

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs
Consent

AGENDA ITEM: 6 – L
DATE: December 7-8, 2022

SUBJECT

Education Partnership Agreement – DSU

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 5:3](#) – Agreements and Contracts

BACKGROUND / DISCUSSION

BOR Policy 5:3 requires board action on a range of items including “Affiliative agreements and other agreements that provide for joint sponsorship of educational programming for which credit shall be awarded.” To comply with this requirement, Dakota State University (DSU) seeks approval for an education partnership agreement with the National Security Agency/Central Security Service.

IMPACT AND RECOMMENDATION

The agreement results in the opportunity for shared equipment and instructional materials, joint research, faculty collaboration, and student, faculty, and staff exchange. DSU will be eligible to cooperate with the NSA in developing a program under which DSU’s students may be given academic credit for work on NSA research projects.

Board staff recommends approval.

ATTACHMENTS

Attachment I – Education Partnership Agreement: National Security Agency

DRAFT MOTION 20221207_6-L:

I move to approve the Educational Partnership Agreement between DSU and the National Security Agency, as presented.

**EDUCATION PARTNERSHIP AGREEMENT
BETWEEN**

DAKOTA STATE UNIVERSITY

AND THE

NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE

This Education Partnership Agreement (“Agreement”) is made and entered into effect as of the last date executed by a Party hereto (the “Effective Date”) by Dakota State University, an educational institution having its principal place of business at 820 Washington Ave N. Madison, SD 57042 (EPA Partner) and the National Security Agency/Central Security Service (NSA), (collectively referred to as “Parties”), an Agency of the United States Government, having its principal place of business at 9800 Savage Road, Suite 6843, Ft. Meade, Maryland, 20755.

WHEREAS, Congress enacted Title 10 U.S.C. § 2194 titled “Education Partnerships,” authorizing, defense laboratories to enter into Education Partnership Agreements with educational institutions in the United States, including local education agencies, colleges, universities and nonprofit institutions that are dedicated to, improving science, technology, engineering, mathematics, business, law, and technology transfer or transition and engineering education (hereinafter “STEM”);

WHEREAS, NSA conducts research and development in STEM education;

WHEREAS, the EPA Partner is an educational institution as defined in 10 U.S.C. § 2194, dedicated to improving STEM education;

WHEREAS, NSA and the EPA Partner currently possess scientific skills, facilities, personnel, special equipment, information, computer software, and know-how pertaining to STEM;

WHEREAS, NSA and the EPA Partner desire to improve STEM education; and

WHEREAS, NSA desires to do one or more of the following:

- i) loan equipment and instructional materials to the EPA Partner;
- ii) transfer equipment to the EPA Partner;
- iii) make NSA Personnel available to teach and assist in the development of STEM courses, programs, and materials with the EPA partner;
- iv) involve the EPA Partner’s Personnel in NSA research projects;
- v) cooperate with the EPA Partner in developing a program under which the EPA Partner’s students may be given academic credit for work on NSA research projects;
- vi) provide academic, career advice, and assistance to the EPA Partner’s students; and
- vii) provide any other support and resources to the EPA Partner as authorized by law including, but not limited to, activities described in 10 U.S.C. § 2192, 10 U.S.C. § 2374a, and 15 U.S.C. § 3719, as amended, at its sole discretion.

Now, therefore, the Parties hereto agree as follows:

1.0 DEFINITIONS.

“**Academic Liaison,**” means the NSA representative for the EPA Partner who will lead NSA engagement in areas of mutual interest, including identification of STEM topic areas and production of a highly skilled STEM talent base.

“**Personnel,**” means

- in the case of NSA any employee, contractor, or other affiliate authorized to do work for or on behalf of NSA.
- in the case of EPA Partner any employee, volunteer, or student of the EPA Partner.

2.0 PURPOSE.

2.1 The purpose of this Agreement between NSA and the EPA Partner is to include mutual support for STEM activities.

3.0 REQUIREMENTS.

3.1 Responsibilities of NSA.

3.1.1 NSA will provide resources required for supporting the engagement between the EPA Partner and NSA, as well as demonstrate its function and discuss its limitations with the EPA Partner’s faculty and students.

3.1.2 NSA will make its Personnel available to assist in the development of academic projects and programs and related educational material in the fields of STEM, and provide appropriate guidance;

3.1.3 NSA will involve the EPA Partner’s Personnel NSA research projects at the sole discretion of the Agency.

3.1.4 NSA will provide academic and career advice to students of the EPA Partner; and programmatic and research advice to the staff members of the EPA Partner.

3.1.5 NSA will provide reasonable access for Personnel of EPA Partner to complete the objectives of this Agreement.

3.1.6 The level of effort expended by NSA under this Agreement shall be determined at the sole discretion of NSA.

3.1.7 To the extent that resources are available, NSA will designate an Academic Liaison for EPA partner. Academic Liaisons will be subject to the DoD 5500.07-R, section 2-301, The DoD Joint Ethics Regulation.

3.2 Responsibilities of the EPA Partner.

3.2.1 Subject to its policies and procedures regarding program development, the EPA Partner will develop academic projects and programs and related educational material in the fields of STEM.

3.2.2 The EPA Partner will provide access to appropriate Personnel to support approved NSA research projects.

3.2.3 The EPA Partner will provide reasonable access and work space for members of NSA Personnel to complete the objectives of this Agreement.

3.2.4 The EPA Partner, at the request of NSA, will periodically meet to discuss its progress in completing its objectives under this Agreement.

3.2.5 The level of effort to be expended by the EPA Partner under this Agreement shall be determined at the sole discretion of the EPA Partner.

3.3 Funding. Each Party will be responsible for its own costs associated with this Agreement.

4.0 WARRANTIES.

4.1 Of NSA. NSA/CSS hereby warrants to the EPA Partner that NSA responsibilities under this Agreement are consistent with the mission of NSA, and that the official executing this Agreement has authority to do so.

4.2 Of EPA Partner. The EPA Partner hereby warrants to NSA that it is duly organized, validly existing and in good standing under the laws of the State of South Dakota and is an educational institution, as required by 10 U.S.C. § 2194, dedicated to improving STEM; and that the official executing this Agreement has the authority to do so.

5.0 CONDITIONS AND LIABILITIES.

The following conditions and liabilities will apply to this Agreement.

5.1 Personnel Conduct. The EPA Partner and its Personnel will abide by NSA rules for security, safety, and general conduct while at any NSA campus or facility. Similarly, all NSA Personnel will abide by EPA Partner rules for security, safety, and general conduct while at any EPA Partner campus or facility.

5.2 Access to Classified or Proprietary Information.

5.2.1 It is not anticipated that research or other activities under this Agreement will require access to classified information. Therefore, the EPA Partner Personnel participating in the Agreement will not be required to obtain security clearances.

5.2.2 If research or other activities under this Agreement requires EPA Partner Personnel access to proprietary information in NSA possession or information for which export is restricted, EPA Partner will decide whether to pursue such research and if it chooses to do so, NSA may allow such access on a case-by-case basis. In such circumstances, NSA may require EPA Partner Personnel to sign a non-disclosure agreement prior to such access, subject to review and approval by both Parties.

5.3 Liabilities.

(a) NSA's responsibility for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of NSA while acting within the scope of his office or employment will be in conformance with the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.). Except as provided by the Federal Tort Claims Act, NSA shall not be liable to EPA Partner for any claims whatsoever, including loss of revenue or other indirect or consequential damages.

(b) EPA Partner's responsibility for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the EPA Partner while acting within the scope of his office or employment will be in conformance with the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.). Except as provided by the Federal Tort Claims Act, EPA Partner shall not be liable to NSA for any claims whatsoever, including loss of revenue or other indirect or consequential damages.

5.4 *Force Majeure*. No Party shall be liable for the consequences of any unforeseeable *force majeure* event that (1) is beyond their reasonable control, (2) is not caused by the fault or negligence of such Party, (3) causes such Party to be unable to perform its obligations under this Agreement and (4) cannot be overcome by the exercise of due diligence. In the event of the occurrence of a force majeure event, the Party unable to perform shall promptly notify the other Party. It shall further pursue its best efforts to resume as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

6.0 MANAGEMENT, ADMINISTRATION and REPORTING.

The management and administration of this Agreement and the coordination of the specific activities, which comprise the Agreement, will be the joint responsibility of the designated program managers (PM) from each institution. The PMs shall meet quarterly to define and assess

the progress and direction of agreed upon activities, intellectual property, export control issues, where applicable, and shall make appropriate adjustments regarding activities, resources and priorities. The EPA Partner shall deliver to the NSA PM within thirty (30) calendar days of June 1 of each year that this EPA is in effect an annual summary report on the activities, benefits, and accomplishments of this Agreement.

6.1 Program Manager. Brenda Martineau, Academic Engagement Coordinator, will serve as the PM on behalf of NSA. The NSA PM will work with the EPA Partner PM to identify specific research or other relevant activities to be undertaken at any given time. The NSA PM will assure that program activities meet the legal and administrative requirements of NSA. The NSA PM will ensure appropriate management approval on all matters regarding the exchange of information or technology.

6.2 EPA Partner Program Manager. Pat Engebreston, Dean, The Beacon College of Computer and Cyber Sciences, will serve as PM on behalf of EPA Partner. The EPA PM will coordinate program activities with the NSA PM and assure that they comply with the legal and administrative requirements of the EPA Partner. If the assigned EPA PM becomes unavailable for continued service as the PM, the EPA Partner will designate a successor PM and notify NSA in writing.

7.0 USE OF NAME.

Each Party shall obtain written approval from the other Party prior to any use of the name, initials, and logo of the other Party with regards to any meetings, presentations, discussions, documentation, technical, or promotional material, press releases, technology, or academic course development as it relates to this Agreement. By entering into this Agreement, neither Party, directly or indirectly, endorses any product or service provided, or to be provided, by the other Party. Neither Party shall in any way imply that this Agreement is an endorsement of any such product or service.

8.0 GENERAL PROVISIONS.

8.1 Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto relating to the specific subject matter hereof and merges all prior discussions between them. There are no terms, obligations, covenants, representations, statements, or conditions other than those contained herein. No variation or modification of this Agreement or waiver of any of the terms or provisions hereof shall be deemed valid unless in writing and signed by both Parties hereto.

8.2 Severability. The illegality or invalidity of any provisions of this Agreement shall not impair, affect or invalidate the other provisions of this Agreement.

8.3 Headings. Titles and headings of the sections and subsections of this Agreement are for

convenience of reference only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

8.4 Governing Laws. This Agreement shall be governed by, and construed in accordance with U.S. federal statutes and regulations, notwithstanding any state conflict of law statutes, practices, or rules of construction.

8.5 Termination. Either Party may unilaterally terminate this Agreement at their sole discretion by giving the other Party written notice not less than thirty (30) calendar days prior to the desired termination date. In such event, the Parties shall specify the disposition of all activities accomplished or in progress, arising from or performed under this Agreement, and they shall specify the disposal of all property in a manner consistent with this Agreement, and any applicable law or regulation concerning property disposal.

9.0 TERM OF AGREEMENT.

This Agreement shall remain in effect from the Effective Date and extend for five (5) years, unless earlier terminated by either Party, or extended by written agreement.

10.0 AMENDMENTS AND MODIFICATIONS.

If either Party desires to amend or modify this Agreement, the Parties shall, upon reasonable notice by the Party desiring the change, confer in good faith to determine the desirability of the proposed amendment or modification. Such amendment or modification shall take effect once a written amendment or modification to that affect is signed by both Parties or by their duly authorized representatives. Amendments may be made to take effect retroactively if so agreed upon in writing by both Parties.

11.0 POINT OF CONTACTS.

For NSA:

Name: Brenda Martineau
Title: Academic Engagement Coordinator
Office: Engagement & Policy
Phone: (410) 854-8293
Email: blmarti@nsa.gov

For EPA Partner:

Name: Pat Engebreston
Title: Dean, The Beacon College of Computer and Cyber Sciences
Phone: (888) dsu-9988
Email: pat.engebreston@dsu.edu

12.0 SURVIVING PROVISIONS.

The articles concerning Liabilities, General Provisions and Surviving Provisions shall survive the termination of this Agreement.

13.0 SIGNATURES.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives and to be effective on and as of the Effective Date. For the:

**NATIONAL SECURITY AGENCY/
CENTRAL SECURITY SERVICE**

DAKOTA STATE UNIVERSITY

Name: Linda L. Burger
Title: Director, Office of Research and
Technology Applications

Name: *<Insert Name>*
Title: *<Insert Title>*

Signature: _____

Signature: _____

Date: _____

Date: _____