

WIDA Consortium Memorandum of Understanding Massachusetts Contract Renewal for 2021–2022

This memorandum of understanding (MOU) is between the Massachusetts Department of Elementary and Secondary Education (“MASSACHUSETTS”) and the Board of Regents of the University of Wisconsin System, on behalf of the University of Wisconsin-Madison’s Wisconsin Center for Education Research (WCER).

WCER is the organizational home of the WIDA Consortium (“WIDA”), a multi-state coalition of state educational agencies (SEAs) that acts in collaboration to research, design and implement a standards-based educational system that promotes equitable educational opportunities for English learners in pre-kindergarten through grade twelve. The WIDA English Language Development Standards form the base of this system. The WIDA English Language Development Standards include the four recognized domains of speaking, listening, reading, and writing, and are based on the academic language content of PreK-12 students. SEAs join the WIDA Consortium to obtain the WIDA Consortium Core Package for use by SEAs and local educational agencies (LEAs) within each of their states (see Schedule D, WIDA Consortium Board for definition of “Core Package”).

Title I and Title III of the Federal Elementary and Secondary Education Act (currently enacted as The Every Student Succeeds Act of 2015 or “ESSA”) establish Federally-supported education programs and activities related to English language instruction, acquisition and achievement; require local educational agencies and institutions to evaluate and report the biennial progress made by English learners; and require SEAs to develop accountability models for English learners that relate to these children’s development and attainment of English proficiency while meeting challenging State academic content and student academic achievement standards.

WCER offers an annual academic assessment of English proficiency as part of the Core Package, on behalf of WIDA, under the brand name ACCESS for ELLs. ACCESS for ELLs is designed to assess the progress of students in attaining English proficiency, including students’ level of comprehension in the four recognized domains of speaking, listening, reading, and writing. ACCESS for ELLs is aligned with the WIDA English Language Development Standards.

MASSACHUSETTS has adopted ACCESS for ELLs for its plan to meet MASSACHUSETTS and Massachusetts’ LEAs’ Title I and III requirements.

MASSACHUSETTS wishes to become a WIDA Consortium member in order to access the Core Package, including the annual administration of ACCESS for ELLs and related services of WCER and WIDA, as holder of the intellectual property rights to the Core Package and having obtained a vendor to provide the operational administration of ACCESS for ELLs, wishes to provide MASSACHUSETTS with the intellectual property licenses, assessment administration and related services of the Core Package.

The Parties therefore agree as follows:

TERM

The terms set forth within this MOU are hereby in effect from the effective date of this MOU **through June 30, 2022**. The option exists for one additional renewal year beyond this date upon mutual agreement of the parties.

MASSACHUSETTS WIDA CONSORTIUM MEMBERSHIP

MASSACHUSETTS shall be a WIDA Consortium Member as a result of approving/adopting (and purchasing) the ACCESS for ELLs assessment for purposes consistent with this MOU. Consequently, MASSACHUSETTS is entitled to one seat on the WIDA Consortium Board and to participate in WIDA Consortium Board activities. The operation and expectations of the WIDA Consortium Board is set forth in Schedule D–WIDA Consortium Board.

LEA PROCUREMENT OF RELATED SERVICES

Where applicable, any LEA subject to MASSACHUSETTS oversight shall be entitled to the same rights and benefits granted to MASSACHUSETTS in this MOU. WCER will offer any LEA in Massachusetts services related to the use and implementation of the Core Package (“WIDA Services”) under the same or similar terms of this MOU. Because of the expense and time associated with negotiating a contract with every LEA for the provision of WIDA Services is cost prohibitive, WCER will only negotiate contracts with LEAs in very limited circumstances. WCER or its subcontractors shall, however, accept any purchase order from an LEA in Massachusetts under the condition that the LEA is joining the terms of procurement stated in this MOU. LEA and WCER may change the scope of work, program terms and payment terms as mutually agreed. LEA, by joining the terms of procurement in this MOU shall expressly agree that the terms of this MOU shall supersede any conflicting terms that LEA may attach or incorporate to any contract or purchase order that it issues in relation to the provision of WIDA Services. The terms of this MOU shall take precedence in any purchase order/contract document hierarchy between the parties. Any new terms provided by LEA not addressed in this MOU shall not be accepted by WCER, unless and until affirmed by written initials and date of authorized WCER representative. An LEA may add the following statement to its purchase order/contract to join the terms of procurement in this MOU by reference: “WCER shall provide WIDA Services in accordance with the terms negotiated by the Massachusetts Department of Elementary and Secondary Education in its WIDA Consortium Memorandum of Understanding.”

STATEMENT AND PERFORMANCE OF WORK, INVOICE AND PAYMENT

For satisfactory performance of the services described in the attached Schedule A–Statement and Performance of Work, MASSACHUSETTS shall pay WCER the compensation provided for in Schedule B–Invoice and Payment.

MASSACHUSETTS acknowledges that the performance of work requires accurate submissions of data files by LEAs and/or MASSACHUSETTS. If an LEA and/or MASSACHUSETTS submits a data file or student information containing errors or omissions that require additional work/cost in order to proceed with the administration of an assessment under this agreement, then the parties shall mutually determine to take one of the following courses of action:

1. The LEA and/or MASSACHUSETTS shall correct the data file or student information; or
2. The LEA and/or MASSACHUSETTS shall request WCER to correct the data file or student information, where MASSACHUSETTS shall pay the cost incurred by WCER to correct the data file or student information.

WCER shall have no obligation to provide test administration services to an LEA and/or MASSACHUSETTS if the parties cannot mutually determine a course of action to remedy the LEA and/or MASSACHUSETTS errors/omissions.

ASSESSMENT PROCEDURES AND SEA OBLIGATIONS

MASSACHUSETTS shall establish and implement or cause LEAs to implement, consistent with this MOU, the necessary procedures and policies to administer the annual ACCESS for ELLs assessment in Massachusetts, including policies and procedures to maintain the security and secure nature of the ACCESS for ELLs assessment within Massachusetts. MASSACHUSETTS acknowledges that timely administration of ACCESS for ELLs requires adherence to administration procedures by LEA personnel. MASSACHUSETTS shall cooperate and provide assistance to WCER in any dispute that it may have with a LEA in Massachusetts related to the provision of services under this MOU.

SUBCONTRACTORS

MASSACHUSETTS acknowledges that only subcontractors of WCER that directly provide services to MASSACHUSETTS, as part of the Core Package, are covered by the provisions of this MOU. WCER shall obtain all subcontractors in accordance with State of Wisconsin and University of Wisconsin procurement laws and rules. In light of the preceding, MASSACHUSETTS further acknowledges that due to the multistate nature of the WIDA Consortium, i.e. WCER providing the same services to multiple states, it is not practical or economically feasible to require WCER's subcontractors to meet each of the WIDA Consortium member state's specific subcontractor requirements. Any specific requirements that MASSACHUSETTS may place on WCER's subcontractors that goes beyond State of Wisconsin and University of Wisconsin procurement laws and rules may result in additional costs to MASSACHUSETTS.

MASSACHUSETTS acknowledges that WCER will obtain a vendor and has selected Data Recognition Corporation to provide the annual printing, distribution, scoring and reporting (the "PDSR Contractor" or "DRC") of the ACCESS for ELLs assessments. WCER obtained the PDSR Contractor through an open competitive bidding process, proposal no.15-5335, Amendment no. 2 (the "PDSR Contractor RFP").

INTELLECTUAL PROPERTY OWNERSHIP AND LICENSE

WCER and the Board of Regents of the University of Wisconsin System, on behalf of the WIDA Consortium, own the copyrights of all works covered under this agreement (collectively the “WIDA Works”). This agreement does not convey any exclusive rights, title or interest in or to the WIDA Works to MASSACHUSETTS. Because WCER makes these materials available to all WIDA Consortium members, MASSACHUSETTS shall not take any actions that would limit or restrict access to the materials by other states or otherwise adversely affect the proprietary nature of the WIDA Works.

Unless otherwise expressed in writing, MASSACHUSETTS shall retain all rights in training and other materials developed by MASSACHUSETTS. Any specific works that WCER develops and delivers solely for MASSACHUSETTS shall be expressly agreed upon in writing and shall be on a work made for hire basis with MASSACHUSETTS retaining ownership of the works.

The WIDA Works includes the following:

1. ACCESS for ELLs English language proficiency test (“ACCESS for ELLs”), including online and paper-based versions and Alternate ACCESS for ELLs;
2. WIDA English language proficiency placement test (the “WIDA Screener”), including both paper-based and online versions as they are developed and the Kindergarten W-APT and Kindergarten Screener;
3. WIDA English Language Development Standards and Resource Guide (“WIDA ELD Standards”), including Essential Actions, WIDA Can Do Descriptors by grade level cluster, individual figures, tables and charts from the Resource Guide and future ELD Standards, Can Do Descriptors and Resource Guide editions;
4. WIDA Early English Language Development Standards; WIDA Early Spanish Language Development Standards, in Spanish and English; WIDA Spanish Language Development Standards; and WIDA Spanish Language Arts Standards (collectively, “WIDA Language Standards”);
5. WIDA Facilitator Toolkit (“WIDA Facilitator Toolkit”) or other comparable resource, including ACCESS for ELLs administration and WIDA ELD Standards training materials;
6. WIDA Consortium professional learning materials (“WIDA PL Materials”); and
7. ACCESS for ELLs technical documents and research reports.

For the purposes of this agreement, WIDA Works does not include WIDA Early Years assessments, WIDA Early Years professional learning and training materials, WIDA Early Years family engagement materials and standards correspondence. Use of those WIDA Early Years works are covered under a separate agreement with WCER and are subject to additional fees and terms.

WCER hereby grants MASSACHUSETTS the right to use the WIDA Works for Massachusetts educational purposes within Massachusetts and subject to the following conditions:

MASSACHUSETTS license to use the ACCESS for ELLs is subject to the payment of the required fees set forth in Schedule B—Invoice and Payment of this MOU and shall remain in effect as long as MASSACHUSETTS elects to use the ACCESS for ELLs for Massachusetts educational purposes. MASSACHUSETTS acknowledges that ACCESS for ELLs is a secure test, as that term is defined in 37 C.F.R. § 202.20(b)(4). MASSACHUSETTS shall implement statewide policies and procedures to ensure that the security of the test is maintained. MASSACHUSETTS shall immediately notify WCER if it learns of any breach or threatened breach of test security. WCER will print and distribute the ACCESS for ELLs for MASSACHUSETTS in accordance with the Statement and Performance of Work schedule of this MOU. The ACCESS for ELLs shall not be copied, modified, distributed or displayed, including electronic storage or retrieval, in any manner without express written permission from WCER and the appropriate security measures in place.

MASSACHUSETTS' license to use the WIDA Screener Online grades 1-12, the Kindergarten W-APT, and the Kindergarten Screener is not subject to any fee, as long as MASSACHUSETTS elects to use the ACCESS for ELLs. MASSACHUSETTS, LEAs, and individual schools in Massachusetts, including educational collaborative and approved private special education schools within and outside Massachusetts that serve publicly funded Massachusetts students, may print and duplicate the appropriate downloadable, WIDA Screener consumable forms for use by LEA or school staff as needed. WIDA Screener materials and resources shall not be modified or publicly displayed, including electronic storage or retrieval, in any manner without express written permission from WCER. WCER shall provide, as long as this contract is in effect, a version of the WIDA Screener Online that is not subject to any fee.

MASSACHUSETTS' license to use the Kindergarten W-APT is not subject to any fee and shall remain in effect as long as MASSACHUSETTS elects to use the ACCESS for ELLs. Kindergarten W-APT is a semi-secure test, meaning it is made available from a password-protected secure website. WCER will make Kindergarten W-APT available electronically in PDF format. MASSACHUSETTS, LEAs and individual schools in Massachusetts, including educational collaborative and approved private special education schools within and outside Massachusetts that serve publicly funded Massachusetts students, may print and duplicate the Kindergarten W-APT and Kindergarten Screener for use by LEA or school staff as needed. The Kindergarten W-APT and Kindergarten Screener shall not be modified or publicly displayed, including electronic storage or retrieval, in any manner without express written permission from WCER. Notwithstanding the foregoing, WCER may phase out all support for the Kindergarten W-APT if/when it introduces a new version of the WIDA Screener for Kindergarten. WCER shall provide, as long as this contract is in effect, a version of the WIDA Screener for Kindergarten that is not subject to any fee.

MASSACHUSETTS' license to use the WIDA ELD Standards is not subject to any fee and shall remain in effect as long as MASSACHUSETTS and/or the Massachusetts Board of Elementary and Secondary Education elects to use the WIDA ELD Standards as the State's English language development Standards. WCER will make the WIDA ELD Standards available electronically in PDF format from the WIDA Consortium website. WCER will publicly display and provide the WIDA ELD Standards for download free of charge for personal and educational purposes. Educational purposes shall include LEA and individual school/teacher use within the State of Massachusetts, including educational collaborative and approved private special education schools within and outside of Massachusetts that serve publicly funded Massachusetts students. This license does not include the right for MASSACHUSETTS or any LEA within the State of

Massachusetts to copy and distribute the WIDA ELD Standards beyond de minimis use (de minimis use is less than 100 copies per event, however, making copies for multiple planned events is not de minimis use). WCER will publish or license to publish full color bound copies of the WIDA ELD Standards and make available to MASSACHUSETTS, LEAs and other educators within the State of Massachusetts at a lower WIDA Consortium member rate. The WIDA ELD Standards shall not be modified or publicly displayed for electronic storage and retrieval in any manner without express written permission from WCER. However, linking to the WIDA Consortium website and stating the free availability of the WIDA ELD Standards is encouraged. WCER will grant additional permissions upon request but MASSACHUSETTS acknowledges that WCER may include additional reasonable restrictions for quality control purposes depending on the nature of the request.

MASSACHUSETTS' license to use the WIDA Language Standards is not subject to any fee and shall remain in effect as long as MASSACHUSETTS and/or the Massachusetts Board of Elementary and Secondary Education elects to use the WIDA Language Standards as the State's language standards. For purpose of this license, MASSACHUSETTS shall include any governmental agency of the State of Massachusetts. WCER will make the WIDA Language Standards available electronically in PDF format from the WIDA Consortium website. WCER will publicly display and provide the WIDA Language Standards for download free of charge for personal and educational purposes. Educational purposes shall include the following: LEA, individual school/teacher, non-profit agency use within the State of Massachusetts. This license does not include the right for MASSACHUSETTS, LEAs or non-profit agencies within the State of Massachusetts to copy and distribute the WIDA Language Standards beyond de minimis use (de minimis use is less than 100 copies per event, however, making copies for multiple planned events is not de minimis use). WCER will publish or license to publish full color bound copies of the WIDA Language Standards and make available to MASSACHUSETTS, LEAs, non-profits and other educators within the State of Massachusetts at a lower WIDA Consortium member rate. The WIDA Language Standards shall not be modified or publicly displayed for electronic storage and retrieval in any manner without express written permission from WCER or except in accordance with published guidelines issued by WIDA. However, linking to the WIDA Consortium website and stating the free availability of the WIDA Language Standards is encouraged. WCER will grant additional permissions upon request but MASSACHUSETTS acknowledges that WCER may include additional reasonable restrictions for quality control purposes depending on the nature of the request.

MASSACHUSETTS' license to use the WIDA Facilitator Toolkit is not subject to any fee and shall remain in effect as long as MASSACHUSETTS elects to use the ACCESS for ELLs. WCER will make the WIDA Facilitator Toolkit or a comparable resource available electronically from the password-protected section of the WIDA Consortium website. MASSACHUSETTS and Massachusetts' LEAs, including educational collaboratives and approved private special education schools within and outside Massachusetts that serve publicly funded Massachusetts students, may use the WIDA Facilitator Toolkit and its individual components for MASSACHUSETTS and LEA in-service training purposes. MASSACHUSETTS and LEAs may modify individual components of the WIDA Facilitator Toolkit only in accordance with WCER provided user guidelines. MASSACHUSETTS and LEAs shall not publicly distribute or display, including electronic storage or retrieval, any training materials from the WIDA Facilitator Toolkit, unless specifically permitted by WCER user guidelines or WCER.

MASSACHUSETTS' license to use the WIDA PL Materials is not subject to any fee and shall remain in effect as long as MASSACHUSETTS elects to use the WIDA ELD Standards. WCER will make the WIDA PL Materials available electronically to MASSACHUSETTS prior to any professional learning. MASSACHUSETTS will be responsible for copying and distributing WIDA PL Materials to participants of MASSACHUSETTS sponsored professional learning offerings. The WIDA PL Materials shall not be modified or publicly displayed for electronic storage and retrieval in any manner without express written permission from WCER.

MASSACHUSETTS' license to use the ACCESS for ELLs technical documents and research reports is not subject to any fee and shall remain in effect as long as MASSACHUSETTS elects to use the ACCESS for ELLs. WCER will make the ACCESS for ELLs technical documents and research reports available electronically to MASSACHUSETTS from the public area of the WIDA Consortium website. All confidential and proprietary information will be removed from the ACCESS for ELLs technical documents and research reports that are posted in the public area of the WIDA Consortium website. MASSACHUSETTS will receive an individual electronic copy of all ACCESS for ELLs technical documents and research reports, including those documents and reports containing confidential and proprietary information. The ACCESS for ELLs technical documents and research reports shall not be modified and no documents or reports containing confidential and proprietary information shall be publicly displayed, including electronic storage and retrieval in any manner.

MASSACHUSETTS shall remove as soon as practicable any WIDA Works that it publicly displays, including electronic storage and retrieval systems, that WCER determines, in its sole discretion, contain confidential or proprietary information.

WIDA, the WIDA Consortium logo, WIDA MODEL and ACCESS for ELLs are trademarks of the Board of Regents of the University of Wisconsin System (collectively the "WIDA Trademarks"). Any use of the WIDA Trademarks shall inure to the benefit of WCER. MASSACHUSETTS acknowledges that WCER may, from time-to-time, issue trademark and copyright use guidelines and policies in order to maintain the proper use and integrity of the WIDA Trademarks and WIDA Works and the quality of WCER services and products. Current WIDA guidelines will be posted on the WIDA website or provided to MASSACHUSETTS as applicable. MASSACHUSETTS shall assist WCER in implementing any trademark and copyright use guidelines for all uses by MASSACHUSETTS LEAs, and MASSACHUSETTS Contractors (see below).

MASSACHUSETTS may contract with third parties ("MASSACHUSETTS Contractors") to provide services to LEAs and other educational agencies within the State of Massachusetts or organizations operating under the authority of MASSACHUSETTS that MASSACHUSETTS would otherwise provide ("In-service Activities"). Contracts for In-service Activities shall be limited to a set geographic territory set by MASSACHUSETTS ("In-service Area") and shall not authorize the provision of any WCER, WIDA or WIDA Consortium service, unless MASSACHUSETTS receives prior written authorization from WCER to do so. MASSACHUSETTS Contractors may charge a fee to cover the cost of providing In-service Activities. However, MASSACHUSETTS Contractors are prohibited from charging a greater fee to LEAs and other educational agencies outside of their In-service Area, if their In-service Area is smaller than the whole state territory.

EDUCATION RECORD RELEASE AND DATA USE

The parties acknowledge that the unauthorized access to or dissemination of school student records is prohibited under state and federal law. In order to protect the privacy of students and parents, and to prevent the disclosure of MASSACHUSETTS' confidential information, the parties agree to enter the *Education Record Release and Data Use Agreement* attached as Schedule C to this MOU.

DISCLAIMER

The parties acknowledge that the Massachusetts State Board of Elementary and Secondary Education sets educational policies, and the Massachusetts Department of Elementary and Secondary Education implements the educational policies for Massachusetts, including, but not limited to, the determination of how MASSACHUSETTS will meet the federal requirements under ESSA.

THE WIDA WORKS AND RELATED SERVICES OFFERED UNDER THIS MOU WERE DEVELOPED AS PART OF THE NON-PROFIT RESEARCH AND EDUCATIONAL ACTIVITIES OF THE UNIVERSITY OF WISCONSIN-MADISON, AND ARE PROVIDED TO MASSACHUSETTS AS PART OF THE UNIVERSITY'S MISSION OF OUTREACH AND SERVICE TO THE EDUCATIONAL COMMUNITY. THE UNIVERSITY HAS NO REASON TO BELIEVE THAT THE WIDA WORKS INFRINGE ON THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, OR ARE UNFIT FOR THE PURPOSES DESCRIBED IN THIS MOU; HOWEVER, DUE TO THE NON-COMMERCIAL NATURE OF THE UNIVERSITY IT CANNOT PROVIDE WARRANTIES FOR THE WIDA WORKS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Neither party shall be liable under this MOU for any special, consequential, indirect or incidental damages.

TERMINATION

The parties shall provide notice, in writing, of any failure to keep in force any of the terms and conditions of this MOU. The parties shall have the right to terminate this MOU without cause at any time during the term by giving sixty (60) days' notice in writing. Upon termination, WCER shall be paid for all services detailed in Schedule A—Statement and Performance of Work satisfactorily rendered up to the date of termination. Notwithstanding termination, the provisions on intellectual property and confidentiality shall survive termination.

Each party shall notify the other party immediately upon receiving information at any time that lack of continued governmental funding or any other set of circumstances may prevent continuation of this project. WCER acknowledges that MASSACHUSETTS may suspend or terminate this MOU upon providing notice of discontinuation of governmental funding.

LIABILITY PROTECTION AND HOLD HARMLESS

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

Neither party shall be liable for the acts and omissions of the other.

FORCE MAJEURE

Neither party is responsible for any inability or failure to comply with the terms of this Agreement due to causes that are beyond its control and that occur without the negligence or malfeasance of such party. These causes include but are not restricted to: fire, storm, flood, earthquake, explosion, acts of the public enemy, war, rebellion, insurrection, mutiny, sabotage, epidemic, pandemic, quarantine restrictions, labor disputes, embargoes, acts of God, and acts of the United States or any other government—including the failure of any government to grant export or import licenses or permits.

MISCELLANEOUS

This MOU may be amended at any time by mutual consent set forth in writing.

In the event of a disagreement regarding the terms or implementation of this MOU, the parties agree to discuss their dispute in good faith and make best efforts to achieve a mutually agreed-upon resolution.

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

WCER shall comply with all federal and state laws. WCER and its subcontractors shall comply with Federal and State of Wisconsin non-discrimination laws, including the Wisconsin Fair Employment Act and similar federal law.

WCER receives federal funds and is therefore subject to federal regulations regarding federal fund recipients. WCER certifies that it complies with all federal funding certifications and assurances required by the U.S. Office of Management and Budget. WCER certifies that it and its principal officers are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from doing business with the Federal Government. WCER certifies that it is in compliance with the Federal Immigration Reform and Control Act and that it verifies the employment eligibility of all of its employees. Additional information on WCER's representations and certification can be obtained from the federal system for award management website under DUNS: 626535538.

This memorandum of understanding will become effective once MASSACHUSETTS and WCER both sign it. The date of this memorandum of understanding shall be the date on which it is signed by the last party to sign it.

For Massachusetts Department of Elementary and Secondary Education



06/24/2021

Jeffrey C. Riley
Commissioner
Massachusetts Department of Elementary and Secondary Education

Date

For WCER



06/14/2021

Vasanthi Pillai, Managing Officer
Research & Sponsored Programs
University of Wisconsin-Madison

Date

Schedule A

STATEMENT AND PERFORMANCE OF WORK

WCER shall provide the professional services listed in paragraphs (a) through (c). The professional services set forth below shall be performed: (i) using the requisite degree of skill, care and diligence; and (ii) in accordance with professional standards consistent with nationally recognized contractors performing similar professional services.

- a. WCER shall develop, administer and score the ACCESS for ELLs assessment for **2018–2019, 2019–2020, and two optional renewal years** upon mutual agreement of the parties, in accordance with the following:
 - i. The assessment will be administered online unless the following exceptions apply: a student requires a printed version of the assessment as an accommodation or a district/school does not have the required IT infrastructure to administer the online version.
 - ii. WCER shall coordinate/oversee the PDSR Contractor. The PDSR Contractor may include an additional 15% of printed test booklets in its distribution to LEAs in order to accommodate fluctuations in ELL populations in larger districts. In addition to the per student charge for the ACCESS for ELLs administration, MASSACHUSETTS shall be responsible for actual printing and distribution costs of unused tests printed and distributed in excess of 120% of the number of actual students tested.
 - iii. WCER, through the PDSR Contractor, will use best efforts to provide error free printing, distribution, scoring and reporting of the ACCESS for ELLs assessment. WCER shall correct and provide replacement materials for any errors in printed test booklets that materially affect the reliability or validity of the test at no cost to MASSACHUSETTS and Massachusetts' LEAs. WCER shall issue an errata sheet for all errors that do not materially affect the reliability or validity of the test at no cost to MASSACHUSETTS and Massachusetts' LEAs.
 - iv. MASSACHUSETTS shall determine each year, through consultation with the PDSR Contractor, the testing year window dates, e.g. pre-coding, test ordering, test delivery, test window, etc. MASSACHUSETTS shall be responsible for informing Massachusetts LEAs of the annual testing year window dates and schools' corresponding task responsibilities, e.g. online ordering and corrections submissions. MASSACHUSETTS shall take steps to encourage accurate ordering by Massachusetts' schools to prevent over-ordering of test booklets.
 - v. WCER shall provide a MASSACHUSETTS Profile that establishes communication protocols, describes MASSACHUSETTS' policies, test delivery specifics, and any additional cost options per MOU. This MASSACHUSETTS' Profile will be shared with the WCER and DRC Help Desks to ensure MASSACHUSETTS-specific protocols are followed. The MASSACHUSETTS Profile will be updated in collaboration with MASSACHUSETTS.

- vi. Printing, distribution, scoring, and reporting policies and procedures include the following:
1. DRC will provide a secure, web-based ordering system and administrative portal supported by toll-free customer service representatives (September through May, 6:00 am–8:00 pm CT and June through August, 6:00 am–6:00 pm CT). LEAs may contact a customer service representative via email at WIDA@datarecognitioncorp.com. DRC will provide the minimum web browser requirements for the administrative portal on the login page of the administrative portal.
 2. MASSACHUSETTS will send student identification and demographic data via file upload through the administrative portal. DRC will populate student testing records for students testing online, and produce Pre-ID labels for all students taking paper-based tests. Pre-ID labels will be packaged with the testing materials for each school.
 3. Any submission of information for Pre-ID labels past the valid submission window will result in a late submission fee.
 4. DRC will consult with MASSACHUSETTS and share a preview of MASSACHUSETTS specific ordering items in advance of school ordering to determine the appropriate file formats, ordering instructions, and other related information.
 5. DRC will provide test materials in large-print format upon request. Schools shall place their orders during the test ordering window to ensure on-time delivery of large-print materials.
 6. DRC will provide test materials in braille format upon request, for a fee. Schools shall place their orders through the test ordering window to ensure on-time delivery of braille materials.
 7. If a student requires additional accommodations, the LEA or school shall consult with MASSACHUSETTS to determine the appropriate assessment options, if any.
 8. Through the administrative portal, DRC will provide software downloads for the DRC INSIGHT secure browser, which will be used as the secure test administration platform for all students testing online.
 9. DRC will ship orders of initial and additional test materials to each school as ordered by the school.
 10. DRC will use United Parcel Service (UPS) for distribution to schools. Materials will be shipped to arrive two (2) weeks prior to the opening of the assessment window in Massachusetts. Special arrangements can be made to provide material earlier to specific sites, if approved by the WCER. Delivery of materials will be scheduled during regular school hours, 9:00 am to 3:00 pm in the appropriate time zone. DRC will send email notifications to test coordinators when materials are shipped. All sites receiving a large volume of material will receive notification at least 24 hours before the materials are delivered. All shipments will be designated as “inside delivery required” and

“secure testing materials enclosed.” Signatures of receipt will provide proof of delivery and allow DRC and districts and schools to track all shipments. DRC will provide all district- and school-specific return shipping labels and forms and will be responsible for all costs associated with the return of materials. DRC may include an additional 15% of test booklets in its distribution to schools in order to accommodate fluctuations in EL populations in larger districts.

11. Schools will place additional test materials orders, as needed, to conduct testing (if applicable) and DRC will ship the orders directly to the appropriate schools within 3 days of order receipt. If overnight or two-day expedited shipping is needed by the school, then shipping charges may apply. Additional materials orders beyond the one (1) allowed per school may require approval from MASSACHUSETTS.
12. DRC will scan student booklets to capture each student’s test data. Booklets that cannot be scanned due to damage or extenuating circumstances will be reported to MASSACHUSETTS.
13. DRC will connect each student’s data with a unique identification number.
14. Test scoring personnel will be overseen by the ACCESS for ELLs Scoring Director, housed at DRC. All test materials will be identified and scored using the unique identification number assigned during test data capture. Twenty percent of all items will be blind double-scored and the Scoring Director will monitor scorers daily to ensure inter-rater reliability of 70% or higher.
15. DRC shall provide electronic reports and data files to MASSACHUSETTS, and to Massachusetts’ LEAs and schools via the administrative portal, and printed score reports, as described below. Custom and specialized reports are available from DRC for additional charges.
 - a. MASSACHUSETTS will receive:
 - initial and final draft data in electronic format, including all demographic and student response data collected, raw, scale scores, and proficiency levels are included in the file
 - MASSACHUSETTS (State) Frequency Report.
 - Flash drive containing all Individual Student Reports; School, District, and State Frequency Reports; Student Roster Reports
 - b. Massachusetts **LEAs** will receive 1 copy of the following reports:
 - District Frequency Report.
 - c. Massachusetts **schools** will receive 1 copy of the following reports:
 - School Frequency Report.
 - Student Roster Report.

- Individual Student Report (in English; electronic files in AMS include summative student reports in both English and Spanish)
- vii. Schools shall return tests to DRC for scoring and reporting. Reports will be available on the mutually agreed upon date.
- viii. General Data Corrections/Booklet Searches after the Data Validation window has closed and/or Scoring Appeals will be provided by DRC upon request.
 1. A combined total of **Twenty-six (26)** General Data Corrections/Booklet Searches (after Data Validation window has closed) and/or Scoring Appeals are included in the price of the ACCESS for ELLs assessment.
 2. General Data Corrections/Booklet Searches (after Data Validation window has closed) and/or Scoring Appeals beyond the number included in the price of the assessment are available from DRC for additional charges.
 3. Scoring Appeal - If it is found that the score was incorrectly calculated, there will be no charge for the Scoring Appeal
- b. WCER shall provide technical assistance to and in consultation with MASSACHUSETTS.
 - i. Technical assistance (TA) shall consist of providing MASSACHUSETTS with analysis and consultation concerning MASSACHUSETTS ACCESS for ELLs test score data in relation to MASSACHUSETTS' and Massachusetts' LEAs' requirements.
 - ii. Up to eight hours of TA per testing year are included in the price of the ACCESS for ELLs assessment. The included hours of TA do not include any on-site visits. MASSACHUSETTS may obtain additional TA as needed at the daily rate in place at the time of ordering. MASSACHUSETTS shall submit a purchase order to WCER to obtain additional TA. TA hours expire on June 30th of each testing year and cannot be rolled over from year to year.
 - iii. WCER shall produce a technical report on the ACCESS for ELLs assessments that, at a minimum, fulfills federal requirements regarding the technical quality of English language proficiency assessments. The non-confidential technical report shall be made available for download on WCER's website.
 - iv. WCER may create and provide MASSACHUSETTS with access to a comprehensive, longitudinally-based, online dashboard application comprising of aggregate ACCESS for ELLs assessment information and data from other national databases in support of MASSACHUSETTS educational programs. The dashboard will only contain aggregate and/or de-identified data in accordance with Schedule C–Education Record Release and Data Use Agreement.
- c. WCER shall provide test administration training and professional learning services to MASSACHUSETTS and Massachusetts' LEAs in consultation with MASSACHUSETTS.
 - i. Test administration training
 1. WCER shall provide separate training modules for online and paper-based ACCESS for ELLs administration.

- a. Both training modules will be delivered online from the password-protected area of the WIDA website. User accounts shall be set up according to MASSACHUSETTS in consultation with WCER. User accounts will include training certification and test administrator security agreements.
 - b. Paper-based administration. Everyone who administers the paper-based ACCESS for ELLs test needs to take training and receive their training certification. Training certification for paper-based administration will require completion of all applicable training units and passing all applicable quizzes. Certification through the paper-based administration training program shall produce an electronic record of those who have passed the online quizzes and it shall provide a certificate to the test administrator completing the course.
 - c. Online administration. Everyone who administers the online ACCESS for ELLs test needs to take training and receive their training certification. Training certification for online administration will require completion of all applicable training units. Certification through the online administration training program will consist of a certification checklist and shall produce an electronic record of those who completed the training and it shall provide a certificate to the test administrator completing the course.
 - d. Webinars for the MASSACHUSETTS State Education Agency. WCER shall provide a series of multi-state webinars for SEA support. These webinars will be conducted live and recorded. Webinars will be archived on the SEA secure portal on wida.us.
 - e. Webinars for Local Education Agencies. WCER shall provide a series of multi-state webinars in support of Local Education Agencies and schools. These webinars will be conducted live and recorded. Webinars will be archived on a secure page on wida.us.
 - f. WCER will provide MASSACHUSETTS with a Checklist detailing ACCESS for ELLs administration procedures. WCER will collaborate with MASSACHUSETTS to ensure that procedures are state-specific.
2. WCER shall provide technical support to MASSACHUSETTS and its LEAs' test administrators through the Client Services Center (CSC). The CSC shall be available to assist with registering for the online training programs and troubleshooting technical difficulties related to WIDA online resources as well as answering any ACCESS for ELLs and WIDA Screener related question. Technical questions concerning the test ordering platform or testing platform will be referred to the DRC Help Desk. The CSC representatives shall be available in April-October, Monday-Thursday, 8:00 am-5:00 pm Friday, 8:00 am-4:30 pm, and in November-March, Monday-Thursday, 7:00 am-7:00 pm Friday, 7:00 am-5:00 pm and shall be available via email (help@wida.us), through the WIDA website (www.wida.us), or by toll free telephone (1-866-276-7735).

ii. Professional Learning

1. The parties shall cooperatively develop a plan for offering professional learning (PL) activities related to the administration of the ACCESS for ELLs assessment and use and classroom implementation of the WIDA ELD Standards by Massachusetts educators. The activities shall be geared toward helping MASSACHUSETTS and its LEAs meet their Title I and III requirements.
2. Twenty-Six (26) PL Units for testing year 2021-2022 are included in the price of the ACCESS for ELLs assessment. PL Units expire on June 30th of each testing year and cannot be rolled over from year to year. The number of PL units included in the price is subject to change based on the number of students tested in the previous testing year:

Students Tested	PL Units
65,000-84,999	22 Units
85,000-104,999	26 Units
105,000-124,999	30 Units

3. WCER will send electronic copies of all course materials for workshops to MASSACHUSETTS in advance of the training. The electronic materials will include printing instructions and room set-up instructions. MASSACHUSETTS shall be responsible for any participant registration and making and distributing all necessary hard copies of course materials, or providing online access for participants to print materials.
4. MASSACHUSETTS is responsible for local expenses (e.g., rental of meeting space, participant’s per diems, and substitute teachers).
5. MASSACHUSETTS shall submit a purchase order to WCER to obtain additional professional learning services.
6. If MASSACHUSETTS cancels a jointly scheduled professional learning offering for which WCER has incurred non-cancelable costs, then MASSACHUSETTS may either reimburse WCER for the incurred costs and reschedule the professional learning offering or it may elect to relinquish the professional learning units altogether at no additional cost to MASSACHUSETTS. The non-cancelable costs are as follows:

Time	Cancellation	Rescheduling
22-42 days prior to the event	\$500 + Travel costs + \$200 per Additional Day OR 1 Unit	50% of the total first day cancellation fees + additional day(s) cancellation fee OR 1 Unit
0-21 days prior to the event	\$2,000 + Travel costs + \$700 per Additional Day OR Workshop Unit Cost	

- a. No penalty will be incurred for professional learning offerings cancelled 43 days or more prior to the event.
 - b. WIDA facilitators will make every effort to be on-site for workshops. In the event that WCER must cancel an event, MASSACHUSETTS will receive an additional webinar in addition to rescheduling the workshop.
 - c. Cancellations due to weather will be rescheduled at no charge within the same academic year.
7. WCER will provide ELD Standards training and other instructional resources online.
8. A minimum 50% of PL Units allocation must be delivered through a menu of e-learning options.

Schedule B

INVOICE AND PAYMENT

PAYMENT SCHEDULE

For professional services rendered in accordance with this MOU and the Statement and Performance of Work in Schedule A, MASSACHUSETTS shall pay WCER the following fees:

- a. MASSACHUSETTS agrees to pay the yearly ACCESS for ELLs costs as follows:

Testing Year	2021–2022
Online Test (per student)	\$27.75
Paper Test (per student)	\$27.75
Alternate ACCESS (per student)	\$141.25
Braille Test (per student)	\$187.75
Total Pop. Est.	98,715
Online Pop. Est.	85,000
Paper Pop. Est.	12,000
Alternate Pop. Est.	1,700
Braille Pop. Est.	15
Online Cost Est.	\$2,358,750.00
Paper Cost Est.	\$333,000.00
Alternate Cost Est. (inc. test development)	\$240,125.00
Braille Cost Est.	\$2,816.25
Extra Copy of ISR (Parent/Guardian Report)	20,000.00
Ship to Schools	\$20,000.00
Discount over 75,000 Tests (\$1.50 per student)	(\$35,572.50)
Total Cost Estimate	\$2,939,118.75

1. For testing year 2021–2022, if more than 75,000 students are tested by MASSACHUSETTS, WCER will discount the price of the online and/or paper test by \$1.50 for the number of students tested in excess of 75,000 students. Future volume price discounts will be announced when future ACCESS pricing is determined.
 2. WCER shall invoice MASSACHUSETTS for test development and pre-operational costs of \$1,250,000 on or before December 1 and MASSACHUSETTS shall pay within 45 calendar days.
 3. WCER shall invoice MASSACHUSETTS for the balance of the cost, based on the actual number of students tested, upon completion and delivery of the annual test reports and MASSACHUSETTS shall pay within 45 calendar days.
- b. WCER shall invoice MASSACHUSETTS for the shipping and receiving of paper test materials (including overage) to and from Massachusetts schools, rather than to and from LEAs, at an additional cost of \$.99 per student per year, exclusive of Boston public schools which is included in the base price and MASSACHUSETTS shall pay within 45 calendar days.
 - c. WCER will invoice MASSACHUSETTS for the printing and distribution costs of unused tests ordered, printed and distributed in excess of 120% of the number of actual students tested and MASSACHUSETTS shall pay within 45 calendar days.
 - d. WCER will invoice MASSACHUSETTS for the cost of General Data Corrections submitted past the valid submission window at \$100 per student, if MASSACHUSETTS has surpassed the number of included combined General Data Corrections/Booklet Searches and/or Scoring Appeals and MASSACHUSETTS shall pay within 45 calendar days.
 - e. WCER will invoice MASSACHUSETTS for the cost of Scoring Appeals at \$200 per domain per student, if MASSACHUSETTS has surpassed the number of included combined General Data Corrections/Booklet Searches and/or Scoring Appeals and MASSACHUSETTS shall pay within 45 calendar days.
 - f. WCER will invoice MASSACHUSETTS for the cost of Booklet Searches submitted past the valid submission window at \$100 per student if requested with a scan code or \$200 per student, if requested without a scan code, if MASSACHUSETTS has surpassed the number of included combined General Data Correction/Booklet Searches and/or Scoring Appeals and MASSACHUSETTS shall pay within 45 calendar days.
 - g. WCER will invoice MASSACHUSETTS for the cost of Pre-ID labels if the submission of information is past the valid submission window for Pre-ID labels at \$5 per student and MASSACHUSETTS shall pay within 45 calendar days.
 - h. The daily rate for additional TA or PL will be determined at the time of purchase based on current Consortium member state pricing.

MISCELLANEOUS

WCER may use up to 1.5% of the total contract amount to cover the cost of the following events and activities which will be conducted in compliance with UW-Madison cost regulations and policies governing meals and alcoholic beverages. Documentation for these expenses will be

retained for three years and will be available for review if requested. Events and activities include: WIDA-Sponsored events at key professional conferences to discuss WIDA activities and services, working dinners with SEA or potential SEA partners or other key Consortium partners, and other events intended to further the WIDA Consortium's goals and objectives.

STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of WCER relevant to this contract are subject to examination by the Massachusetts Auditor or the Auditor's designee. WCER will maintain all such records for at least seven years following completion of this contract.

TAXPAYER ID

WIDA's federal employer ID number is: 39-1805963

Schedule C

Education Record Release and Data Use Agreement

This educational record release and data use agreement is between the Massachusetts Department of Elementary and Secondary Education (“MASSACHUSETTS”) and The Board of Regents of the University of Wisconsin System, on behalf of the University of Wisconsin-Madison’s Wisconsin Center for Education Research (“WCER”).

Title I and Title III of the Federal Elementary and Secondary Education Act (currently enacted as The Every Student Succeeds Act of 2015 or “ESSA”) establish Federally-supported education programs and activities related to English language instruction, acquisition and achievement; require local educational agencies and institutions to evaluate and report the biennial progress made by English learners; and require state education agencies (“SEAs”) to develop accountability models for English learners that relate to these children’s development and attainment of English proficiency while meeting challenging State academic content and student academic achievement standards.

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

Concurrently with its entry into this educational record release and data use agreement, MASSACHUSETTS and WCER are entering a memorandum of understanding (the “MOU”) to provide services relating to MASSACHUSETTS’ compliance with federal requirements under ESSA, including, but not limited to, the administration and scoring of the ACCESS for ELLs English language proficiency assessment (“Evaluation Services”).

The MOU, by its terms, establishes WCER and its subcontractors as authorized representatives of MASSACHUSETTS with respect to the Evaluation Services provided by WCER.

WCER wishes to obtain access to and collect personally identifiable information from the education records of students without the consent of the students or their parents during the performance of these Evaluation Services and MASSACHUSETTS wishes to acquire these Evaluation Services, while protecting the privacy of students and parents within MASSACHUSETTS. The purpose of this Agreement is to document the terms under which MASSACHUSETTS is authorized to release to WCER, through its PDSR contractor, personally identifiable information from the education records of Massachusetts students for the reasons set forth in the MOU and herein, and to designate WCER as MASSACHUSETTS’ authorized representative consistent with the above-cited authority, and applicable provisions concerning access to, and confidentiality of, personally identifiable education record information. The terms “personally identifiable information” and “education record” shall have the meaning set forth in 34 CFR 99.3.

The Parties therefore agree as follows:

1. Acknowledgment of Release of Confidential Data and Description of Use.

- A. The parties acknowledge that MASSACHUSETTS is releasing Confidential Data to WCER for the purposes outlined in Section 3(H) below, and that the release of MASSACHUSETTS Confidential Data to WCER is necessary for the completion of Evaluation Services. The personally identifiable information to disclosed to and collected by WCER is attached to this agreement as Exhibit A. WCER shall notify MASSACHUSETTS and MASSACHUSETTS shall provide written consent, if approved, of any changes to the list of disclosed information necessary for the provision of Evaluation Services.
- B. WCER will use PII from education records in order to facilitate the administration, scoring and reporting of individual student assessments and to connect student records from year to year in order to establish a longitudinal data set that can be used for the evaluation and federal compliance purposes described in this section. WCER will only use de-identified data and/or aggregated data for evaluation activities once student records are connected.
- C. WCER's use of MASSACHUSETTS' Confidential Data is strictly limited to the uses specifically authorized under this agreement. WCER acknowledges that misuse, unauthorized release or violation of the Prohibited Uses Section, below, of MASSACHUSETTS' Confidential Data by WCER or its subcontractor(s), etc., or any other violation of this agreement may be determined to be a material breach of the MOU and grounds for termination.

2. Designation of Authority and MASSACHUSETTS Access to System.

- A. MASSACHUSETTS hereby designates WCER, its subcontractors, including Data Recognition Corporation, and ACCESS for ELLs quality assurance participants as authorized representatives of MASSACHUSETTS with respect to the provision of Evaluation Services and, specifically, the use of personally identifiable information disclosed under this agreement.
- B. WCER shall provide MASSACHUSETTS and MASSACHUSETTS designated personnel with secure access to Confidential Data via WCER's Assessment Management System.
- C. WCER shall facilitate access to and correction of any factually inaccurate student information in response to an inquiry from an LEA or from MASSACHUSETTS. MASSACHUSETTS shall act as an intermediary on behalf of the LEA for any such LEA inquiry.

3. Receiving Institution Obligations.

The undersigned receiving institution, WCER, agrees to abide by the following student privacy and information security requirements:

- A. WCER shall not share Confidential Data with anyone, except those employees of WCER, WCER's subcontractors, including Data Recognition Corporation, and ACCESS for ELLs quality assurance participants ("Authorized Users") that are directly involved and have a legitimate educational interest in providing Evaluation Services according to the terms of the MOU.
- B. WCER shall require all Authorized Users to comply with FERPA and other applicable state and federal student privacy law. WCER shall require and maintain confidentiality agreements with each Authorized User of Confidential Data. The terms of the Authorized User confidentiality agreements shall contain, at a minimum, the terms and conditions of this educational record release and data use agreement. A copy of the current WCER employee confidentiality agreement is attached to this agreement as Exhibit B. WCER shall perform and cause its subcontractors to perform background checks on all of its employees and agents that are Authorized Users, prior to providing authorized access to Confidential Data. All background checks will be performed in accordance with the State of Wisconsin/University of Wisconsin background checks for employees and contractors.
- C. WCER certifies that it has the capacity to restrict access to Confidential Data solely to Authorized Users and ensure that the Confidential Data is accessed only for the purposes described in this agreement. WCER shall protect Confidential Data in a manner that does not permit personal identification of students and their parents by anyone except those bound by this agreement and MASSACHUSETTS. WCER and its subcontractors subject to this section shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of Confidential Data. A copy of WCER's Standard Security Policies and Procedures is attached to this agreement as Exhibit C. WCER shall notify MASSACHUSETTS in accordance with the procedures in Exhibit C if it learns of any of the following:
 - i. A use of Confidential Data by anyone that is inconsistent with the terms of this agreement or for a use not authorized under the MOU;
 - ii. A security breach to any system containing Confidential Data; or
 - iii. Any disclosure of Confidential Data to anyone other than an Authorized User or MASSACHUSETTS officials authorized to receive Confidential Data.

WCER shall cooperate and take all reasonable means prescribed by MASSACHUSETTS to secure any breaches as soon as practicable.

- D. WCER shall not store, process or transfer Confidential Data outside the United States. WCER shall encrypt Confidential Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
- E. WCER shall not redisclose Confidential Data to any other party, nor shall it request consent from any parent or eligible student to redisclose Confidential Data.
- F. WCER shall destroy all Confidential Data within 45 days after it is no longer needed to perform the Evaluation Services described in this agreement, upon MASSACHUSETTS' request or upon termination of this agreement, whichever occurs first or unless otherwise agreed upon in writing. WCER shall provide written

verification of the data destruction to MASSACHUSETTS within 45 days after the data is destroyed. Prior to destruction, MASSACHUSETTS may request a copy of all electronically stored Confidential Data retained by WCER or its subcontractor in accordance with the Transfer Protocol section below. "Destroy" means to remove Confidential Data from WCER's systems, paper files, records, databases, and any other media regardless of format so that the Confidential Data is permanently irretrievable in the WCER's and Subcontractor's normal course of business, as that term is applied in the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. WCER shall clear data in accordance with the current version NIST Special Publication 800-88.

- G. WCER shall permit MASSACHUSETTS, at MASSACHUSETTS' cost, to audit, upon reasonable request, that it is complying with the Standard Security Policies and Procedures in Exhibit C and/or that it has destroyed the data as verified.
- H. WCER shall collect and use these Confidential Data only for the purpose of assisting MASSACHUSETTS to carry out an audit or evaluation of Federal and State supported education programs and to comply with the Federal legal requirements related to the activities outlined in the MOU, including but not limited to:
 - i. Activities related to the development, administration, scoring and reporting of the annual assessment of student English proficiency;
 - ii. Activities related to the evaluation of federally-supported education programs;
 - iii. Activities related to English language instruction, acquisition, assessment, and achievement; and
 - iv. The development of accountability measures and models for limited English proficient children that relate to these children's development and attainment of English proficiency while meeting challenging State academic content and student academic achievement standards.
- I. If MASSACHUSETTS requests additional services for activities beyond the scope specified in Section H, above, but consistent with MASSACHUSETTS' federal and state requirements, then WCER shall obtain prior written approval from MASSACHUSETTS before accessing Confidential Data. Any Confidential Data collected by WCER under activities approved by MASSACHUSETTS under this sub-section, which is not regularly collected within the scope of Section H, above, but is consistent with the activities of Section H, shall be subject to the terms and conditions of this agreement.
- J. WCER shall obtain from the University of Wisconsin-Madison Institutional Review Board either approval or a determination of exemption for all research conducted using Confidential Data where required by law and/or University policy.
- K. If WCER becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then WCER shall use all reasonable efforts to provide MASSACHUSETTS with prior notice before disclosure so that MASSACHUSETTS may seek a protective order or other appropriate remedy to prevent the disclosure; provided, however, that WCER

will use all reasonable efforts to maintain the confidentiality of Confidential Data. If a protective order or other remedy is not obtained prior to when any legally compelled disclosure is required, WCER will disclose only that portion of Confidential Data that it is legally required to disclose.

4. Prohibited Uses

- A. WCER shall not sell MASSACHUSETTS' Confidential Data, use MASSACHUSETTS' Confidential Data for purposes of targeted advertising to students or any party, or use MASSACHUSETTS' Confidential Data to create a personal profile of a student other than supporting the Evaluation Services described in this Contract. "Targeted Advertising" means selecting and sending advertisements to a student based on information obtained or inferred over time from the student's online behavior, use of applications, or PII.
- B. WCER shall not use Confidential Data to measure, capture, record, or analyze any biological characteristics that can be used for automated recognition of an individual. WCER shall not create or maintain any biometric records, as defined by FERPA, using PII disclosed, captured or received during the course of providing Evaluation Services to MASSACHUSETTS.
- C. WCER shall contractually require any subcontractor that it discloses MASSACHUSETTS' Confidential Data in accordance with this contract to comply with the requirements of this Data Use Agreement.

5. System Control Auditing

WCER shall require Data Recognition Corporation to obtain annual systems audits, performed by an independent audit firm of Data Recognition Corporation's choosing, of its organization controls with respect to its handling of MASSACHUSETTS's Confidential Data for the provision of assessment services, as described in the Contract. WCER shall review the results of the shared audit reports for sufficiency of controls over these services. DRC shall also provide certificates/letters of audit completion that WCER may share with MASSACHUSETTS.

- A. The audit reports/certifications shall include summary or certifications of the various audits conducted (as applicable), from the following audit types:
 - NIST 800.83
 - ISO 27001 Audit
 - SOC 2 Type 1
- B. If the annual system audit report contains any findings in the Processing Environment that are deemed critical in nature by the assessor, those critical findings will be remediated within 30 days of the issuance of the report.
- C. The audit report shall include at least one audit type that ascertains the Processing Environment uses FIPS 1402 encryption technologies to encrypt data at rest and data in motion and will report any findings if DRC is not appropriately using these technologies.
- D. The annual system audit report shall certify that an Annual Penetration test was conducted by DRC and evaluated by WCER such that the State is able to ascertain that a complete Penetration and Vulnerability Test has been completed.

6. Transparency Requirements

WCER shall provide transparency to parents, school districts and the public about its collection and use of PII for ACCESS for ELLs test administrations by posting the following information in plain English on its public website:

- A. Contact information for an individual within WCER's organization that can provide information on or answer questions related to the use of PII by WCER and Data Recognition Corporation.
- B. An explanation of how the PII will be shared with Subcontractors or disclosed to any third party.
- C. The types of PII WCER collects, generates, or uses. This information must include all PII that is collected regardless of whether it is initially collected or ultimately held individually or in the aggregate.
- D. An explanation of the PII, an explanation of how the PII is used, and the learning purpose for which the PII is collected and used.
- E. WCER shall update this information on its website as necessary to maintain accuracy. WCER acknowledges that MASSACHUSETTS may post this information on its public website, in MASSACHUSETTS' sole discretion.
- F. WCER shall send MASSACHUSETTS a written notice that includes a clear explanation of the proposed changes prior to making a material change to the transparency information required by this section.

7. Use of Aggregate Data.

- A. In order to provide Consortium level data and analysis to WIDA consortium members, WCER will aggregate MASSACHUSETTS data with all other WIDA Consortium member states.
- B. WCER shall follow the recommended practices outlined in the IES-SLDS Technical Brief Statistical Methods for Protecting Personally Identifiable Information in Aggregate Reporting, December 2010, Brief 3 NCES 2011-603, including the use of a minimum of 10 students for the reporting subgroup size limitation in Aggregate Reporting.

8. Permission to Use Data.

MASSACHUSETTS acknowledges that by entering this agreement it is approving, in writing, of WCER's use of these Confidential Data within the scope of purposes outlined in this agreement and Section 3H, above.

9. Transfer Protocol.

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

10. Remedies.

WCER acknowledges that the breach of this Agreement on its part may result in irreparable and continuing damage to MASSACHUSETTS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this Agreement by WCER, MASSACHUSETTS, in addition to any other rights and remedies available to it at law or in equity, may be entitled to preliminary and permanent injunctions, enjoining and restraining the breach or threatened breach.

11. Binding Effect and Assignability.

The rights and obligations of each party under this Agreement shall inure to the benefit of and shall be binding upon that party and its respective successors and assigns.

12. Waiver.

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising from this Agreement shall be valid or binding for any purpose unless in writing and duly executed by the party against whom they are asserted.

13. Severability.

Any provision of this Agreement that is declared invalid by a court of competent jurisdiction or by operation of law, shall not affect the validity or enforceability of any other provision of this Agreement.

14. Term.

The term of this Agreement shall be the same as the term of the MOU of even date herewith between MASSACHUSETTS and WCER/University of Wisconsin for the development, administration and scoring of ACCESS for ELL's and other testing services, unless terminated earlier by either party upon thirty (30) days advanced written notice.

15. Data Custodians.

The following individuals are the designated data custodians for their respective entities with respect to this educational record release and data use agreement:

For WCER
WIDA Consortium
H. Gary Cook
Research Director
1025. W Johnson St., MD#23
Madison, WI 53706
Phone: 608-890-0471
Email: hcook@wisc.edu

For Data Recognition Corporation – Assessment platform vendor
Karen Jans
Sr. Director, Education Programs
13490 Bass Lake Road
Maple Grove, MN 55311
Phone: 763-268-2040
Email: kjans@datarecognitioncorp.com

This educational record release and data use agreement will become effective once MASSACHUSETTS and WCER both sign it. The date of this agreement shall be the date on which it is signed by the last party to sign it.

For Massachusetts Department of Elementary and Secondary Education



06/24/2021

Jeffrey C. Riley
Commissioner
Massachusetts Department of Elementary and Secondary Education

Date

For WCER



06/14/2021

Vasanthi Pillai, Managing Officer
Research & Sponsored Programs
University of Wisconsin-Madison

Date

Schedule D

WIDA Consortium Board

1. Purpose

- a. Advisory - The WIDA Consortium Board serves as an advisory board to the WIDA Consortium operational leadership. The WIDA Consortium leadership solicits input on and the WIDA Consortium Board offers guidance and support on the annual offering of WIDA's Core Package of educational services in consideration of recommendations made by subcommittees.
- b. Collaborative - The WIDA Consortium Board provides an organized opportunity for SEAs to associate and address common issues relating to English learners, the academic English language development of kindergarten through grade 12 students and other issues related to SEA and LEA requirements of Title I and III of ESSA.

2. Structure

- a. Board Member Appointment - Each WIDA Consortium Member should appoint one SEA representative to the WIDA Consortium Board. Wisconsin, Illinois and Florida are each entitled to appoint one additional representative to the WIDA Consortium Board.
- b. Term of WIDA Consortium Board Members - Each WIDA Consortium Board Member will serve until replaced by their respective SEA or until their SEA is no longer a WIDA Consortium Member.
- c. Removal of WIDA Consortium Board Members - WIDA Consortium Board Members may only be removed by their respective SEA. An SEA will appoint a successor member to the WIDA Consortium Board if that SEA removes its appointed member.
- d. Compensation - Members of the WIDA Consortium Board do not receive compensation.

3. Operations

- a. General - WCER, through the WIDA Consortium will facilitate the activities of the WIDA Consortium Board. WCER will provide the necessary personnel to serve as a liaison between the WIDA Consortium Board Members and the WIDA Consortium.
- b. Meetings - The WIDA Consortium will hold the following meetings:
 - i. Annual Meeting - WCER will conduct an annual gathering of the WIDA Consortium Board. The gathering will be held in late spring.
 - ii. Committee Meetings - WCER will conduct committee meetings of the WIDA Consortium Board as provided in Section 4.c. below, Committees.
 - iii. Special Meetings - WCER will conduct special meetings concerning the ongoing development and review of the annual offering of the Core Package of educational services as necessary. WCER may hold special meetings either in person or via teleconference. Attendance at special meetings may be held to a limited number of WIDA Consortium Board Members.
- c. Communications
 - i. General - WCER will provide the necessary infrastructure to facilitate the WIDA Consortium Board activities.

- ii. Meeting Summaries – WCER will maintain meeting notes and provide meeting summaries to the WIDA Consortium Board Members after any WIDA Consortium Board meeting.
- d. Costs
 - i. General - WCER will pay the costs associated with operating the WIDA Consortium Board.
 - ii. Travel Expenses -WCER will pay for/reimburse WIDA Consortium Board Members' travel expenses incurred in connection with attending a WIDA Annual Board meeting. If an SEA wants to bring *up to two additional people* to attend the WIDA Annual Board Meeting, that SEA is responsible for their travel expenses. In the first year an SEA becomes a WIDA Consortium Member WCER will pay for/reimburse the travel costs of one additional person from that state to attend the WIDA Annual Board meeting. All travel expense reimbursements will be made in accordance with State of Wisconsin guidelines.
- e. Fiscal Impact - The activities of the WIDA Consortium Board will have no direct fiscal impact on individual WIDA Consortium Members without an additional written agreement between the individual WIDA Consortium members and WCER. If WIDA Consortium Board Members recommend and the WIDA Consortium adopts any changes to the Core Package of educational services that affect the price of the Core Package, then no price change will take effect until the individual WIDA Consortium Members execute written agreements with WCER that reflect these changes.

4. Activities

- a. General - The activities of the WIDA Consortium Board include the following:
 - i. Attendance at the WIDA Annual Board meeting;
 - ii. Participation on WIDA subcommittees as appointed; and
 - iii. Participation at special meetings conducted by the WIDA Consortium.
- b. WIDA Annual Board Meetings - WCER, through the WIDA Consortium, will coordinate the meetings of the WIDA Consortium Board.
 - i. Meeting Agendas -The WIDA Consortium will set the agendas for the WIDA Annual Board meetings.
 - ii. Meeting Activities
 - 1. Presentations - The WIDA Consortium will present updates on WIDA Consortium activities related to the implementation, research, and development of the Core Package.
 - 2. Discussion and Review Groups - The WIDA Consortium will facilitate discussion groups on targeted topics related to the implementation, research, and development of the Core Package. The discussion groups are an opportunity for WIDA Consortium Board Members to provide input to the WIDA Consortium and to interact and exchange ideas with other SEAs.
 - 3. Policy Orientation and Priority Setting - The WIDA Consortium may poll the WIDA Consortium Board in order to ascertain the position of WIDA Consortium Board Members on issues related to the policy orientation and priorities of the implementation, research and development of the Core Package. Each WIDA Consortium

Board Member present will receive one vote. The votes will be recorded by the WIDA Consortium.

c. Committees

- i. Executive Committee – The Executive Committee is a standing committee that meets to discuss issues that require cross-collaboration among subcommittees.
 1. Purpose - The purpose of the Executive Committee is to recommend, advise, and comment on policy and priority issues related to the implementation, research, and development of the Core Package and provide recommendations to WIDA leadership.
 2. Makeup - Membership on the Executive Committee will consist of the following:
 - a. SEA representatives (one from each subcommittee with expertise in that area);
 - b. One LEA representative (appointed by the LEA Advisory Committee); and
 - c. Three standing members (one Wisconsin Department of Public Instruction representative, one Illinois State Board of Education representative, and one Florida Department of Education representative).
 3. Term - Executive Committee members serve a two year term.
 4. Meetings - The Executive Committee meets virtually and face-to-face each year. Face-to-face meetings include the WIDA Annual Board Meeting in June and one in the late fall. Virtual meetings are scheduled as needed.
- ii. Subcommittee organizational structure – WCER, through the WIDA Consortium, will form standing subcommittees for the purpose of vetting policy and priority issues related to the implementation, research, and development of the Core Package. Each subcommittee will focus on one main component of the Core Package and may collaborate with other subcommittees, as needed.
 1. Standing subcommittees:
 - a. Accessibility, Accommodations, and Equity
 - b. Assessment Development and Implementation
 - c. Assessment/Psychometrics
 - d. National Policy
 - e. Professional Learning
 - f. Research
 - g. Standards
 2. SEA Membership:
 - a. WIDA Consortium Members may have representation on three subcommittees, plus Research, for a maximum of four subcommittees.
 - b. Each SEA representative may join no more than two subcommittees.
 - c. No more than one SEA representative per consortium state member may serve on any one subcommittee.
 3. Membership process - SEA representatives interested in serving

on a subcommittee must complete and submit the Subcommittee Interest Questionnaire during open enrollment June 1–30. Notices are sent to members in July.

4. Terms of subcommittee membership - Each SEA representative appointed to serve on a subcommittee will actively serve to the end of their appointed term based on subcommittee guidance.
 5. Compensation - Members serving on WIDA subcommittees do not receive compensation from WIDA.
 6. Communications - Notes from subcommittees will be made available to all WIDA Consortium members via the secure website. Information and updates will be shared through the established SEA Quarterly and Regional meetings schedule, in addition to standard communication channels.
- iii. LEA Advisory Committee – The LEA Advisory Committee is a standing committee comprised of local education representatives from each of the regions.
1. Purpose - The purpose of the LEA Advisory Committee is to raise and vet policy and priority issues related to the implementation, research and development of the Core Package with respect to issues effecting local education agencies.
 2. Makeup - Two LEAs per region, one representing Subgroup A and one representing Subgroup B, will be nominated by their SEA and approved by the regional group. Regions and Subgroups are defined on the WIDA website at <https://www.wida.us/membership/regions/>.
 3. Term of membership – LEAs serve a two-year term on a staggered rotation as outlined below.
 - a. Subgroup A for all four Regional Groups
 - i. June 15, 2020–June 14, 2022
 - ii. June 15, 2022–June 14, 2024
 - iii. June 15, 2024–June 14, 2026
 - b. Subgroup B for all four Regional Groups
 - i. June 15, 2019–June 14, 2021
 - ii. June 15, 2021–June 14, 2023
 - iii. June 15, 2023–June 14, 2025
 4. Meetings – The LEA Advisory Committee meets five times annually: one face-to-face session at WIDA Central in Madison, and quarterly, four 1.5-hour WebEx sessions. There may be additional opportunities to share feedback by independent review of materials and/or one-on-one discussions with various WIDA departmental members.
- iv. Ad Hoc Committees – WIDA may form ad hoc committees as needed. The ad hoc committees meet to address a specific task or object and dissolve after completion or accomplishment of the assigned task or objective.

5. Definitions

- a. SEA – “SEA” means state educational agency and includes each state’s education Superintendent.

- b. LEA – “LEA” means local educational agency and includes any educational agency within a WIDA Consortium Member state subject to the requirements of Titles I and III of ESSA.
- c. WCER – “WCER” means Wisconsin Center for Education Research at the University of Wisconsin-Madison.
- d. WIDA Consortium – “WIDA Consortium” means the operational unit of the Wisconsin Center for Education Research at the University of Wisconsin-Madison, which offers educational services related to English language learners and academic English language development for pre-kindergarten through grade 12.
- e. WIDA Consortium Member – “WIDA Consortium Member” means any state educational agency that approves and/or purchases the Core Package of WIDA Consortium educational services to satisfy the state and local educational agencies requirements of Title I and Title III of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESSA), which pertain to: the academic assessment of limited English proficient students; the academic assessment of English language proficiency; the development and meeting of annual measurable achievement objectives for limited English proficient students and the building and enhancement of capacity to offer programs that assist limited English proficient students in obtaining academic English language proficiency.
- f. WIDA Consortium Board Member – “WIDA Consortium Board Member” means any person appointed to the WIDA Consortium Board according to the Board Member Appointment subsection below, *see* sec. 3a.
- g. Core Package - “Core Package” means the multi-state copyright licenses and related educational services offered by WCER under the name WIDA Consortium to WIDA Consortium Members, namely: limited copyright licenses to certain WIDA assessments, including ACCESS for ELLs, Alternate ACCESS for ELLs, the WIDA Screener, language development standards and resource guides, instructional and educator training/support materials; technical assistance and professional learning associated with implementing the WIDA ELD Standards; the printing, distributing, scoring and reporting of the ACCESS for ELLs English language test; and educator and technical assistance and professional learning associated with administering and interpreting the ACCESS for ELLs English language test and test results. WIDA Consortium Members all receive the same Core Package of educational services. Individual member States may contract with WCER to obtain enhancements to the Core Package for additional charges.