privileges to Authorized Persons. A copy of this audit trail may be requested by USBE from Contractor at any time and shall be provided within 10 days of the USBE request.
 - 46.4.** Contractor shall have strong access controls in place. Contractor shall disable and/or immediately delete unused and terminated Authorized Persons' accounts and shall periodically assess account inactivity for potential stale accounts.
 - 46.5.** Contractor shall provide annual, mandatory privacy and security awareness and training for all Authorized Persons, maintain past and current lists of Authorized Persons that have completed training, and permit inspection of the same by USBE upon request.
- 47. USE AND DISCLOSURE OF DATA:**
- 47.1.** Contractor shall not collect, use, or share Data beyond the purposes set forth as follows:
 - 47.1.1.** To carry out the Contractor's responsibilities listed in Exhibit A, Statement of Work.
 - 47.1.2.** [Click here to list responsibilities.](#)
 - 47.2.** Contractor shall share Data only for the purposes stated in Section 48.1 and only with the following entities:
 - 47.2.1.** Law enforcement agencies or individuals only as authorized by law or court order. Contractor receives such a request, Contractor shall notify USBE within two (2) business days of the receipt of the request, as permitted by law.
 - 47.2.2.** [Click here to list additional entities.](#)
 - 47.3.** If Contractor seeks to publicly release Data, Contractor must aggregate the Data by totaling the Data and reporting it at the group, cohort, school, school district, region, or state level. Contractor shall, upon request of USBE, provide USBE with a document that lists the steps and methods the Contractor shall use to de-identify the information. Any aggregate data that is publicly released without being redacted using the methods in this section shall be considered an Incident. The following methods shall be used on any aggregated reports:
 - 47.3.1.** Aggregate data shall be reported publicly only if there is a sufficient number of individuals represented in any

demographic or subgroup so that an individual cannot be identified.

47.3.2. Aggregated reports shall be redacted using complementary suppression methods that remove the risk of Data being identifiable using simple mathematics or formulas.

47.3.3. Aggregated reports shall be redacted to remove identifiability risks caused other prior releases of aggregate data by Contractor.

47.4. Contractor shall not use Data for the purposes of Targeted Advertising except under the following conditions:

47.4.1. For adaptive learning or customized student learning purposes.

47.4.2. To market an educational application or product to a parent or legal guardian of a student if Contractor did not use Data, shared by or collected per this Contract, to market the educational application or product.

47.4.3. To use a recommendation engine to recommend to a student (i) content that relates to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party; or (ii) services that relate to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party;

47.4.4. To respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party.

47.4.5. To use Data to allow or improve operability and functionality of the third-party contractor's internal application.

47.5. Contractor shall not sell or otherwise monetize Data except Data transferred through the purchase of, merger with, or otherwise acquisition of Contractors provided that all parties remain in compliance with this Contract.

48. SECURITY AND PROTECTION OF DATA:

48.1. Contractor shall notify USBE of material system changes that may negatively impact the security of Data prior to such changes being implemented.

48.2. If Contractor is given Data as part of this Contract, the protection of Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Data. Contractor shall safeguard the confidentiality, integrity, and availability of Data.

48.3. Contractor shall comply with and protect and maintain Data using methods that are at least as good as or better than that established in the State of Utah's Department of Technology Policies (<https://dts.utah.gov/policies>).

48.4. Contractor shall only transmit or exchange Data via secure means (ex. HTTPS or FTPS). Contractor shall not use, store or process Data on any unencrypted portable or laptop computing device or any portable storage medium.

48.5. Contractor shall store and maintain all Data in data centers located in the United States.

48.6. Contractor shall permit its employees and Subcontractors to access Data remotely only via a secured manner, such as Virtual Private Networks (VPN).

48.7. Contractor shall store all Data, as well as any backups made of that data, in encrypted form using no less than 128-bit key and include all Data as part of a designated backup and recovery process.

48.8. Contractor shall enforce strong password protections on all devices and networks with access to or that store Data.

49. INCIDENTS:

49.1. If Contractor becomes aware of an Incident involving Data by either Contractor or any of Contractor's Subcontractors, Contractor shall notify USBE within one (1) calendar day and cooperate with USBE regarding recovery, remediation, and the necessity to involve law enforcement, if any.

49.2. Contractor shall produce a written remediation plan that includes information about the cause and extent of the Incident and the actions Contractor will take to remediate the Incident and to reduce the risk of incurring a similar type of Incident in the future. Contractor shall present its analysis and remediation plan to USBE within ten (10) calendar days of notifying USBE of an Incident. USBE reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce its analysis and plan within the allotted time, USBE, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse USBE for the reasonable costs thereof.

49.3. In the event of an Incident, Contractor shall provide USBE or its designated representatives with access seven (7) days a week, twenty-four (24) hours a day, for the purpose of evaluating, mitigating, or resolving the Incident.

49.4. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person whose personal information may have been compromised by the Incident.

49.5. Disclosure of Data by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor 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 Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Contract. Notwithstanding any other provision of this Contract, Contractor shall be liable to the State for all direct, consequential and incidental damages arising from an Incident caused by Contractor or its Subcontractors.

ATTACHMENT B: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS

This is for a contract of information technology procurement items and must be accompanied by the State of Utah Standard Terms and Conditions. The definitions in Attachment A apply to this Attachment.

1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, and Technology" means Contractor will (A) enter upon secure premises controlled, held, leased, or occupied by the State of Utah; (B) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by the State of Utah; or (C) have access to or receive any State Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access State Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Custom Deliverable" means the Work Product that Contractor is required to deliver under this Contract.
- d. "Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of State Data and compromises the security, confidentiality, or integrity of State Data. It is within State Entity's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- e. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
- f. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
- g. "Personal Data" means data that includes information relating to a person that identifies the person by a person's first name or first initial and last name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- h. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- i. "Security Incident" means the potentially unauthorized access by non-authorized persons to State Data that Contractor believes could reasonably result in the use, disclosure or theft of State Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach. It is within the State Entity's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- j. "State Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah whether such data or output is stored on the State of Utah's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah or by the Contractor. State Data also includes any federal data that the State of Utah controls or maintains that is protected under federal laws, statutes, and regulations.
- k. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any State of Utah or State Entity intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.

2. **CONTRACTOR ACCESS TO SECURE STATE FACILITIES, STATE DATA, AND TECHNOLOGY:** If an employee of Contractor or a Subcontractor is required to complete a Federal Criminal Background Check or said employee of Contractor or a Subcontractor will have Access to Secure State Facilities, State Data, and Technology, Contractor shall provide State Entity with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by State Entity, at State Entity's expense.
3. **DRUG-FREE WORKPLACE:** Contractor agrees to abide by the State Entity's drug-free workplace policies while on the State Entity's premises. The State Entity will provide Contractor with a copy of these written drug-free workplace policies upon request.
4. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the State Entity's applicable code of conduct.
5. **HARDWARE WARRANTY:** Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells to DTS under this Contract, for a period of one (1) year. Contractor acknowledges that all warranties granted to DTS by the Uniform Commercial Code of the State of Utah apply to this Contract.

Product liability disclaimers and/or warranty disclaimers from Contractor are not applicable to this Contract. In general, the Contractor warrants that the hardware: (a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that DTS has relied on Contractor's skill or judgment to consider when it advised DTS about the hardware in the Proposal; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems about which DTS has not been warned.

6. **SOFTWARE WARRANTY:** Contractor warrants that for a period of ninety (90) days from the date of Acceptance that the software portions of the Procurements Items, that Contractor licenses, contracts, or sells to the State Entity under this Contract, will: (a) perform in accordance with the specific claims provided in the Response and any specifications agreed to in writing between the State Entity and Contractor; (b) be suitable for the ordinary purposes for which such software is used; (c) be suitable for any special purposes that the State Entity has relied on Contractor's skill or judgment to consider when it advised the State Entity about the software in its Response; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems about which the State Entity has not been warned. Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems.
7. **UPDATES AND UPGRADES:** Contractor grants to the State Entity a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the term of this Contract. Such upgrades and updates are subject to the terms of this Contract. The State Entity shall download, distribute, and install all updates as released by Contractor during the Contract Period.
8. **TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Procurement Item that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond to the State Entity in a reasonable time.
9. **SECURE PROTECTION AND HANDLING OF STATE DATA:** If Contractor is given State Data as part of this Contract, the protection of State Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of State Data. To the extent that Contractor is given State Data, Contractor shall safeguard the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below. The State Entity reserves the right to verify Contractor's adherence to the following conditions to ensure they are met during the life of the Contract:
 1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Contractor also agrees to maintain network security that conforms to one of the following:
 - (1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy* (copy available upon request);
 - (2) Current standards set forth and maintained by the National Institute of Standards and Technology, including those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or
 - (3) Any generally recognized comparable standard that Contractor then applies to its own network and is approved by the State Entity in writing.
 2. **State Data Security:** Contractor agrees to protect and maintain the security of State Data with protection that is at least as good as or better than that maintained by the State of Utah as identified in *DTS Policy 5000-0002*. These security measures include but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). The State Entity reserves the right to determine if Contractor's level of protection adequately meets the State Entity's security requirements.
 3. **State Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the State Entity shall take place via secure means (ex. HTTPS or FTPS).
 4. **State Data Storage:** Contractor agrees that all State Data will be stored and maintained in data centers in the United States. Contractor agrees that no State Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-State Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.
 5. **State Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form using no less than 128 bit key and include all data as part of a designated backup and recovery process.
 6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the State Entity or State of Utah network, or stores any State Data is equipped with strong and secure password protection.
 7. **State Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no State Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the State Entity.
 8. **State Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all State Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the

State Entity, whichever shall come first, unless the State Entity provides Contractor with a written directive. It is understood by the parties that the State Entity's written directive may request that certain data be preserved in accordance with applicable law.

9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the services related to State Data will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.
10. **SECURITY INCIDENT NOTIFICATION:** Contractor shall immediately inform the State Entity of any Security Incident. Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the State Entity should be handled on an urgent, as-needed basis as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
11. **DATA BREACH RESPONSIBILITIES:** Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with DTS Policy 5000-0002 Enterprise Information Security Policy (copy available upon request). Contractor shall immediately inform the State Entity of any Data Breach. In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the State Entity by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and (d) in accordance with applicable laws indemnify, hold harmless, and defend the State Entity and the State of Utah against any claims, damages, or other harm related to such Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the State Entity. Contractor shall be responsible for all notification and remedial costs and damages.
12. **STATE INFORMATION TECHNOLOGY POLICIES:** If applicable, Contractor agrees to comply with the following State of Utah Department of Technology Policies which are available upon request:
 1. **DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** The Enterprise Application and Database Deployment Policy requires any Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable state and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
 2. **DTS policy 4000-0002, Enterprise Password Standards Policy:** Any Contractor developing software for the State must ensure it is built to follow the password requirements outlined in the Enterprise Password Standards Policy.
 3. **DTS Policy 4000-0003, Software Development Life Cycle Policy:** The Software Development Life Cycle Policy requires any Contractor developing software for the State to work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
 4. **DTS Policy 4000-0004, Change Management Policy:** Per the Change Management Policy, any Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Following this notification, any outages or Data Breaches which are a direct result of Contractor's failure to comply with DTS instructions and policies following notification will result in Contractor's liability for any and all damages resulting from or associated with the outage or Data Breach.
13. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Procurement Item to the State Entity or provide any Procurement Item for download from the Internet, if approved in writing by the State Entity. Contractor must take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and is reminded that failure to do so may constitute a breach of obligations owed to the State Entity under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes State Data that Contractor processes or stores must be delivered within the specifications of this Contract.
14. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the State Entity, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the State Entity and are specifically within the framework of fulfilling Contractor's contractual obligations under this Contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the State Entity. To the extent that the Custom Deliverables are not recognized as work made for hire, Contractor shall assign to the State Entity any and all copyrights in and to the Custom Deliverables, subject to the following:
 1. Contractor has received payment for the Custom Deliverables,
 2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
 3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the State Entity (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

Contractor agrees to grant to the State Entity a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the State Entity and the State of Utah to use the Custom Deliverables. The State Entity reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the State Entity's and the State of Utah's internal purposes, such Custom Deliverables.

- 15. PROTECTION AND USE OF RECORDS:** The State Entity shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the State Entity.
- 16. RETURN OF DOCUMENTS AND DATA:** All documents and data pertaining to work required by this Contract will be the property of the State Entity, and must be delivered to State Entity within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. Any documents and data that may be returned under provisions of this Section must either be in the format as originally provided, or in a format that is readily usable by the State Entity or that can be formatted in a way that it can be used. The costs for returning documents and data to the State Entity are included in this Contract.
- 17. SURVIVORSHIP:** Any terms that by their nature would survive the expiration of, completion, or termination of this contract shall survive.
- 18. COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractors must also adhere to Utah Administrative rule R895-14-1-3-3, which states that vendors developing new websites or applications are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency; and Rule R895-14-1-4-2, which states that vendors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents.
- 19. RIGHT TO AUDIT:** Contractor agrees to, upon written request, permit the State Entity, or a third party designated by the State Entity, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards.

If Services are applicable to this Contract, the following terms and conditions apply to this Contract:

- 20. TIME IS OF THE ESSENCE:** The Procurement Items shall be completed by any applicable deadline stated in this Contract. For all services, time is of the essence. Contractor shall be liable for all damages to the State Entity and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely complete the services required under this Contract.
- 21. STANDARD OF CARE:** The services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to the State Entity and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (i.e. another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

(Revision Date: 6/15/2016)

ATTACHMENT C:

Scope of Work

Contract #USBE190090MA

**Measurement Incorporated/Utah State Board of
Education**

2019-2024

(with optional renewals through 2029)

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TABLE OF CONTENTS

Scope of Work and Budget.....	1
Introduction	1
A. Overview of Utah Compose	1
B. Components of Utah Compose.....	1
1. Machine Scoring.....	1
2. Up to 99 Revisions per Prompt	2
3. Analytic Writing Assessment System	2
4. Prepackaged Prompts	2
5. Teacher-Created Prompts	2
6. Shared Prompts.....	3
7. Benchmark Prompts.....	3
8. Graphic Organizers.....	3
9. Stimulus Materials.....	3
10. Student Portfolios	5
11. Parent Access to Portfolio.....	5
12. Tools for Analyzing Longitudinal Growth.....	5
13. Teacher/Student Communication.....	5
14. Peer Reviews	6
15. Exemplars for Student Training.....	6
16. Optional Instruction	6
17. Computer-Based Accessibility Tools	7
C. Administration	8
1. User Credentials	8
2. USBE Users	8
3. LEA Users (Assessment Directors).....	8
4. School Administrators	9
5. Teachers	9
6. Parents	9
7. Students	9
8. Student Roster Management.....	9
9. Creating Courses	10

10. Assigning Students to Courses (Registration)	10
11. Developing Support Materials	10
12. Technical Requirements.....	10
13. Help Desk Support	11
14. Annual Project Plan.....	12
D. Training	12
Professional Development Levels.....	13
E. Reporting.....	15
F. Timeline for Delivery	15
G. MI Deliverables.....	16
H. Additional Terms and Conditions	17
Data Security.....	17
Protection of Student Level Data.....	Error! Bookmark not defined.
I. Resources/Project Management	19
J. Budget.....	19

Scope of Work and Budget

2019-2024

Introduction

The scope of work and delivery is for the 2019-2020, 2020-2021, 2021-2022, 2022-2023, and 2023-2024 school years, with optional renewals for the 2024-2025, 2025-2026, 2026-2027, 2027-2028, and 2028-2029 school years.

This document describes the scope of work Measurement Incorporated shall undertake in support of the Utah State Board of Education's Utah Compose online formative writing tool.

A. Overview of Utah Compose

Utah Compose is a comprehensive writing instruction and assessment system designed to assist students in Grades 3 through 12 with improving their writing skills. The system acts as a partner with the teacher, providing students with instant feedback on their performance across effective characteristics of Writing and supplying teachers with the necessary data to inform their instruction.

B. Components of Utah Compose

The system shall include the following components:

1. Machine Scoring

Utah Compose machine scoring functionality is powered by PEG®, MI's artificial intelligence scoring engine. Within seconds of submitting an argumentative, informative-explanatory, or narrative essay, the student receives a Score Report with descriptive feedback including a holistic score (out of 30) and analytic scores (out of 5) for each of six characteristics of effective writing: Development of Ideas, Organization, Style, Sentence Structure, Word Choice, and Conventions. Students also receive feedback in the form of questions to help them evaluate their writing, suggestions for improvement, and links to interactive lessons designed to address the skills that make up each of the six characteristics. Constructed response essays, those designed to have responses of fewer than 250 words, receive a holistic score (out of 3) and feedback as well. In-line grammar and spelling suggestions are provided for all essays with embedded suggestions for corrections.

2. Up to 99 Revisions per Prompt

A student can revise a response to a prompt up to 99 times directly within the text box and submit each revision for a new score. Each new score generates new grammar and spelling suggestions, holistic and characteristic scores, and lesson links, and each essay revision is saved in the Score Report to access and monitor progress easily.

3. Analytic Writing Assessment System

In Utah Compose, students can respond to grade-appropriate prepackaged or teacher-created prompts aligned to one of three of Utah Core Standards for Writing:

- Standard 1: Opinion (K–5)/Argumentative (6–12)
- Standard 2: Informative/Explanatory (and Constructed Response)
- Standard 3: Narrative

PEG will score student responses to both prepackaged and teacher-created writing prompts, displaying instant feedback on the effective characteristics of writing in the Score Report. Student scores for each of the characteristics can also be found for each genre (standard) in the Student Portfolio.

While PEG provides a score for one of three Utah Core Standards for Writing, teachers can utilize the built-in scoring tool and rubrics to provide a score for Textual Evidence and/or Content Accuracy. A 3-point scoring rubric is available for teachers as a reference when scoring these areas. Teachers can also provide anecdotal feedback relating to students' use of textual evidence and content accuracy within their essays.

4. Prepackaged Prompts

For each grade level, teachers and students shall receive 50-55 writing prompts aligned to the Utah Core Standards for Writing across content areas, totaling over 500 prompts, over a third of which include stimulus material, allowing students practice in using textual evidence in their writing, a skill required in Utah Core Standards for English Language Arts in both reading and writing. Many of these prompts are tied to other Utah Core content areas as well, such as social studies, science, math, or visual arts.

5. Teacher-Created Prompts

Utah Compose will allow teachers from any content area to create their writing prompts aligned to both Utah Core Standards for Writing and content standards for their particular subject areas. Similar to prepackaged prompts, student essays written in response to teacher-created prompts are scored by PEG. Teachers can upload text, graphics, and links to webpages for use in their custom prompts, allowing writing to truly become an integral part of the daily curriculum in all content areas.

Scope of Work and Budget

2019-2024

Introduction

The scope of work and delivery is for the 2019-2020, 2020-2021, 2021-2022, 2022-2023, and 2023-2024 school years, with optional renewals for the 2024-2025, 2025-2026, 2026-2027, 2027-2028, and 2028-2029 school years.

This document describes the scope of work Measurement Incorporated shall undertake in support of the Utah State Board of Education's Utah Compose online formative writing tool.

A. Overview of Utah Compose

Utah Compose is a comprehensive writing instruction and assessment system designed to assist students in Grades 3 through 12 with improving their writing skills. The system acts as a partner with the teacher, providing students with instant feedback on their performance across effective characteristics of Writing and supplying teachers with the necessary data to inform their instruction.

B. Components of Utah Compose

The system shall include the following components:

1. Machine Scoring

Utah Compose machine scoring functionality is powered by PEG®, MI's artificial intelligence scoring engine. Within seconds of submitting an argumentative, informative-explanatory, or narrative essay, the student receives a Score Report with descriptive feedback including a holistic score (out of 30) and analytic scores (out of 5) for each of six characteristics of effective writing: Development of Ideas, Organization, Style, Sentence Structure, Word Choice, and Conventions. Students also receive feedback in the form of questions to help them evaluate their writing, suggestions for improvement, and links to interactive lessons designed to address the skills that make up each of the six characteristics. Constructed response essays, those designed to have responses of fewer than 250 words, receive a holistic score (out of 3) and feedback as well. In-line grammar and spelling suggestions are provided for all essays with embedded suggestions for corrections.

2. Up to 99 Revisions per Prompt

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Utah Compose will allow teachers from any content area to create their writing prompts aligned to both Utah Core Standards for Writing and content standards for their particular subject areas. Similar to prepackaged prompts, student essays written in response to teacher-created prompts are scored by PEG. Teachers can upload text, graphics, and links to webpages for use in their custom prompts, allowing writing to truly become an integral part of the daily curriculum in all content areas.

6. Shared Prompts

Once a teacher creates a prompt, they can share it with other teachers in the school who also teach a course for that particular grade level. Teachers can also use the email feature to share their custom prompts with others.

7. Benchmark Prompts

a. State-Wide Benchmark Prompts

Utah Compose can house prompts developed in conjunction with state curriculum and assessment stakeholders and delivered during specific time frames in the school year. These prompts can be added by MI at any time and can include stimulus material.

b. School-Created and LEA-Created Prompts

School and LEA administrators can create school-wide/LEA-wide writing prompts with stimulus material and view writing performance across the school and LEA by specific characteristic, prompt, and class. Each type of prompt is labeled with an icon representing the level at which it was assigned. As with the state-created prompts, school and LEA prompts can be scheduled for specific times during the school year using the Enable/Disable feature and kept secure until they are released at the appropriate times.

8. Graphic Organizers

Students are provided with suggested graphic organizers based on the type of writing required by the prompt, or they can choose from several other organizers that may fit their writing styles. Organizers can be completed online or printed out to work on at home, and students have the option of showing or hiding their organizers as they write their essays. Organizers are saved along with the essay drafts and can be accessed at any time during the writing process and through the student's writing portfolio.

Teachers have access to all graphic organizers from the Utah Compose Help Center and can download and print copies for in-class or home completion. Teachers can upload their organizers as stimulus material for any prompt.

9. Stimulus Materials

Utah Compose includes a variety of stimulus materials attached to prompts:

- a. Prepackaged stimulus material text includes complete and excerpted news magazines, science, and other content-specific articles, poetry, books, short stories, primary documents, and passages commissioned for a specific grade level. Stimulus material text, as well as graphics and multimedia resources, adhere to the following guidelines:

- Content is in the public domain or otherwise free from copyrights and trademarks held by others, or
 - Protected by copyrights or trademarks for which MI has been granted documented permission allowing its use for this purpose, or
 - Owned by MI as the copyright holder and is released under the Creative Commons (CC by 4.0) public domain dedication.
- b. Teachers may also upload their stimulus material, including graphic organizers, reading passages, images, and website links, to their custom prompts. Teachers must agree to the terms of use for uploading text, images, links or other material (“Content”) to this website. The terms of use state that
- Content does not contain profanity or imply profanity by using gestures, adult content or “not safe for work” images, depict hatred or imply hatred to any group or ethnicity, discriminate in any way, disclose personally identifiable information about students, and/or violate any US laws including copyrights. Measurement Incorporated reserves the right to delete any Content deemed unacceptable, and reserves the right to determine what Content is acceptable even if the user-uploaded content that they believe complies with the upload policy. Under the terms of the Digital Millennium Copyright Act (DMCA), Measurement Incorporated may delete infringing Content and reserves the right to terminate the use of the content upload feature from any user for repeated policy violations.*
- c. Utah Compose includes a variety of infographics, maps, charts, diagrams, multimedia files and graphs in stimulus material attached to prepackaged prompts. The table below contains the current percentage of prepackaged prompts containing stimulus material categorized by genre and overall. MI is developing more prompts per grade with a higher percentage of them containing stimulus materials. MI shall provide those prompts to Utah Compose as they become available.
- d. Web pages and websites are both included as stimulus material for many of the prepackaged prompts on Utah Compose. Some of these materials are live on websites, and some are archived. Some stimulus material contains links to third-party websites maintained by others. These links are provided solely as a convenience to the users of the website and not as an endorsement by MI of the contents on such third-party websites. MI is not responsible for the content of linked third-party websites and does not make any representations on the content or accuracy of materials on such third-party websites.

USBE will be given the opportunity to review and approve all stimulus materials provided with the prompts supplied by MI.

10. Student Portfolios

Students can access their writing scores at any time using the Portfolio tab. The portfolio is a one-stop location where students can access, review and edit existing essays, and view holistic and characteristic scores, PEG's grammar and spelling suggestions, teacher sticky notes, teacher-student instant messages, and additional scores for textual evidence and/or content accuracy. Student portfolios can be saved as PDFs (Adobe PDF Converter required), or exported into a CSV spreadsheet.

Teachers also have access to student portfolios at any time from within the Reports tab. Teachers can utilize the portfolio to access the student's Score Reports for each prompt, including each submitted draft, completed graphic organizer, holistic and characteristic scores, and PEG's grammar and spelling suggestions.

11. Parent Access to Portfolio

Parents can access the Utah Compose electronic reporting system any time of day or night, seven days per week, from any supported computer with an Internet connection, using their child's unique and secure username and password.

12. Tools for Analyzing Longitudinal Growth

Because Utah Compose uses unique student identification numbers, student digital writing portfolios can be accessed across multiple years, allowing for longitudinal analysis of student learning and writing growth. A teacher can access both active and inactive courses that are associated with his/her account including any custom prompts that he/she created and class reports and student portfolios within the course. Teachers can also view how students have progressed in their writing skills over time through reports that organize both student and class, holistic and characteristic scores into monthly totals.

School administrators, LEA leaders, and state users can view data for each district, school, and class for each school year.

13. Teacher/Student Communication

Teachers can write a general message for students within the Score Reports for any draft. Students will subsequently be alerted upon logging in that a message has been received. In this way, teachers can engage in real-time, two-way communication with students about their writing, and a running record of the conversation is stored in the student writing portfolio. If the essay was scored by the teacher for content, accuracy or textual evidence, the scores for these areas are also displayed within the portfolio.

Teachers can also provide feedback within drafts by adding "electronic sticky note" messages for students.

14. Peer Reviews

The Digital Peer Review Feature in Utah Compose mirrors the peer review process commonly found in the classroom. Teachers can assign students to a group by using the randomizing tool or by selecting students for a custom group. Once assigned to a group, students can read and review each other's writing and provide the author of the written piece with constructive feedback on specific components.

15. Exemplars for Student Training

MI shall provide five sets of three exemplar essays for each of the three types of writing for a total of 15 different prompts and 45 essays. There are three argumentative, three informative/explanatory, and three narrative essays for grades 3–4, 5–6, 7–8, 9–10, and 11–12; plus constructed response example essays for grades 5-6, 7-8, and 9-10. The essays represent a range of holistic scoring, from low to high. Three examples of responses to the same prompt are offered; allowing students to see how they can build on their original drafts to increase their scores as they improve their skills.

16. Optional Instruction

a. Instructional Activities and Tools

Interactive writing lessons are available to students in Utah Compose. Lessons are aligned to the Utah Core Standards for Writing, organized by specific writing characteristic, and can be filtered by levels: beginner, intermediate, and advanced.

Behind the scenes, Utah Compose employs the analytic scores from PEG to identify areas in need of improvement and connects the individual student with specific interactive lessons. Grammar and passage exercises are also available through the Lessons tab for school and home use.

b. Instructions Accessible via Read-Aloud Capability

To better serve students who speak English as a second language or who may be reading on a lower grade level, read-aloud capability is available as a part of all Utah Compose lessons. Read-aloud capability is denoted by the inclusion of an icon in the lesson description.

The interactive lessons, passage exercises, and grammar exercises are also available to stakeholders within the Utah Compose program including teachers, students, and parents through the Lessons tab. To monitor progress and ensure full implementation of the program, users can view the amount of time spent on each interactive lesson via the Lesson Usage Report.

c. Using Lessons for Classroom Instruction

Teachers can access and utilize the interactive writing lessons in Utah Compose for classroom writing instruction. Using a Smart Board, teachers can project the interactive lesson and work through the activities with the students to provide additional small- or whole-group writing instruction on a specific writing skill.

17. Computer-Based Accessibility Tools

All accessibility tools listed below were included in the first release of Utah Compose. As the formative writing application continues to evolve, MI will keep USBE apprised of new, standard, and optional features for its consideration.

- a. **Increased font size** is enabled by using a toolbar button, included in all application pages (except lessons). Three font sizes are provided with the current release.
- b. **Color contrast display** is enabled by using a toolbar button, included in all application pages (except lessons). Three additional background colors are provided with the current release.
- c. **Text-to-Speech (directions, passage, stimulus material)** is enabled through the use of existing browser plug-ins and major third-party providers (MI will work with USBE to identify a preferred solution).
- d. **Text-to-Speech (graphical description)** can be enabled through the use of existing browser plug-ins and major third-party providers. MI will work with USBE to identify a preferred solution.
- e. **Tint Overlay** is enabled by using a toolbar button, included in all application pages of the Utah Compose website. A variety of overlay colors are provided with the current release.
- f. **Line Reader** is enabled by using a toolbar button, included in all application pages of the Utah Compose website.
- g. **Highlighter** is enabled for prompts when the mouse pointer is over the prompt text. Drag the highlighter to highlight text and click on the highlighted text to remove the highlight. Highlighted text will persist as the user moves to other areas of the application.
- h. **Refreshable braille/tactile with external embosser printer.** Can be compatible with third-party providers (e.g., Freedom Scientific “JAWS” with Microsoft OS). JAWS licensing is not included with Utah Compose.
- i. **Magnification** is enabled with keyboard controls (Control +/-, mouse wheel or “pinch zoom” on a tablet).

- j. **Speech-to-text** can be enabled through the use of third-party applications (e.g., Dragon Software “Naturally Speaking” for PC or Mac). Third-party licensing is not included with Utah Compose.
- k. **American Sign Language** – A provision has been made to allow Utah Compose administrators to add links to sign language videos in American Sign Language describing content within prompts, passages, directions, and stimulus material. The supported format is mp4, and Utah Compose will resize any uploaded video to a fixed size compatible with the page.

C. Administration

Due to changing technology requirements, MI shall submit annually for USBE approval revisions to all subsections of this section C, including, for example, supported configurations (hardware, software, networks) and technology specifications and requirements.

1. User Credentials

MI will work with USBE to define user roles and establish the protocols for credential generation and distribution. MI shall integrate Utah Compose with existing Utah systems such as CACTUS, UTREx, and a web service to automate as much of the rostering and registration process as possible, reducing the time demands on teachers and LEA users.

Utah Compose has a hierarchical system of access, based on user ID and password. In general, user credentials will be distributed via email. The system will prompt users to reset their passwords when they log into the Utah Compose website for the first time to ensure future secure access.

2. USBE Users

USBE “State Administrator” user IDs and passwords will be created for designated USBE users as required and distributed via MI’s secure web portal. Users will be able to change their passwords at any time, and a secure password recovery mechanism will be available. USBE users will have read access to all LEA and school summary data.

3. LEA Users (Assessment Directors)

LEA users will be assigned user IDs and passwords based on the LEA contact list supplied by USBE. Users will be able to log in to their accounts to change their passwords at any time. A secure password recovery mechanism will also be available.

4. School Administrators

School administrator accounts will be created for each of the schools in the Utah system. This information will be provided to the Assessment Directors for distribution to the schools.

5. Teachers

When accessing the system for the first time, teachers will complete the registration page and log in using their CACTUS ID with a "T" prefix (User ID and password) e.g., T1234. MI will make this a requirement for teacher registration. Teachers with no CACTUS ID will need to obtain one from CACTUS to activate an account. Teachers will be associated with their courses and students imported via the UTREx files. A web service is used to verify educator basic information and their LEA school data, where the educator has active assignments. The first call to the web service verifies the teacher's information from the registration page. The second call to the web service returns the school information for that teacher. The USBE reserves the right to make immediate changes to this processes described in this section, with written notice to MI, based on changes or updates to USBE policies, procedures, and/or programmatic needs.

6. Parents

Parents will use their student's secure student account to access Utah Compose. They will have access to the same reports and information as their student.

7. Students

The UTREx student extract file contains the student SSID which will be 10 digits in length. SSIDs in UTREx with less than ten digits will be right-justified and padded with zeroes. The student extract file will be downloaded each evening so that any student changes/additions can be captured.

When accessing the system for the first time, students will enter their SSID (User ID and password) and include leading zeroes if their SSID is less than ten digits, e.g., 0001234567. If students omit leading zeroes, they will receive a "login incorrect" message. User IDs and passwords can be viewed by teachers in Utah Compose if students require assistance. The USBE reserves the right to make immediate changes to this processes described in this section, with written notice to MI, based on changes or updates to USBE policies, procedures, and/or programmatic needs.

8. Student Roster Management

MI shall use an automated method for managing state and LEA-wide student rosters, using data from nightly downloads of UTREx class and student extract files.

9. Creating Courses

The UTREx class file will be imported nightly into Utah Compose. Once a course has been created, teachers can assign prompts to the course as required and set parameters such as number of retries, peer scoring, and response timer.

10. Assigning Students to Courses (Registration)

Any students not assigned to a course but registered in Utah Compose can be added manually using the Register Existing feature. Manually-added student accounts will be merged with future UTREx data uploads. The UTREx student file contains SSID data, and the students can be associated with the courses and teachers in the UTREx class file.

11. Developing Support Materials

MI will continue to maintain the support materials for Utah Compose, in the Help Center for each role. Support materials will be made available for USBE review and approval in advance of test administration.

12. Technical Requirements

MI shall notify any updates of these specifications for USBE by September 1 each year.

All Utah computers should support web browsing. MI recommends systems with a minimum of 1 GHz processor speeds and 1GB of RAM. Recommended browser versions are listed below:

Technical Specifications required for operating Utah Compose

1. Operating System: Windows 7 or later, Mac OS X 10.9 or later, Ubuntu 12.04 or later, Chromebook 48 or later, iOS 9 or later, and Android 4.4 or later.
2. Browser (some accessibility features do not work in older browsers): Google Chrome, Firefox, Edge, Internet Explorer 11, Safari (Mac only).
3. Screen: Resolution must be at least 1024x768
4. Firewall Configuration: Firewall and Content Filters must be configured to allow users to access write.utahcompose.com
5. Cookies: Browser must be configured to accept cookies.
6. Add-ons and Plug-ins: JavaScripts

Table 1. Network Requirements

Category	Specification	Description
Bandwidth	High-speed (Broadband) connection is recommended (i.e., Cable, DSL, Wireless). 115 kbps per student	Bandwidth requirements may increase based on the number of students and size of test administration.
Firewalls	Port 80 and 443 must be open.	Port 80 and 443 are used to establish a connection and are used during the test. Web services are used for communication between the client and server during testing and proctoring.

13. Help Desk Support

Live-customer help desk support is available Monday through Friday, 8:00 AM to 5:00 PM. EST through a dedicated toll-free phone line (866 691-1231) or email (support@utahcompose.com).

The call center staff will be fully trained and qualified to answer project-related queries concerning registration, scoring, reporting, and technical issues. The staff will have a thorough understanding of the login procedures, security requirements, web systems, application processes, and problem/resolution processes.

Escalation Process

In the event a customer issue requires escalation the path is as follows:

- a. The call center manager will be advised if a solution (acceptable to the customer) cannot be found after exhausting call center resolution methods.
- b. The MI Project Manager (MI PM) for Utah Compose will be advised if the call center manager cannot resolve the issue. The MI PM will use all available MI resources (development, quality, systems engineering) to reach a swift and satisfactory closure. The PM will also ensure that all parties involved (customer and MI) are advised of the outcome and that the customer accepts the resolution.

The MI oversight executive will be advised of any issues that require additional corporate resources.

As part of the Help link in Utah Compose, users can find a list of frequently asked questions (FAQs). The FAQ list includes common questions and answers about topics such as creating accounts, managing courses, understanding PEG scoring, and meeting technology requirements.

14. Annual Project Plan

The project plan includes the following:

- a. The project organizational structure complete with roles and responsibilities
- b. A staffing list with names, titles, and contact information for personnel assigned to the project. As necessary, MI will work with USBE to resolve staffing difficulties, including reassignment of MI staff assigned to this project when other solutions are unworkable from USBE's perspective
- c. A detailed breakdown of sub-projects, activities, and tasks and the resources allocated to them
- d. A graphical timeline of the project detailing events, deadlines, deliverables, and decision points
- e. Any changes will be noted and updated in the scope document and will be submitted for USBE approval.

D. Training

MI shall prepare and provide annually for USBE a training and professional development plan including topics and formats approved by USBE in a format similar to the one illustrated below:

Table 2. Sample Training Schedule

Time-Frame	Title	Level*	Duration	Format
September	Basic User Training for Teachers	1	60 min	Video (Web)
	Basic User Training for School Administrators	1	60 min	Video (Web)
	Basic User Training for LEA Administrators	1	60 min	Video (Web)
Oct & Nov	Advanced User Training	2		Webinars/Support Documents

Time-Frame	Title	Level*	Duration	Format
	for Teachers			
	Advanced User Training for School Administrators	2		Webinars/Support Documents
	Advanced User Training for LEA Administrators	2		Webinars/Support Documents
Dec & Jan	Data Analysis for School Leaders	2		Webinars/Support Documents
	Data Analysis for LEA Leaders	2		Webinars/Support Documents
	Data Analysis for State Leaders	2		Webinars/Support Documents
Feb & Mar	Creating Performance Tasks in Utah Compose	3	45 min	Video (web)
Conferences in Utah	Live Demonstration and Troubleshooting	3	45 min	On-site UCET UEA UAPCS
Monthly (Sept-May)	Utah Compose Tools and Tips	3	Ongoing	Support Site Resources

Professional Development Levels

- a. **Level 1 PD Sessions = Strongly recommended*** for all teachers using Utah Compose. The one-hour video will introduce teachers to Utah Compose and show teachers how to use the program including how to log in, manage courses and student accounts, access prompts and lessons, and view reports.

*based on the discretion of the USBE

- b. **Level 2 PD Sessions = Recommended** for all teachers using Utah Compose. The one-hour webinar allows teachers who have been introduced to the program and have had some time to use the system in their classrooms to see more advanced features and ask questions that they may have based on their initial experiences using the program.
- c. **Level 3 PD Sessions = Optional** for teachers using Utah Compose who are interested in learning different ways to incorporate the program into their classroom. Using actual teacher experiences, participants can learn how to use Utah Compose to create, deliver, and assess performance tasks and other helpful tips from their peers.

The following workshops are available in video format, allowing Utah Compose users to select the delivery method for professional development that best meets their needs.

1. Utah Compose Basics

Teachers, school administrators, and LEA leaders will receive a brief overview of Utah Compose including the purpose, mission, and goals of the program in Utah. Participants will follow along with the video and learn how to get started with Utah Compose. At the end of the session, participants will be able to log in to their accounts, access the prepackaged prompts, create teacher prompts, navigate through the program as students, and view and interpret the Score Report as well as other basic reports.

2. Utah Compose Advanced Tools

Once teachers have experienced the basic functionality of Utah Compose with their students in the classroom, they are ready for the next level of user training: Advanced Tools. During this session, teachers will learn how to customize their writing prompts using advanced options such as the writing timer, essay retries, and grammar/spelling feedback settings. Teachers will also learn how to create and share prompts and courses to maximize collaboration and to support differentiation.

3. Utah Compose Data Analysis

Participants will learn how to access school, class, and student performance data across six characteristics of writing and the Utah Core Standards for Writing through a variety of reports. Strategies for analyzing score reports on writing characteristics, textual evidence, and content accuracy as well as efficient methods for monitoring program usage will be provided.

4. Utah Compose Performance Task Development

In this session, the Utah Compose team will demonstrate how to develop interdisciplinary performance tasks that measure Utah Core Standards for Writing and content area proficiency. Emphasis will be placed on the creation of authentic tasks that

require students to research topics from informational text and multimedia resources and then synthesize ideas into a coherent, high-quality writing product.

5. Additional Offerings

- a. In addition to the above workshops, the Utah Compose client support team creates monthly resources called “Tools and Tips,” highlighting specific features and tools within the program. These brief, informative articles demonstrate how to use some of the most powerful tools for teaching and assessing writing using Utah Compose, such as peer review, performance tasks, and embedded communication tools.
- b. The Utah Compose client support team will be available for face-to-face demonstrations and troubleshooting at three major Utah education conferences per year. During these visits, educators will have the opportunity to ask the team members questions, request demonstrations, and discuss best practices for using Utah Compose to improve writing. Team members will build in time during these three visits to honor requests for on-site training if requested in advance and as time allows.

E. Reporting

Electronic reporting is available in Utah Compose for all levels of users, including students, parents, teachers, school administrators, LEA leaders, and state personnel. Users can view usage, performance, progress, and prompt reports any time of day or night, 24 hours a day, seven days a week, from any supported computer with an Internet connection. Users can employ the Portfolio/Reports tab to access and view scores on six characteristics of writing and the Utah Core Standards for Writing. Instant access to this information can help all levels of users to determine better how students are progressing with their writing skills and better support their development in this important area.

Data analysis professional development workshops can be provided by our Utah Compose client support team to help educators utilize the score reports to drive instructional decision-making and improvement.

By June 30th each year, M.I. shall provide USBE with a program effectiveness report for presentation to USBE leadership. The purpose of this report is to show usage, performance, and progress from students using Utah Compose, and will include: usage broken down by district, school and grade level by course; annual progress displaying the average total scores by month, district, and school; performance in average scores for each writing characteristic and total score by district and school.

F. Timeline for Delivery

MI’s schedule acknowledges that:

1. The traditional school year begins in mid-August and that the statewide school year begins July 1st and ends June 30th. The USBE anticipates that students will continue using the System for the next five to ten years, a readiness date that MI is prepared to meet.
2. USBE anticipates—and MI assures—that the system will be operational from the first day of each school year.
3. MI will work closely with USBE, LEAs, and schools to ensure rosters are uploaded, user credentials are assigned, courses are uploaded, and students uploaded to the courses. USBE will deliver updated school lists prior to the beginning of each school year promptly.

G. MI Deliverables

Table 3. Timeline of Deliverables

Item	Planned start date	Planned completion date	Prime
Prepackaged prompts	Ongoing	Ongoing	Jordan Garnett, Evelyn Runberg
Project Plan	Annual	Annual	Evelyn Runberg
Program Effectiveness Report	Annual	Annual	Evelyn Runberg
Technical Support	Ongoing	Ongoing	Evelyn Runberg, MI Call Center
Review prompts	Ongoing	Ongoing	USBE
Student Support Site	Ongoing	Ongoing	Evelyn Runberg
Teacher Support Site	Ongoing	Ongoing	Evelyn Runberg
Administrator Support Site	Ongoing	Ongoing	Evelyn Runberg
Nightly Import Roster Maintenance	Ongoing	Ongoing	Evelyn Runberg
Utah Compose Site Maintenance	Ongoing	Ongoing	MaryBeth Crissman
Utah Compose Bug Fixes	Ongoing	Ongoing	MaryBeth Crissman

Basic Online User Training	Conference Dates		Evelyn Runberg
Advanced Tool Training	Upon Request		Evelyn Runberg
Admin User Access	Ongoing	Ongoing	Evelyn Runberg
PEG Scoring Maintenance	Ongoing	Ongoing	Evelyn Runberg
PEG Scoring Enhancements – New Scoring Models	TBA/2017-18		Evelyn Runberg

H. Additional Terms and Conditions

In addition to the standard terms and conditions as prescribed by Utah law, the following terms and conditions will apply to this contract.

1. Subcontractors. Contractor shall seek and receive USBE approval in advance of any contracts it intends to establish with subcontractors involved in delivering goods or services related to this project.
2. Constructive changes. Contractor shall provide written notice to USBE if it believes USBE has directed it to perform an out-of-scope change or agreed to a compensatory or out-of-scope change. This written notice must be given within ten (10) days and prior to performance of the work by the contractor. The contractor shall not proceed with additional out-of-scope work without the written consent of USBE and a concomitant contract and budget amendment executed in accordance with the State Standard Terms and Conditions.
3. Liquidated damages. In all areas described in subparts a-d below, Contractor shall be liable for liquidated damages unless it can show USBE's actions, or any other cause outside of Contractor's control, were a significant cause of the breach, delay, non-performance, or interruption; where liability can be apportioned, the contractor shall remain liable for its portion thereof.
 - a. Data Security. Contractor acknowledges that USBE is the authorized steward of all student data and student responses. It is understood and agreed by Contractor that security of student level data must be maintained at all times. Contractor will protect personally identifiable information student data in accordance with the State Standard Terms and Conditions, including Attachment B, and will at all times comply with the Family Educational Rights and Privacy Act (FERPA). Contractor has a duty to self-report to USBE within 24 hours all actual and suspected data breaches of which it becomes aware.

Further, should a breach of security result from negligence on the part of Contractor, USBE will (1) charge Contractor \$1,000 per student per breach, not as a penalty but as liquidated damages; and (2) require Contractor to purchase, at its own expense, credit monitoring services for all affected parties in the event of a breach.

- b. Service Interruptions. A service interruption is defined as (1) a failure on the part of the Contractor to provide access for students to begin or complete a test available through the on-line assessment system during regularly scheduled school hours, including delay of the first and subsequent assessment administrations, or (2) the failure on the part of the Contractor to provide access to USBE, LEA, or school personnel to perform administrative functions of the assessment system at any time, with the exception of pre-approved maintenance windows. Service interruptions also include access that is made unavailable due to the Contractor's failure to receive and accept data transfers from USBE and LEAs as set forth in the contract.

For each service interruption which prevents one or more students from taking a test for more than ten minutes, and up to 60 minutes, USBE will charge Contractor \$10,000 per incident, not as a penalty, but as liquidated damages. Damages for a service interruption greater than 60 minutes will be prorated based on the actual duration of the interruption at a rate equivalent to \$10,000 per hour. Total damages for service interruptions to students on any given day will not exceed \$50,000.

Liquidated damages of \$5,000 per day will also be assessed for each service interruption that prevents USBE, LEA, or school personnel from accessing administrative functions for more than four hours.

Excluded Events: The occurrence of the following events is excluded from the definition of a service interruption:

- i. Scheduled Maintenance: Planned downtime, which shall be any period for which Contractor gives 48 or more hours' notice to USBE and system users that the assessment system will be unavailable. Notice shall be given via email and phone to the contacts identified by USBE.
 - ii. Force Majeure Events: Circumstances described in Section 29 of Attachment A: State Standard Terms and Conditions.
- c. Item Security. It is understood and agreed by the Contractor that security of test items and forms must be maintained at all times. Contractor has a duty to self-report to USBE within 24 hours all actual and suspected item security

breaches of it which it becomes aware. Further, should a breach of item security, affecting items owned by USBE, resulting from negligence on the part of the Contractor occur, USBE will charge Contractor \$3,000 per item, not as a penalty but as liquidated damages.

- d. Data Delivery. It is understood and agreed by Contractor that delivery of assessment data used or usable for state and/or federal accountability purposes must be delivered according to the annually agreed-upon schedule and format. Should a breach of the data delivery timeline resulting from negligence on the part of Contractor occur, USBE will charge Contractor \$40,000 per day, not as a penalty but as liquidated damages.
4. Work made for hire. Contractor agrees that all data and original work products (collectively called the "work product") produced and paid for pursuant to any contract specifically for USBE are the property of USBE and shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq. and shall be owned by USBE. This excludes any pre-existing products, items, materials, or content owned by Contractor or subcontractors and any modifications or derivatives thereto provided to USBE pursuant to the contract.

I. Resources/Project Management

Executive Oversight: MaryBeth Crissman, M.A., Director of PEG Products

Project Management: Evelyn Runberg, B.A., Senior Technical Project Manager

Support Staff:

- Katie Dugan, Senior Manager, Online Formative Assessment
- Thomas Davis, Technical Lead, Artificial Intelligence
- Julie St. John, Ph.D., PEG Scoring
- Jordan Garnett, Content Manager
- Christine Pirrello, Professional Development and Education Manager

J. Invoicing

Contractor shall submit invoices via e-mail to USBE at invoices@schools.utah.gov with a copy to the USBE program manager. Invoices submitted via hard copy or other delivery method will not be considered for payment.

Invoices must include the following:

- a. Contractor name;

- b. Contract number;
- c. Uniquely identifiable invoice number;
- d. Invoice date;
- e. USBE representative contact information (phone number and email address);
- f. Description of specific deliverable for which payment is being requested;
- g. Date(s) deliverable was provided or completed; and
- h. Dollar amount requested.

Invoices submitted by Contractor to USBE without the required information will not be paid and will be returned to the Contractor for correction. USBE reserves the right to question or seek clarification for any cost invoiced if the invoice is not supported by proper documentation.

All payments made to the Contractor under this contract shall be made in the name of the Contractor and to the Contractor's address as they appear in this contract. Changes to the information identified in this section must be requested in writing.

Contractor may be required to repay USBE if, during or after the contract period, an audit or other review determines that payments made by USBE to Contractor were incorrectly paid or were based on incorrect information received from the Contractor. USBE reserves the right to withhold any or all subsequent payment to the Contractor until any incorrect amounts paid have been fully recovered.

Contractor shall be wholly responsible for all expenses incurred in relation to Contractor's travel, if any. USBE shall not be invoiced for any travel expense; invoices with travel-related expenses shall be returned to Contractor unpaid.

USBE will not pay for travel time.

ATTACHMENT D: CONTRACT BUDGET

ITEM		YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
1	Cost of unlimited access to, and unlimited drafts submitted within, the on-line writing assessment system for all students in grades 3 through 12.	\$ 519,163.00	\$ 511,610.00	\$ 514,287.00	\$ 529,716.00	\$ 545,607.00	\$ 578,343.00	\$ 613,044.00	\$ 649,827.00	\$ 688,817.00	\$ 730,146.00
GRAND TOTAL:		\$ 5,880,560.00									

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