

**JOINT POWERS AGREEMENT AMONG
THE SOUTH DAKOTA BOARD OF REGENTS,
THE SOUTH DAKOTA DEPARTMENT OF EDUCATION, AND
THE SOUTH DAKOTA STATE LIBRARY BOARD
REGARDING THE SOUTH DAKOTA LIBRARY NETWORK**

This Joint Powers Agreement (JPA) is entered between the South Dakota Board of Regents (BOR), 306 East Capitol Avenue, Suite 200, Pierre, SD 57501, the South Dakota Department of Education (DOE), 800 Governors Drive, Pierre, SD 57501, and the South Dakota State Library Board (Library Board), 800 Governors Drive, Pierre, SD 57501, pursuant to the authority provided in SDCL Chapter 1-24.

I. RECITALS

A. BOR is a public body charged under article XIV, § 3 of the South Dakota Constitution with control of all publicly funded institutions of higher education as well as two special schools. Such control includes control of libraries located at each of its several campuses. The Board of Regents has all customary management powers associated with higher education governing boards, and it may exercise those powers and duties that are necessary for proper management of institutions committed to its control. SDCL §§ 13-49-19 and 13-53-2.

B. DOE was formerly known as the South Dakota Department of Education and Cultural Affairs. One of DOE's components is the South Dakota State Library Office, which has primary responsibility for executing State library policy. SDCL §§14-1-40, 1-45-18, and 14-1-44.

C. The Library Board is the supervisory and policymaking board for the State library office. SDCL §14-1-59.

D. Beginning in 1988, the parties cooperated to institute the South Dakota Library Network (SDLN), an automated library information system. SDLN allowed participating libraries to search their own holdings and holdings of other participating libraries.

E. Under the original governance document, DOE assumed primary responsibility for the SDLN initiative. BOR, under contract with the Library Board, provided a location for the data processing equipment and operational services and support.

F. In 2000, the parties executed a Memorandum of Understanding (MOU), which is attached as Exhibit A. This MOU provided for the transfer of positions, equipment, and supplies to BOR, the maintenance and support of SDLN, and the establishment of advisory groups. The MOU expired, according to its terms, on December 31, 2005, but network services have continued to be provided under the terms provided therein, except as noted in ¶¶ I.G. and IV. A. and B. of this JPA.

G. Over the years since the execution of the MOU, budget constraints and practicalities have resulted in transfer of management, budgeting, collection of fees, and maintenance and support of SDLN to BOR. This has resulted in the provisions of the MOU becoming out of date and unmatched with actual practice.

H. Divergent needs of SDLN members have made it necessary to wind down the current network services and distribute certain records and reserves.

II. PURPOSE

The purpose of this JPA is to provide for joint action among the parties to wind down and terminate the outdated MOU attached as Exhibit A and to provide for continuation of SDLN operations and support during the term of this JPA in order to permit SDLN members to withdraw their records from the system in orderly fashion.

III. TERM

Proper written notification of proposed termination of the MOU was provided by all parties before June 30, 2014. This JPA shall commence on July 1, 2014, and termination of the MOU and this JPA shall be fully effective on June 30, 2016, unless this JPA is otherwise terminated by the parties as provided in this JPA.

IV. CONTROL OF PROPERTY AND PERSONNEL

A. All equipment, supplies, funding and full-time equivalent positions previously under the custody or control of DOE for purposes of the maintenance, operation and support of SDLN have been transferred to BOR for those purposes and reflected in BOR's budget pursuant to SDCL §§ 4-7-10 and 4-7-13.

B. All fee collection for SDLN pursuant to SDCL § 1-45-37 (repealed) has been transferred to BOR for purposes of maintenance, operation, and support of SDLN and reflected in BOR's budget pursuant to SDCL §§ 4-7-10 and 4-7-13.

C. These transfers are hereby reaffirmed by DOE and the Library Board, and BOR shall maintain custody, title, and control of all equipment, supplies, funding, FTEs, and fees referenced in this Section IV unless otherwise provided in this JPA.

D. BOR shall retain exclusive responsibility for its officers, employees, and agents in engaging in services related to SDLN, including but not limited to regular and overtime wages and salaries, unemployment benefits, worker's compensation coverage, health insurance or other benefits, and liability coverage and indemnity.

V. ADMINISTRATION AND FINANCING

A. BOR shall be responsible for administration and costs of maintenance, operation, and support of SDLN. SDLN property shall be held and disposed in the manner described in Section IV.

B. During the term of this JPA, there will be no break in continuity of SDLN services for full-time participating libraries and remote access member libraries.

C. Nothing referenced in this JPA shall, in any way, diminish or modify the contractual obligations of SDLN established under previous governance and management

procedures. Upon termination of this JPA, any surviving contractual obligations will devolve upon the BOR, and BOR will execute any necessary amendments to existing contracts to carry out the provisions of this paragraph.

D. All full-time participating libraries and remote access member libraries have been made aware of the winding down of the MOU and network services and the necessity of making alternative arrangements for network services before July 1, 2016.

E. BOR staff will consult with member libraries to develop a plan for the orderly phase out of network services, withdrawal of individual library records, distribution of operating and capital reserves, distribution of annual fee, and charges to be set off against reserves to cover the costs of withdrawing records.

VI. FUNDING REQUIREMENT

This JPA depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for the purposes contemplated herein. This JPA will be terminated if the Legislature fails to appropriate funds or grant expenditure authority or funds become unavailable due to federal funds restrictions. Termination pursuant to this paragraph is not a default by any party nor does it give rise to a claim against any party.

VII. GENERAL PROVISIONS

A. This JPA, or any part thereof, or benefits to be received hereunder, shall not be assigned, transferred or otherwise disposed of to any person, firm, corporation or other entity. This JPA may not be modified or amended except in writing, which writing shall be expressly identified as part of this JPA, and which writing shall be signed by the official who executed this JPA or their authorized designees.

B. This JPA shall be governed and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this JPA shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

C. This JPA may be terminated by any party hereto upon thirty (30) days written notice. In the event the any party breaches any of the terms or conditions hereof, this JPA may be terminated by the non-breaching party at any time with or without notice. Upon termination, property and contractual rights and obligations will be determined as provided in this JPA.

D. This JPA and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, agents, employees, successors in interests and assigns to the respective parties hereto.

E. All notices or other communication required under this JPA shall be in writing and sent to the address set forth above. Notices shall be given by and to the undersigned or such authorized designees as a party may from time to time designate in writing. Notices or communications shall be deemed to have been delivered when mailed by first class mail or, if personally delivered, when received by such party.

F. In the event that any provision of this JPA shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision herein.

G. All other prior discussions, communications and representations concerning the subject matter of this JPA are superseded by the terms of this JPA, and except as specifically provided herein, this JPA constitutes the entire agreement with respect to the subject matter hereof. This JPA is intended to supersede and replace any existing agreement between the parties.

H. This JPA is intended only to govern the rights and interest of the undersigned parties. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

I. The parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this JPA, and that the cooperative undertaking herein described shall be administered as provided herein.

J. By the signature of their representative below, each party certifies that approval of this JPA by ordinance, resolution or other appropriate means has been obtained by that party's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 and that the representative is authorized to sign on the party's behalf.

K. The parties acknowledge that a true and correct copy of this JPA will be filed with the Office of Attorney General and the Legislative Research Council within 14 days of its final execution pursuant to SDCL 1-24-6.1.

The parties hereby confirm their agreement of the foregoing terms and conditions through the signatures of their duly authorized representatives affixed below.

IN WITNESS HERETO, the parties signify their agreement by signature affixed below.

Dated this 11 day of June, 2014.

Dated this ___ day of _____, 2014.



Dean Krogman
President
South Dakota Board of Regents

Dr. Melody Schopp
Secretary
South Dakota Department of Education

Dated this ___ day of _____, 2014.

Dr. Lesta V. Turchen
President
South Dakota State Library Board

**MEMORANDUM OF UNDERSTANDING
AMONG THE SOUTH DAKOTA BOARD OF REGENTS,
THE SOUTH DAKOTA DEPARTMENT OF EDUCATION AND CULTURAL AFFAIRS,
AND THE SOUTH DAKOTA STATE LIBRARY BOARD**

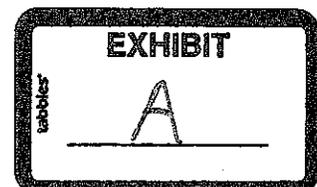
The South Dakota Board of Regents, hereafter "the Board of Regents," is charged under Article XIV, § 3 of the South Dakota Constitution with control of publicly funded institutions of higher education and with two special schools. This control includes control of libraries located at each of its several campuses. In administering these libraries, the Board of Regents is charged with the responsibility to avoid unnecessary duplication of facilities and programs. SDCL § 13-53-2. The Board of Regents enjoys all customary management powers higher education governing boards exercise that are necessary for the proper legal management of the institutions committed to its control. SDCL § 13-49-19.

The South Dakota Department of Education and Cultural Affairs, hereafter "DECA," includes the state library office, which has primary responsibility for executing the state library policy declared in SDCL § 14-1-40. SDCL §§ 1-45-18, 14-1-44. The DECA collects the fees paid by libraries that participate in the state's automated library system. SDCL § 1-45-37. Such monies are appropriated to the DECA to provide enhancements to the existing automated library system as they become necessary as the result of more libraries joining the automated library system. SDCL § 1-45-37. The DECA, through the power vested in its Secretary, controls the exercise of the governmental responsibilities vested in it. SDCL § 1-32-4. The DECA, upon approval of the governor, may establish advisory councils to assist in the discharge of its responsibilities. SDCL § 1-32-4.

The South Dakota Library Board, hereafter "the Library Board," is the supervisory and policymaking board for the state library office. SDCL § 14-1-59. Among its responsibilities is the adoption of a statewide plan for the coordination of development of library services. SDCL § 14-1-59 (4). The Library Board enjoys the power to enter into contracts with other state agencies to provide library services and to extend, improve or coordinate library services. SDCL § 14-1-60.

Beginning in 1988, the Board of Regents, the DECA and the Library Board cooperated to institute the South Dakota Library Network, hereafter "SDLN," to place into operation and to maintain an automated information system. SDLN permitted participating libraries to search not only their own library holdings, but also the holdings of all other participating libraries.

Under the original governance document, the DECA assumed primary responsibility to implement the SDLN initiative. The DECA and the Library Board relied upon an Advisory Council drawn from user groups to provide policy formulation and program review. The Board of Regents, under contract with the Library Board, provided a location for the data processing equipment and for operational services and support.



Initial funding for the system included an increase to the DECA's FY89 appropriation and special equipment appropriations and internal reallocations in participating state-funded libraries. Subsequent to the initial funding, passage of SDCL § 1-45-37 has authorized the DECA to collect fees from member libraries and to use the funds so generated.

The Board of Regents, the DECA and the Library Board, with the concurrence of the SDLN Advisory Council created under the initial governance document, concluded that the management of the SDLN could be improved by creating the position of the state library network operations director and providing that person greater authority and responsibility for the day-to-day management of the SDLN. Recognizing the advantage to SDLN operations of continuing to house the equipment and system operations site with the Board of Regents, where access to necessary hardware and software support personnel can be readily assured, the parties have agreed to the following conditions in order to effect such a consolidation of functions.

The Network services on this agreement commence January 1, 2000 and shall end December 31, 2005.

- I. The DECA shall:
 - A. Transfer two full-time equivalent positions to the Board to permit it to employ a SDLN operations director and support staff positions;
 - B. Transfer title to SDLN equipment and supplies and all funding required to provide salary and fringe benefit support for the SDLN staff, together with such funds as shall be necessary to cover the operational and maintenance requirements of the SDLN;
 - C. Approve, recommend and justify the SDLN budget; and
 - D. Remain responsible for, consistently with the foregoing, and under the terms of this Memorandum of Understanding, FTE and funding requirements of the SDLN, including all necessary legislative action.
- II. The Board of Regents shall:
 - A. Select, in consultation with the SDLN Executive Committee, sites at which the SDLN equipment and the SDLN operations director's offices may be located;
 - B. Take title to SDLN equipment and supplies, and, subsequent to the effective date of this agreement, purchase and take title to SDLN equipment and supplies acquired with funds made available to it by the DECA pursuant to section I, above;
 - C. Provide management information services for SDLN personnel, equipment and supplies;

- D. Hire an SDLN operations director and assign the operations director and support staff to an appropriate organizational unit within the Board of Regents' system;
- E. Solicit the recommendations and comments of the SDLN Executive Committee, whose constitution is discussed in section IV, below, in all personnel matters involving the SDLN operations director, including hiring, firing, salary and performance appraisals, and
- F. Assume, consistently with the foregoing and under the terms established in this Memorandum of Understanding, all responsibilities for the operations and obligations, including the responsibilities for budgeted expenditures and reports, of the SDLN.

III. The Library Board agrees to continue to exercise its responsibilities to refine and to implement state library policy, as they relate to the SDLN, through the SDLN Advisory Council and Executive Committee.

IV. The Advisory Council shall include one member (the Director) representing each full-time participating library, one member representing associate members, one member representing remote users, one member representing the executive director of the Board of Regents, and the state librarian. The representative of the remote users and the representative of the associate members shall be elected annually by their respective participants. The SDLN operations director shall provide staff support to the SDLN Advisory Council.

A. The Advisory Council shall:

1. Make policy recommendations to the Library Board;
2. Promote and support cooperative programs, services and activities;
3. Review and evaluate the effectiveness of the network services and activities and make recommendations to the Board of Regents, the Department of Education and the Library Board;
4. Review and evaluate the responsibilities and contract terms of participating libraries and make recommendations to the Library Board;
5. Recommend all fee structures and rates to the DECA;
6. Identify network concerns and recommend improvement of network efficiency and services and make recommendations to the Board of Regents, the DECA and the Library Board;

7. Develop long-range plans for the SDLN and make recommendations to the Library Board;
 8. Select five at-large members from among participating library representatives to serve on the Executive Committee; and
 9. Prepare an annual report to the Board of Regents, the Department of Education and the Library Board.
- B. The Advisory Council shall meet at least twice a year to review SDLN operations and to carry out its assigned responsibilities. The State Librarian and the Advisory Council Chair, in consultation with the Executive Committee and the Operation Director, shall be responsible to develop the agenda for such meetings. The State Librarian is responsible for preparation and distribution of minutes. The State Librarian, the Advisory Council Chair, the SDLN Operations Director, or any three members of the Advisory Council, upon written request to the State Librarian and the Advisory Council Chair, may convene special meetings.
- C. Except for the selection of at-large members to the Executive Committee, the Advisory Council may delegate any of its responsibilities to the Executive Committee.
- V. The Board of Regents, the DECA and the Library Board agree that the effective oversight of the SDLN operations director shall be enhanced if done in consultation with major user groups, provided that the consulting group is not so large as to inhibit full, frank and timely discussion. To that end, the Board of Regents, the DECA and the Library Board agree to the formation of an Executive Committee drawn from members of the SDLN Advisory Council.
- A. The Executive Committee shall include the executive director of the South Dakota Board of Regents or that individual's designee, the South Dakota state librarian or that individual's designee and five at-large members elected by the SDLN Advisory Council from among participating library representatives and dial access users. The state librarian shall chair the Executive Committee.
 - B. The Executive Committee shall advise the Board of Regents personnel in all matters involving the network operations director, including hiring, firing, salary and performance appraisals.
 - C. The Executive Committee shall advise the SDLN operations director in matters affecting the management of the SDLN. In this capacity, the Executive Committee shall review procedures, protocols and standards for the SDLN and make recommendations on such matters to the SDLN operations director.

- D. The Executive Committee shall review fees and costs and make recommendations to the Board of Regents and the DECA for modifications in budgets and expenditure programs.
- E. The Executive Committee shall have the power to contract for the SDLN, provided that the obligations assumed under the contract shall not require the expenditure of funds exceeding the budget recommended by the DECA and adopted by the legislature. The Executive Committee may delegate this power to the SDLN operations director. If such a delegation is made, the SDLN operations director's exercise of such contract power shall be subject to all Board of Regents procedures and practices governing the legal, budgetary and programmatic review and approval of contracts.
- F. The Executive Committee shall meet at least once each quarter. The Executive Committee may be convened for special meetings by the SDLN operations director, that state librarian or upon the written request of any two committee members. Meetings may be conducted via teleconference.
- G. The official designated by the Board of Regents to supervise the SDLN operations director shall also be authorized to convene the Executive Committee, for the purpose of obtaining its recommendations and comments on personnel matters involving the operations director. The Executive Committee shall be convened for purposes of such consultation at least once each year. At all other times, the Executive Committee shall notify the SDLN operations director of its meetings, and the SDLN operations director shall provide necessary staff assistance to the Executive Committee.
- H. The Executive Committee shall develop and recommend to the Board of Regents a detailed job description for the SDLN operations director. The description should provide, at a minimum, that the SDLN operations director:
1. Supervises the staff assigned to the SDLN office, consistently with Board of Regents procedures and practices;
 2. Develops procedures, protocols and standards for the SDLN in consultation with the Executive Committee;
 3. Administers SDLN budgets, negotiates and reviews SDLN contracts and recommends expenditure of SDLN funds, all consistently with Board of Regents procedures and practices;
 4. Develops long-range plans for the SDLN, addressing both operational and equipment need, and forwards recommendations to the Advisory Council

through the Executive Committee; and

5. Provides staff support for the Executive Committee and the Advisory Council.
- VI. The Board of Regents, the DECA and the Library Board agree that funding shall be addressed as follows:
 - A. The budget for the SDLN shall be prepared by the SDLN operations director and must be reviewed by the Executive Committee and approved by the Secretary of the DECA before being submitted to the Governor for inclusion in the recommended budget.
 - B. The Board of Regents shall request such other fund expenditure authority as needed to operate the SDLN under the budget approved by the DECA. The DECA shall remain responsible for justification of the budget and revenue projections before the Governor and Legislature.
 - C. As contemplated under SDCL § 1-45-37, the DECA shall remain responsible for the collection and management of funds obtained through the SDLN fees.
 - D. The DECA shall transfer sufficient funds to the Board of Regents to cover the expenditure authority authorized by the legislature for the operation of the SDLN.
 - VII. Upon execution of this Memorandum of Understanding, the Board of Regents, the DECA and the Library Board shall exercise their best good faith efforts to effect the transfers contemplated herein and to secure all necessary approvals. This Memorandum of Understanding shall become fully effective only upon receipt by the Board of Regents of the necessary FTE and spending authority.
 - VIII. This Memorandum of Understanding expresses the entire agreement among the parties with respect to the governance, funding and management of the SDLN. When this Memorandum of Understanding becomes fully effective, it shall supersede and control all prior governance and management documents. Such changes in governance and management structures shall not, in any way, diminish or modify the contractual entitlements and obligations of the SDLN established under previous governance and management procedures.

- IX. The operations addressed under this Memorandum of Understanding are contingent upon the continued availability of funds. The parties agree that the agreement set out in this Memorandum of Understanding shall terminate automatically in the event that any of the following occurs:
- A. Funds from SDLN member libraries are not available to support SDLN operations and services;
 - B. Appropriated funds are not available to support SDLN operations and services; or
 - C. In either event, if expenditure authority is not extended to any of the necessary ~~parties to expend funds available for SDLN operations or services.~~
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- X. Apart from termination for failure of funding, this Memorandum of Understanding may be terminated by any party for any reason upon written notification to the chief executive officer of the other parties. Unless otherwise agreed upon by the parties, such termination will not take effect until June 30 of the fiscal year following the fiscal year in which notification is given.
- XI. In the event that this Memorandum of Understanding is terminated, and in the absence of an agreement among the parties providing for different measures, the Department of Education shall assume responsibility for all operations and obligations of the SDLN; the Board of Regents shall initiate the necessary procedures to transfer to the Department of Education any FTEs, spending authority and funds acquired by it from the Department of Education for purposes of operating the SDLN, together with SDLN equipment and supplies; the Board of Regents shall also transfer existing staff to the Department of Education and shall take such steps as may be necessary and convenient to permit the DECA to relocate SDLN equipment, records and supplies.
- XII. This Memorandum of Understanding shall be construed under the laws of the State of South Dakota. If any term or provision of this Memorandum of Understanding shall be found to be invalid, the remaining provisions shall continue with full force and effect to the extent that they are severable from such invalid terms or provisions.
- XIII. This Memorandum of Understanding may be modified at any time in writing executed by all parties.

