***\*\*\*DRAFT\*\*\* Exhibit D*** imab-adad-nov21item01a08

***California Assessment System #CN220002*** Attachment 8

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# EXHIBIT D

## Special TERMS AND CONDITIONS

### Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

### IT Requirements

For Agreements that require the contractor to develop, modify or maintain any type of web product (which includes but is not limited to a web page, web document, web site, web application, or other web service), or Agreements that include a web product as a deliverable or result, contractor hereby agrees to adhere to the following CDE standards:

1. All web site and application pages/documents that can be seen by users must be reviewed and approved as required by the CDE’s DEAM 3900 process. Contractor agrees to work through the CDE Contract Monitor for this agreement to ensure the DEAM 3900 process is implemented. Review of all content will be done by the Technology Services Division Web Services Unit.
2. Web sites and web applications must adhere to the appropriate CDE web standards as specified at <http://www.cde.ca.gov/re/di/ws/webstandards.asp>.
3. Contractor must provide the application and/or web site source code (for all non-proprietary software systems or components paid for by the CDE), collected data, and project documentation for ETS and subcontractor developed California-specific application only, in a form to be specified by the CDE according to the following time frame:
	1. For California only new sites/applications: Within 30 days of implementation. For multi-year agreements, material must also be provided annually on the Agreement date anniversary during the Agreement period.
	2. For existing California only sites/applications: Within 90 days of the Agreement renewal or amendment execution. For multi-year agreements, material must also be provided annually on the Agreement date anniversary during the Agreement period.
	3. This release does not include ETS and subcontractor proprietary and previously developed sites/applications not developed specifically for CDE’s sole use under this agreement as set forth in Article VIII.
4. Contractor shall monitor the web site/application on a monthly basis (or more frequently if necessary) to identify and correct the following issues:
	1. Broken links
	2. Dated content
	3. Usability issues
	4. Circumstances where the contractual agreement is not followed
5. Contractor agrees to not violate any proprietary rights or laws (i.e., privacy, confidentiality, copyright, commercial use, hate speech, pornography, software/media downloading, etc.). Also, the contractor agrees to make all reasonable efforts to protect the copyright of CDE content and to obtain permission from the CDE Press to use any potentially copyrighted CDE material, or before allowing any other entity to publish copyrighted CDE content.
6. Contractor agrees that any web applications, web sites, data or other files which may be needed to restore the system in the event of disaster are backed up redundantly, and that a detailed, tested plan exists for such a restoration.
7. Contractor shall provide the CDE with web site usage reports on a monthly basis during the Agreement period for each web page, document or file which can be viewed by users. In addition, contractor shall provide an easy mechanism for users to provide feedback on the site/application, such as a feedback form.

### Data Management (DM) Requirements

While working with the CDE, the contractor may gather, process, or otherwise be intentionally or inadvertently exposed to confidential information, including personally identifiable educational records as defined in federal or state law. The contractor must use, disclose, manage, and protect confidential information in accordance with all applicable federal and California state laws. Applicable laws include, but are not limited to: the Family Educational Rights and Privacy Act of 1984 (FERPA; 20 U.S.C. Sec. 1232g), the Information Practices Act (California Civil Code Sec. 1798, et seq.), the Children’s Online Privacy Protection Act (COPPA), and *EC* sections 49069 to 49079.

Contractor and its subcontractors shall exercise other security precautions that are set forth in the Scope of Work as well as precautions have been approved by the CDE’s Educational Data Management Division (EDMD) and Technology Services Division (TSD) to prevent unauthorized use, access, modification or disclosure/re-disclosure of any Confidential Information. Such security precautions shall include, at a minimum (and without limiting the generality of the use and disclosure restrictions set forth above):

* Securely encrypting and otherwise complying with best practices in order to securely protect Confidential Information that is transmitted electronically or stored on portable electronic devices;
* Securely locking any repository for Confidential Information;
* Provide appropriate levels of security (confidentiality, integrity, and availability) for the data based on data categorization and classification and FIPS Publication 199 protection levels;
* Properly maintaining security of any and all computer systems (hardware and software applications) used to store or process Confidential Information, including installing all security patches, upgrades, and anti-virus updates;
* Designating a Security Officer to oversee such Party’s Data security program, carry out privacy programs and to act as the principal point of contact responsible for communicating on security matters with the CDE;
* Implementing any other reasonable security protocols for PII or Student-Level Data that may be prescribed by the CDE’s Technology Service Division in a written notice to Contractor;
* Making and distributing copies of Data only as necessary to perform the obligations hereunder in full compliance with the other terms hereof, keeping accurate records of any such copies (including any back-ups), and legally and physically controlling such copies in a manner that prevents unauthorized duplication, use or disclosure.

The Contractor shall retain and provide the CDE upon written request with a copy of any compliance agreements required pursuant to the Scope of Work, which include signed confidentiality statements, training certifications, and other documentation necessary to demonstrate compliance with this provision.

Contractor agrees to indemnify the CDE for any losses incurred as a result of any breach of security or any disclosure or re-disclosure of Confidential Information to parties that are not entitled to such disclosure or re-disclosure, including any losses or damages resulting from any third-party claims.

The contractor shall only allow those employees, agents, and subcontractors to have access to confidential information as necessary to perform any duties or functions associated with the Agreement. The contractor, its employees, agents, and subcontractors shall protect from unauthorized disclosure all personal information, sensitive information, or confidential information. The contractor, its employees, agents, and subcontractors promise not to copy, give or otherwise redisclose such sensitive, confidential, or personal information to any other person or entity unless the redisclosure is permitted by federal and state law, the CDE has approved of the redisclosure, and the CDE has on file a CDE confidentiality agreement that is signed by the party to whom the information has been disclosed.

The contractor shall ensure that all personal information, sensitive information, or confidential information are kept secure and confidential. The contractor must immediately report by email and telephone (within two hours of discovery) to the CDE Contract Monitor any breach of security, as that phrase is used in California Civil Code section 1798.29(d). The CDE contact for such notification is as follows:

Mark Lourenco, Information Security Officer

California Department of Education

Technology Services Division – Information Security Office

1430 N Street, Suite 3712

Sacramento, CA 95814-5901

Office phone: 916-322-8334 Office email: ISO@cde.ca.gov

The contractor shall take prompt corrective action to cure any such breach of security. The contractor shall investigate such breach and provide a written report of the investigation to CDE, via email and within 30 working days of the discovery of the breach to the address above.

The contractor fully understands that any unauthorized disclosure made by the contractor, its employees, agents, or subcontractors may be a basis for civil or criminal penalties and/or disciplinary action (including dismissal for State employees). The contractor will immediately inform the CDE Contract Monitor in the event that the contractor, its employees, agents, or subcontractors either learns or has reason to believe that any person who has access to confidential information has or intends to disclose that information in violation of this agreement.

The contractor shall return or confidentially destroy, as directed by the CDE, any and all CDE information and data: i) provided by CDE hereunder, or ii) owned by CDE, immediately upon CDE’s request or immediately upon termination of this agreement. Unless otherwise agreed to in writing by the CDE, such destruction shall include data that is publicly available; however, nothing herein shall prevent the contractor from thereafter obtaining such data from publicly available sources.

The contractor acknowledges that any and all data that are collected, developed and/or generated by the work performed for the CDE are the sole and exclusive property of the CDE.

Definitions: The following definitions apply for the purposes of this agreement:

“Public information” means information maintained by state agencies that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code Sections 6250-6265) or other applicable state or federal laws, whether or not marked “confidential,” “proprietary,” “privileged” or with similar markings.

“Confidential information” means information maintained by state agencies that is exempt from disclosure under the provisions of the California Public Records Act (Government Code Sections 6250-6265) or other applicable state or federal laws, whether or not marked “confidential,” “proprietary,” “privileged” or with similar markings. Confidential Information includes Sensitive and Personal Information.

“Data” means any data or information, whether confidential or publicly available.

“Sensitive and personal information” means information that is personally identifiable, whether or not marked in any manner, including, any name, telephone, email address, street address, date of birth, social security number, government license or ID number, account or bank card number, security code, password, pupil information, educational record, medical information or record, health information or record. Personal information includes information that alone or in combination, is linked or linkable to a specific person that would allow a reasonable person in the community, who does not have personal knowledge of the relevant circumstances, to identify the person with reasonable certainty. Sensitive and personal information may occur in public and/or confidential records. Files and databases containing sensitive and/or personal information require special precautions to prevent inappropriate disclosure.

“Working day” shall mean days Monday through Friday, inclusive, but exclusive of the CDE-observed holidays.

### Resolution of Disputes

If the contractor disputes any action by the CDE Contract Monitor arising under or out of the performance of this Agreement, the contractor shall notify the CDE Contract Monitor of the dispute in writing and request a claims decision. The CDE Contract Monitor shall issue a decision within 30 working days of the contractor's notice. If the contractor disagrees with the CDE Contract Monitor’s claims decision, the contractor shall submit a formal claim to the Superintendent of Public Instruction or the Superintendent's designee. The decision of the Superintendent shall be final and conclusive on the claim unless the decision is arbitrary or capricious. The decision may encompass facts, interpretations of the Agreement, and determinations or applications of law. The decision shall be in writing following an opportunity for the contractor to present oral or documentary evidence and arguments in support of the claim. Contractor shall continue with the responsibilities under this Agreement during any dispute.

### ICT Accessibility Requirements (05/2018):

Unless the Scope of Work expressly provides that the CDE shall be responsible for all 508 compliance:

1. Contractor shall, in accordance with California Government Code section 11135 (which requires state agencies to comply with Section 508 of the federal Rehabilitation Act of 1973 (Section 508)), ensure that any and all Information and Communications Technology (ICT) deliverables developed, procured, or maintained as a result of this Agreement shall comply with state and federal accessibility requirements, including: (i) the California Department of Education’s (CDE) Web Content Accessibility Guidelines (WCAG) 2.0 at the AA level found at: <http://www.w3.org/TR/WCAG20/>, (ii) the CDE’s Web Standards found at: <https://www.cde.ca.gov/re/di/ws/webstandards.asp>, and (iii) the CDE’s Web Application Review Team (WebART) review process found at: <https://www.cde.ca.gov/re/di/ws/webartproc.asp>.
2. The definition of “Information and Communications Technology” or “ICT” includes but is not limited to: computer hardware, software, cloud services, websites, web content, web or mobile application, office documents (e.g., MS Word, MS Excel, MS PowerPoint, PDF), multimedia, social media, email, and electronic devices.
3. Contractor shall employ a section 508 compliance expert with qualifications and experience acceptable to the CDE to: (i) advise Contractor during ICT deliverable development, and (ii) certify in writing on behalf of Contractor that the ICT deliverables are fully compliant with the standards in subsection A above and Section 508 prior to submission to, or use by, the CDE. Such certification shall also include a statement describing precise methods by which compliance was determined, along with the results of testing. The Contractor is responsible for any costs associated with breach of such certification.
4. Upon CDE’s request, the Contractor must provide to the CDE all source files for ICT deliverables to the CDE for the purpose of improving accessibility. This may include non-proprietary code, unedited pictures and video, and original documents prior to PDF conversion among others.

### Prohibition of Discrimination:

In addition to the non-discrimination requirements in General Terms and Conditions attached as Exhibit C, Contractor and its subcontractors shall comply with Education Code section 220, which prohibits any person from discriminating on the basis of any characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted in connection with this Agreement.

### Right to Terminate

Only the CDE has the right to terminate this agreement subject to 30 working days written notice to the contractor. The contractor may submit for approval a written request to the CDE to terminate this agreement upon 30 working days written notice and only upon the grounds that the CDE substantially failed to perform its responsibilities as provided herein.

The agreement can be immediately terminated by the CDE for cause. The term “for cause” shall mean that the contractor fails to meet any of the terms, conditions, and/or responsibilities of the Agreement. In this instance, the Agreement termination shall be effective as of the date indicated on the State’s notification to the contractor.

This agreement may be suspended or cancelled without notice, at the option of the contractor or the CDE, if the contractor or the CDE’s premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is not reasonably possible to continue service, or in the event that the contractor determines or the CDE finds that the contractor is unable to render all services under the Agreement as a result of any action by any governmental authority. The CDE is not responsible for payment for any work conducted by the contractor during any period of suspension or after the date of cancellation.

If the Agreement is terminated for any reason, CDE agrees to pay the Contractor for work completed based on the final invoices of actual expenses incurred by the contractor up to and including the date the Agreement is terminated.

### List of ETS and Subcontractor Proprietary Sites:

**ETS**

ISAAP Tool - <https://isaap.ets.org/>

TOMS - <https://ca-metrics.ets.org/>

TOMS (Production) - <https://mytoms.ets.org/TOMS>

Technology Readiness Checker for Students - <https://trcs.ets.org/>

**Cambium**

Test Information Distribution Engine (TIDE) - [https://ca.tide.cambiumast.com](https://ca.tide.cambiumast.com/)

Operational Test Delivery System (TDS) for Test Administrators - <https://ca.tds.cambiumast.com/testadmin>

Operational Test Delivery System (TDS) for Students - <https://ca.tds.cambiumast.com/student>

Practice & Training Test Delivery System (TDS) for Test Administrators - <https://capt.tds.cambiumast.com/testadmin>

Practice & Training Test Delivery System (TDS) for Students - <https://capt.tds.cambiumast.com/student>

Item Tracking/Item Bank Systems - [https://its.cambiumast.com](https://its.cambiumast.com/)

Results Data Entry Interface - <https://ca.tds.cambiumast.com/student/?a=ResponseEntry>

Local Educator Hand Scoring Module (CAASPP) - [https://ca.tss.cambiumast.com](https://ca.tss.cambiumast.com/)

Local Educator Hand Scoring Module (ELPAC) - [https://ca-elpac.tss.cambiumast.com](https://ca-elpac.tss.cambiumast.com/)

Educator Assessment Viewing Application - <https://capt.tds.cambiumast.com/student/?a=ResponseEntry>

**Measurement Inc.**

Virtual Scoring Center - <https://scoring2.measinc.com/SRC/Account/LogOn>

**WestEd**

Center for Standards, Assessment, & Accountability - <https://csaa.wested.org/>

Understanding Proficiency - <https://understandingproficiency.wested.org/>

**SCOE**

CAASPP-ELPAC Moodle Training Site - <https://moodle.caaspp-elpac.org/>

CAASPP-ELPAC AST Website - <https://caaspp-elpac.scoe.net/AgencyLogin>

Educator Opportunities Portal - <https://filemaker1.scoe.net/fmi/webd/Educator_Opportunities_Portal>

**MetaMetrics**

The Lexile Framework for Reading website - [https://www.lexile.com](https://www.lexile.com/)

The Quantile Framework for Mathematics website - <https://www.quantiles.com/>

Corporate website - <https://metametricsinc.com/>

Lexile and Quantile Tools - [https://hub.lexile.com](https://hub.lexile.com/)

Lexile and Quantile Tools for Family Members - [https://Hub.lexile.com/family](https://hub.lexile.com/family)

**Red Dog**

CAASPP program webcast - <https://ets.themeetingzone.com/>

ELPAC program webcast - <https://ets2.themeetingzone.com/>

Backup website: <https://ets3.themeetingzone.com/>