

**South Dakota Science and Technology Authority**

**Annual Board Meeting  
June 16, 2022**



630 East Summit Street  
Lead, SD 57754



**Call to Order—Chairperson Casey Peterson**

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1A. Call Roll

Dr. Ani Aprahamian  
Mr. Dana Dykhouse  
Dr. Chris Fall  
Ms. Pat Lebrun  
Mr. Roger Musick  
Mr. Casey Peterson  
Mr. Ron Wheeler  
Dr. James Rankin, ex-officio member

1B. Introduce guests—ask to announce name and affiliation

1C. Public comment form (submit forms prior to start of board meeting)

Procedure for Public Comment Periods

Pursuant to SDCL 1-25-1 as amended by House Bill 1172 in the 2018 Legislative Session the procedure for conducting public comment periods during meetings of the South Dakota Science and Technology Authority (SDSTA) shall be as follows:

The chair of the SDSTA shall reserve a period for public comment, limited at the chair's discretion, at each meeting.

Before the beginning of the meeting, all persons who wish to make comments during the comment period shall indicate their desire to do so on a form that will be provided by the Executive Director. The form shall indicate the person's name, city of residence and generally describe the matter or matters on which the person wishes to comment.

The amount of time allocated to each interested person who wishes to make comments will be determined at the chair's discretion at each meeting.

Comments must be limited to matters which are under the jurisdiction of the SDSTA.

All persons making public comments at meetings of the SDSTA must do so in a manner that maintains civility. Comments which contain offensive language or profanity will not be tolerated.

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## Procedure for Public Comment and Form

South Dakota Science and Technology Authority

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Adopted June 28, 2018

Full Name:

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City of Residence:

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General Subject Matter of Comments:

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**Approve Agenda—Chairperson Casey Peterson**

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Attached is the SDSTA Board agenda for the June 16, 2022 meeting.

*See recommended motion below.*

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**Recommended Action:**

*Motion to approve agenda as presented.*

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## AGENDA

**South Dakota Science and Technology Authority**  
**630 East Summit Street, Lead, South Dakota**  
**Annual Meeting of the Board of Directors**  
**Thursday, June 16, 2022 at 8:00 AM (MT)**

**\*\*Yates Education & Outreach Building—large conference room\*\***

**Public (Open) Session: 1-669-900-6833, Meeting ID: 605 722 4022, Passcode: 8650, <https://zoom.us/join>**

SDSTA Mission: *We advance world class science and inspire learning across generations.*

**NOTICE: Members of the public may listen to the meeting by calling 1-669-900-6833 and entering Meeting ID code: 605 722 4022. Please mute your phone after joining.**

Title	Report	Recommendations
1. Call to order	-- Chair Casey Peterson	
A. Call roll		<i>1A. Confirm quorum by calling roll</i>
B. Introduce guests		<i>1B. Ask guests to announce their name/affiliation</i>
C. Public comment form		<i>1C. Reminder request to submit public comment form(s)</i>
2. Approve agenda	-- Chair Casey Peterson	<i>Motion to approve agenda</i>
3. Approve minutes	-- Chair Casey Peterson	<i>Motion to approve the March 24 minutes</i>
4. Conflict of interest disclosure	-- Mr. Tim Engel	<i>Informational</i>
5. Conflict of interest disclosure and waiver under SDCL CH. 3-23	-- Mr. Tim Engel	<i>"Motion to approve or deny" (as appropriate)</i>
6. SURF Foundation (SURFF) status update	-- Mr. Mike Headley -- Ms. Staci Miller	
A. Foundation status update		
B. Approval of SURF Foundation Amended Bylaws		<i>6B. Motion to approve SURF Foundation Bylaws amended June 7, 2022, as presented</i>
C. SURF Foundation board member appointments		<i>6C. Motion to approve appointment of new SURF Foundation board members, as presented</i>
7. Audit Committee	-- Chair Casey Peterson	
A. Annual appointment of members		<i>7A. Motion to confirm chairperson's appointment of audit committee members</i>
B. Audit committee update	-- Ms. Pat Lebrun -- Mr. Terry Miller	<i>7B. Audit committee minutes dated April 13 and June 2, 2022; reference board packet</i>
C. Annual review of Audit Charter	-- Ms. Pat Lebrun	<i>7C. Review Audit Charter dated June 19, 2014; reference board packet</i>

Please do not place or accept cell phone calls during this meeting. A copy of this agenda has been posted in a manner visible to the public at the entrance to the South Dakota Science and Technology Authority office located at 630 East Summit Street, Lead, South Dakota at least 72 hours prior to this meeting. Telephone: (605) 722-8650.

## AGENDA

**South Dakota Science and Technology Authority  
630 East Summit Street, Lead, South Dakota  
Annual Meeting of the Board of Directors  
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**Public (Open) Session: 1-669-900-6833, Meeting ID: 605 722 4022, Passcode: 8650, <https://zoom.us/join>**

Title	Report	Recommendations
<b>8. Financial Report</b>	-- Mr. Mike Headley	
<b>A. Review financial statements</b>	-- Mr. Terry Miller	<i>8A. Motion to accept financial report as presented</i>
<b>B. Amend FY2022 budget</b>	-- Mr. Terry Miller	<i>8B. Motion to approve amended FY2022 budget at presented</i>
<b>C. LZ Operations Support Grant</b>	-- Mr. Terry Miller	<i>8C. Motion to authorize executive director to accept and expend LZ Operations Support Grant</i>
<b>D. Approval of FY2023 budget</b>	-- Mr. Mike Headley	<i>8D. Motion to approve FY2023 budget as presented</i>
<b>E. May, Adam, Gerdes &amp; Thompson hourly rate increase</b>	-- Mr. Mike Headley	<i>8E. Motion to approve rate increase for May Adam Law Firm as presented</i>
<b>9. Report from Executive Director</b>	-- Mr. Mike Headley	
<b>A. Declarations of Surplus (2)</b>		<i>Informational</i>
<b>B. SDSTA quarterly update</b>		<i>Presentation</i>
<b>C. SLHVC update</b>	-- Ms. Deb Wolf and Ms. Kelly Kirk	<i>Presentation</i>
<b>D. SURF Artist-in-Residence update</b>	-- Ms. Gina Gibson and Mr. Gary Szczerbaniewicz	<i>Presentation</i>
		<i>Motion to accept executive director's report</i>
<b>10. SDSTA policies and procedures</b>	-- Mr. Mike Headley	
<b>A. Annual review of PY &amp; PP</b>		<i>10A. Motion to approve updated policies; reference board packet</i>
<b>B. Annual statements affirming compliance with Financial Conflict of Interest policy</b>		<i>10B. Each board member is to sign a copy of the statement</i>
<b>11. Report from nominating committee</b>	-- Vice Chair Dykhous	<i>Nominating committee minutes dated May 24, 2022; reference board packet</i>
<b>12. Election of officers</b>	-- Chair Casey Peterson	<i>Elect officers as described in procedure adopted August 2008</i>

## AGENDA

**South Dakota Science and Technology Authority  
630 East Summit Street, Lead, South Dakota  
Annual Meeting of the Board of Directors  
Thursday, June 16, 2022 at 8:00 AM (MT)**

**\*\*Yates Education & Outreach Building—large conference room\*\***

**Public (Open) Session: 1-669-900-6833, Meeting ID: 605 722 4022, Passcode: 8650, <https://zoom.us/join>**

Title	Report	Recommendations
13. Executive session (closed meeting)	-- Chair Casey Peterson	<i>Motion to enter executive session to discuss personnel matters and to consult with legal counsel concerning contractual and legal matters—SDCL 1-25-2(1), (3) and (4); 19-19-502.</i>
14. Report from executive session	-- Chair Casey Peterson	<i>"The board consulted with legal counsel concerning contractual and legal matters. No action was taken."</i> OR <i>...as discussed and stated otherwise</i>
15. Approval of FY2023 Office of Risk Management Intergovernmental Agreement	-- Mr. Mike Headley	<i>Motion to approve FY2023 Intergovernmental Agreement between the Bureau of Administration, Office of Risk Management of the State of SD and SDSTA and authorize SDSTA executive director to sign agreement</i>
16. Confirm date and time of next meeting	-- Chair Casey Peterson	<i>Thursday, September 22, 2022 at 8:00am (MT)</i>
17. Public comments	-- Chair Casey Peterson	
18. Board comments	-- Chair Casey Peterson	
19. Adjourn	-- Chair Casey Peterson	<i>Motion to adjourn</i>

**Meeting of the Board of Directors  
Thursday, June 16, 2022**

**SDSTA Board Member Terms of Service, Committees and Schedule**

	Board Members and Terms of Service		
	Board Members	Appointed	Term Expires
1.	Dr. Ani Aprahamian	Re-appointed January 7, 2022	December 9, 2027
2.	Mr. Dana Dykhouse, Vice-Chair	Re-appointed August 15, 2020	August 14, 2026
3.	Ms. Patricia Lebrun, Secretary-Treasurer	Re-appointed August 5, 2016	August 8, 2022
4.	Dr. Chris Fall	Appointed December 1, 2021	August 8, 2027
5.	Mr. Roger Musick	Appointed September 19, 2018	August 21, 2022
6.	Mr. Casey Peterson, Chair	Re-appointed December 1, 2021	August 8, 2027
7.	Mr. Ron Wheeler	Re-appointed April 28, 2020	April 9, 2025
8.	Dr. James Rankin, <i>ex-officio member</i>	SDSM&T President as of Jan 8, 2018	
	Committees and Members (2021-2022)		
	Audit Committee Members (September):	Nominating Committee Members (March):	
	➤ Pat Lebrun-Chair, tbd	➤ Dana Dykhouse	
	➤ Dana Dykhouse, tbd	➤ Roger Musick	
	➤ Casey Peterson, ex-officio, tbd		
	2022 Board Schedule		
	Thursday, March 24 2022	8:00 am (MT)	E&O Bldg
	Thursday, June 16, 2022	8:00 am (MT), annual	E&O Bldg
	Thursday, September 22, 2022	8:00 am (MT)	E&O Bldg
	Thursday, December 15, 2022	9:00 am (MT)	E&O Bldg

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**Approve Minutes—Chairperson Casey Peterson**

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Attached are the March 24, 2022 Board Minutes for approval.

*See recommended motion below.*

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**Recommended Action:**

*Motion to approve the December 16, 2021 Minutes as presented.*

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**South Dakota Science and Technology Authority Board of Directors**  
**Meeting Minutes**  
**Thursday, March 24, 2022**  
**Lead, South Dakota**

The Board of Directors of the South Dakota Science and Technology Authority (SDSTA) convened at 8:00 AM Mountain Time (MT) on Thursday, March 24, 2022, in the Education and Outreach (E&O) Building Conference Room at the South Dakota Science and Technology Authority, 630 East Summit Street, Lead, South Dakota. A conference number was posted on the agenda with an invitation for members of the public to participate in the meeting by telephone.

**MEMBERS OF THE BOARD IN ATTENDANCE**

Dr. Ani Aprahamian (by phone)  
Vice Chairperson Dana Dykhouse (by phone)  
Dr. Chris Fall (by phone)  
Secretary/Treasurer Patricia Lebrun (by phone)  
Chairperson Casey Peterson (in person)  
Vice Chairperson Ron Wheeler (by phone)  
Dr. James Rankin, ex-officio (by phone)

**MEMBERS OF THE BOARD ABSENT**

Mr. Roger Musick

**SDSTA STAFF PRESENT DURING ALL OR PART OF THE MEETING**

Ms. Eileen Brosnahan, Human Resources Administrator (in person)  
Ms. Christine Burger, Human Resources Manager (in person)  
Mr. Tim Engel, Legal Counsel (in person)  
Ms. Julie Ewing, Environment, Safety and Health (ESH) Director (in person)  
Ms. Nancy Geary, Outgoing Chief Financial Officer (in person)  
Mr. Brook Hanson, IT Support Technician (in person)  
Mr. Mike Headley, Executive Director (in person)  
Dr. Jaret Heise, Science Director (in person)  
Ms. Kelly Kirk, Sanford Lab Homestake Visitor Center (SLHVC) Director (in person)  
Ms. Mandy Knight, Administrative Services Manager (in person)  
Mr. William McElroy, Deputy Director of Operations (in person)  
Ms. Staci Miller, Sanford Underground Research Facility (SURF) Foundation Director (in person)  
Mr. Terry Miller, Chief Financial Officer (in person)  
Ms. Ashlyn Pearson, Human Resources Generalist (in person)  
Ms. Wendy Straub, Hoists and Shafts Director (in person)  
Ms. Constance Walter, Communications Director (by phone)  
Ms. Natasha Wheeler, Administrative Assistant (in person)  
Ms. Deb Wolf, Outreach and Culture Director (in person)

**ALSO PRESENT DURING ALL OR PART OF THE MEETING**

Mr. Clayton Hollowell, Department of Energy High Energy Physics Program Manager (in person)  
Mr. Alex Portal, Black Hills Pioneer Journalist (in person)  
Ms. Nicol Reiner, Education & Outreach Director (BHSU) (in person)

## **ITEM 1. CALL TO ORDER**

Chairperson Casey Peterson called the meeting to order at 8:00 AM (MT). Roll call was held. Dr. Ani Aprahamian, Mr. Dana Dykhouse, Dr. Chris Fall, Ms. Pat Lebrun, Mr. Ron Wheeler and Dr. Jim Rankin were present by phone. Chairperson Peterson was present in person. Mr. Roger Musick was absent.

Chairperson Peterson then asked audience members to introduce themselves. Of note, Ms. Eileen Brosnahan and Ms. Nancy Geary were in attendance and will retire from SDSTA on April 15 and June 10, 2022, respectively. Mr. Headley thanked and recognized them for their contributions and said Ms. Brosnahan has completed 44 years of working with Homestake and SURF. The individuals in the room gave Ms. Brosnahan and Ms. Geary a standing ovation. The incoming CFO, Mr. Terry Miller, and the new Human Resources team, Ms. Christine Burger and Ms. Ashlyn Pearson, were also in attendance.

Chairperson Peterson said if anyone from the audience had any questions or comments for the board to address, to please complete the public comment form located at the sign-in table and time will be given at the end of the agenda to discuss. He reported no comment forms were submitted.

## **ITEM 2. APPROVE AGENDA**

Chairperson Peterson asked if there were any modifications to the agenda. Hearing none, Chairperson Peterson asked for a motion to approve the agenda.

*Motion by Ms. Lebrun and seconded by Mr. Dykhouse to approve the agenda as presented. Motion passed unanimously.*

## **ITEM 3. APPROVE MINUTES**

Chairperson Peterson asked if there were any comments on the December 16, 2021 Minutes. Hearing none, he asked for a motion to approve the minutes.

*Motion by Mr. Dykhouse and seconded by Mr. Wheeler to approve the December 16, 2021 minutes as presented. Motion passed unanimously.*

*Dr. Chris Fall joined the meeting at 8:05 AM.*

## **ITEM 4. GENERAL CONFLICT OF INTEREST DISCLOSURE**

SDSTA Legal Counsel Mr. Tim Engel invited members of the board to disclose anything that might be construed to be a conflict of interest with respect to items under consideration at today's meeting.

No conflicts of interest were disclosed.

## **ITEM 5. DISCLOSURES AND WAIVER UNDER SDCL CH. 3-23**

Mr. Engel said he contacted all board members before the March 24, 2022, board meeting and asked them to make any disclosures related to SDCL CH. 3-23. He said no disclosures were reported.

## **ITEM 6. SURF FOUNDATION (SURFF) STATUS UPDATE**

Ms. Miller shared an image of the new brochure cover for the Cangleska Wakan (Sacred Circle) Garden. She said the campaign goal for the garden is \$800,000.00, and to-date, the Foundation has raised over \$430,000 for the project. Ms. Miller said uses of the garden will include learning across generations: stargazing, gardening alongside master gardeners and presentations from subject matter experts; connecting our communities: a gathering space to bring people together and a stop for trolley tours; and cultivating cultural awareness: a space to learn about cultures of the region, caring for others and creating a better community. Ms. Miller said the Sacred Circle Garden campaign includes a new brochure, a 100% design underway and presentations being given to a variety of civic organizations and clubs. She said the current donor retention rate for the Foundation is 60% compared to the national



average of 43%, 27 new donors have been gained over the last quarter and recent Foundation events include the Fireworks Viewing event held in collaboration with the SLHVC with 60 people in attendance, the annual Donor Appreciation event hosted virtually with 28 people in attendance and the Mix & Mingle event held in collaboration with the Lead Chamber of Commerce with over 60 people in attendance. Ms. Miller said the annual Employee Giving Campaign will be in partnership with the Handley Center in Lead and will kick off on April 4, 2022.

Mr. Headley said progress for the Institute was slow over the last quarter due to several factors including the consultant being out of the office and SDSTA efforts being focused on the acquisition and transition of the SLHVC.

Mr. Dykhoush thanked Ms. Miller for giving several presentations in Sioux Falls for SURF, the SURF Foundation and the Sacred Circle Garden, noting the positive comments he's received.

## **ITEM 7. REPORT FROM THE AUDIT COMMITTEE**

### **ITEM 7A. AUDIT COMMITTEE MEETING UPDATE**

Ms. Lebrun said the Audit Committee met in February 2022, to review the Request for Proposal (RFP) for an outside auditor and the minutes are included in the board packet. She said the RFP is out for bid. Mr. Miller said proposals are due March 31, 2022, and questions were due March 10, 2022. He said questions were received from two potential audit firms, but proposals have not yet been received from those firms.

Ms. Lebrun said the State of South Dakota will no longer complete the audit for SDSTA, as the organization has become too large. The audit committee is seeking a third-party firm to complete the 2021-2022 fiscal year audit for submission to the State for review and approval.

Ms. Lebrun said the audit committee reviews the Audit Charter annually and they will review it before the June 16, 2022, board meeting. Chairperson Peterson suggested including the Audit Charter in the audit scope of work.

### **ITEM 7B. ACCEPTANCE OF AUDIT REPORT, FISCAL YEAR ENDED JUNE 30, 2021**

Ms. Lebrun said the audit report was presented to the board at the December 16, 2021, meeting for discussion and is now presented for approval.

*Motion by Ms. Lebrun and seconded by Mr. Dykhoush to accept the Audit Report for the Fiscal Year Ended June 30, 2021, as reviewed and discussed at the December 16, 2021, board meeting. Motion passed unanimously.*

## **ITEM 8. FINANCIAL REPORT**

### **ITEM 8A. FEBRUARY FINANCIAL STATEMENTS**

Mr. Miller said the February 2022, financial statements are included in the board packet. He said last quarter, SDSTA purchased the SLHVC which appears in the capital items on the statement. Mr. Miller said the transaction included the building, land, SLHVC sign, Davis Ring, gift shop inventory and trolley, and SDSTA is now full owner and operator of the SLHVC. Ms. Geary noted that certain of the SLHVC assets were originally purchased by SDSTA and the transaction represents the value being returned to SDSTA.

Chairperson Peterson asked if the SLHVC items conveyed to SDSTA were valued at cost or fair market value. Ms. Geary replied that the items were recorded at cost.

Mr. Miller said four Dodge pickup trucks, previously leased, have been purchased by SDSTA.

## **ITEM 8B. CHECKS RESOLUTION NO. 2022-01**

Chairperson Peterson asked for a motion to adopt Resolution No. 2022-01, making changes to the signatories for SDSTA checks. He said Ms. Geary will be removed and Mr. Miller added. Mr. Headley said the number of required board member signatures will be reduced from all seven voting board members to the Chairperson and the Secretary/Treasurer, and he will remain as a signatory under this resolution.

*Motion by Mr. Dykhouse and seconded by Dr. Fall to adopt Resolution No. 2022-01. Motion passed unanimously.*

*Motion by Mr. Wheeler and seconded by Mr. Dykhouse to accept the financial report as presented. Motion passed unanimously.*

## **ITEM 9. REPORT FROM THE EXECUTIVE DIRECTOR**

### **ITEM 9A. DECLARATION OF SURPLUS – (5)**

Mr. Headley directed the board to the five Declarations of Surplus included in the board packet and asked for questions or comments. None were raised.

### **ITEM 9B. SDSTA QUARTERLY UPDATE**

Mr. Headley said SDSTA is now in the third year of execution for the SURF Operations Cooperative Agreement (CA). He said Fiscal Year 2022 (FY22) Department of Energy (DOE) funding is \$30 million, minus a Small Business Innovation Research reduction of \$900,000.00, leaving \$29.1 million available. He said the current CA operations budget is \$23.8 million, with an infrastructure improvement budget of \$5.3 million.

Mr. Headley said a DOE independent review is planned for late June 2022, as a midterm review for the CA, chaired by Mr. Hollowell, and with a successful review, SDSTA hopes to submit an application to become a DOE user facility. Mr. Headley said the significance of becoming a user facility is an increase in stature and awareness of SURF. Dr. Fall said the designation provides entry into a higher level of interaction with investigators and creates more opportunity for SURF.

Mr. Headley said International Organization for Standardization (ISO) certification preparations are advancing, with the Stage 1 audit set for early May, followed by a 90-day period to address any issues raised by the audit. Mr. Headley reminded the board that obtaining ISO certification is a requirement of the CA.

Mr. Headley made note of the aforementioned purchase of the SLHVC, completed on January 7, 2022, and said the initial transition is complete.

Mr. Headley said SDSTA 24-hour/7-day-a-week support to Long Baseline Neutrino Facility (LBNF) construction is proceeding according to plan, SDSTA is continuing to transport personnel and material loads to the 3650L and 4850L, and SDSTA engineering and ESH staff are assisting with investigation of dust mitigation options.

Mr. Headley said the LUX-ZEPLIN (LZ) experiment commenced data taking in December 2021, and long-term planning has been advancing for science and the facility. He said the SURF Science Program Advisory Committee held its first review in January 2022, the 4850L science lab space planning study was completed in February 2022, and the Yates Shaft refurbishment and hoist upgrade study will be complete in April 2022. Mr. Headley said a whitepaper was submitted to Snowmass (particle physics community planning exercise) to highlight SURF and the local impacts SURF has in the community.

Mr. Headley shared several slides provided by Fermilab, illustrating 22% completion of total excavation for the LBNF/Deep Underground Neutrino Experiment (DUNE) project. He said two of the three pilot drifts are complete, and the third pilot drift is 50% complete. Mr. Headley shared photos of the South Access Drift, a Copco Jumbo Machine used for drilling, and a 512 CT Bolter, which is one of the largest pieces of equipment of its kind.

Chairperson Peterson asked about the access control system project mentioned in the board packet. Mr. Headley said proxy-card readers are used onsite at SURF for access control, but each door unit is a stand-alone unit, not connected to the whole system. He said a new access control system product was selected during the headframe upgrade project, new proxy-card readers have been installed at the headframes, and SDSTA is in the process of buying the system that will connect the readers. He said five additional buildings above and below ground will be outfitted with new proxy-card readers.

### **ITEM 9C. YATES SHAFT UPDATE**

Ms. Straub shared a schematic of the Yates Shaft, illustrating the layout of the north and south cages, north and south skips, runabout cage and the ladders and pipe and electrical compartments. She said damage was discovered during a routine weekly inspection, a Stop Work was issued, and the area was secured for inspection. She said an initial inspection was done between the 1700L and the 2300L, a Top-Down Maintenance (TDM) schedule was created for that area, and an inspection of the 2300L to the 2600L was added, extending the outage of the Yates Shaft.

Ms. Straub shared a photo at set 251 where a set sag measurement tag had been placed. She said, during routine inspection, lacing was found out of place in the skip compartment and during repair of the lacing, a broken wall plate was observed in the rear panel of the northeast utility compartment.

Ms. Straub explained that TDM includes building work platforms, removing lacing, cleaning out old timber and debris, scaling the walls, cutting and removing legacy pipe, replacing structural timber and J-hooks, installing turnbuckles, screening, rock bolting and replacing exterior lacing panels. She said, prior to June 28, 2021, TDM was mostly complete in the skip panels to the 4850L, complete to within 19 sets of the 4850L for the cage panels with approximately 3 weeks of work left in that section, and turnbuckle installation was complete every eight sets in the skip and cage compartments between the 1100L and the 2900L. She said at that point in time, the utility panels were mostly untouched, and no turnbuckles had been installed in the utility compartments.

Ms. Straub said initial utility compartment rehabilitation was completed September 2, 2021, pipe was removed from the 800L to the 1700L and TDM was performed from the 1700L to the 2300L. She said once the upper area of the shaft was secured, further inspection revealed pipe separations and additional compromised timber between the 2300L and just below the 2600L, causing project completion to shift to December 2021, to perform TDM from the 2300L to below the 2600L.

Ms. Straub shared several photos to illustrate the improvements made using before and after images and said 150,000 pounds of legacy steel and approximately 580 tons of wood were removed from the shaft during the project.

Ms. Straub thanked the Yates shaft crews, acknowledging that the project was also made possible by the support of the Ross shaft crews, SDSTA leadership and others.

Ms. Straub said Stantec (a third-party architectural engineering firm) has been contracted to conduct the Yates Shaft Rehabilitation study, with a contracted scope and schedule to span approximately eight months to evaluate hoisting equipment, headframe and shaft configuration options, shaft rehabilitation options, and costs to replace the existing wooden and timber structures with steel sets. She said the contract deliverables include shaft configuration and compartment use options, phased construction

concepts, cost and schedule options, and a final report to document the study. She said this study and report will be used to inform lab management and science sponsors with the DOE on the cost and schedule for rehabilitating the Yates Shaft structure and to subsequently plan, budget and schedule for future detailed design, procurement, and construction of the project.

Chairperson Peterson asked Ms. Straub to address the recent winch failure, and she said no damage or injury occurred related to the incident. She said although pre-use inspections are regularly performed, abnormalities are hard to identify in the type of synthetic nylon rope that was being used and the rope failed. She said an investigation revealed that winches in place were not installed correctly for the way they were being used to bring beams out of the shaft for transport through the cavern. Ms. Ewing said that load ratings were within limits for the winches, the problem is being addressed and that ESH and SDSTA are confident that the issue has been successfully resolved. Ms. Straub said a rail-mounted tugger, owned by SDSTA, with a safety rating of five has been installed for future work.

#### **ITEM 9D. SCIENCE UPDATE**

Dr. Heise said the SURF User Association was launched in December 2020, a second round of executive committee elections was completed in late 2021 with 2-year terms going forward, a successful long-term vision workshop was held in September 2021, with follow-up items on workshop topics, a general SURF meeting was held in late September 2021, and a process for expanding membership is underway.

Dr. Heise said the Science Program Advisory Committee has 14 members including national and international experts, their first meeting was held in January 2022, and a second meeting is being planned for the upcoming year.

Dr. Heise noted the whitepaper previously mentioned by Mr. Headley that was submitted to Snowmass, as well as upcoming conferences at SD Mines including the Conference on Science at SURF and Low Radioactivity Techniques.

Dr. Heise gave an overview of experiments currently hosted at SURF, including completed commissioning of LZ which now has WIMP-search data underway, significant calibration efforts in place, and two SDSTA employee experiment support scientists (supported by LZ) who started in January 2022. He said LZ plans to operate for approximately five years, and meetings are in progress for next-generation liquid xenon experiments as well as other low-mass dark matter projects. Dr. Heise said Majorana Demonstrator dismantled Module #1 to recover welded copper components to perform a background assay of those parts using Module #2, a fourth copper electroforming bath is being installed at the Davis Campus, and the upcoming LEGEND experiment may require up to eight baths. Installation starts this week for DEMONSTRATOR experiment infrastructure, and a double-beta decay summit held in October 2021 resulted in an agreement for a 1-ton scale experiment in North America and in Europe. Dr. Heise said Black Hills State University Underground Campus (BHUC) and SDSTA continue to perform sample swaps, data analysis, and liquid nitrogen support at the Davis Campus. BHUC has five of six counter systems currently operating and expects their nEXO Ge-IV experiment to be online by summer, 2022. He said BHUC plans to have all six detector systems operational and wants to discuss returning to the Ross campus following LBNF construction, possibly in FY24.

Dr. Heise also highlighted several other research groups currently associated with SURF, including SIGMA-V, CASPAR, 3D DAS, several small geologist teams, a biology team, a thermal breakout research team and a group doing post-blast monitoring. Dr. Heise shared graphs of researcher hours onsite at SURF and said they are expected increase for several major experiments in the near future. Chairperson Peterson noted SIGMA-V is an impressive site and Dr. Heise said over \$10 million dollars have been invested in the project and nine national labs are involved in the research.

Chairperson Peterson requested photos of the SIGMA-V site to be shared with the SDSTA Board of Directors.

*Motion by Mr. Wheeler and seconded by Ms. Lebrun to accept the Executive Director's report as presented. Motion passed unanimously.*

#### **ITEM 10. EXECUTIVE SESSION**

*Motion by Mr. Dykhous and seconded by Dr. Fall to enter into executive session to discuss personnel matters and to consult with legal counsel concerning legal and contractual matters as permitted by SDCL 1-25-2(1), (3) and (4) and SDCL 19-19-502. Motion passed unanimously.*

*The board recessed at 9:17 AM for a ten-minute break followed by executive session.*

*The board reconvened in open session at 10:29 AM.*

#### **ITEM 11. REPORT FROM EXECUTIVE SESSION**

Chairperson Peterson reported that the board discussed personnel matters and consulted with legal counsel concerning legal and contractual matters. No action was taken.

Mr. Engel said he has a business relationship with one of the interested parties discussed during executive session and wanted his disclosure to be on the record, but neither he nor the board believe a conflict of interest exists. Mr. Wheeler said he is comfortable with Mr. Engel's statement that there is no conflict of interest.

*Motion by Mr. Wheeler and seconded by Ms. Lebrun to approve the executive session report. Motion passed unanimously.*

#### **ITEM 12. SDSTA POLICIES AND PROCEDURES**

Mr. Headley said there are several updates to policies and procedures, including an update to the Alcohol, Controlled Substances and Testing policy to reflect that SDSTA now operates a trolley and DOT regulations need to be taken into consideration; an update to the Firearms, Explosives and Other Weapons policy to reflect the addition of the SLHVC; minor changes to the Open Door policy to update the purpose section and formatting; and an update to the Record Retention policy to revise dates for various ESH documents.

*Motion by Mr. Wheeler and seconded by Dr. Aprahamian to approve the following updated policies: 1) Alcohol, Controlled Substances and Testing, 2) Firearms, Explosives and Other Weapons, 3) Open Door and 4) Record Retention Policy. Motion passed unanimously.*

#### **ITEM 13. SELECTING NOMINATING COMMITTEE**

Chairperson Peterson said he asked Mr. Dykhous to chair the nominating committee and he agreed. Chairperson Peterson noted that he will reach out to Mr. Musick to request his service on the committee also. He said the nominating committee will report to the board at the June 16, 2022, board meeting.

Chairperson Peterson mentioned the election of officers will be held at the annual board meeting on June 16, 2022.

#### **ITEM 14. CONFIRM DATE AND TIME OF NEXT MEETING**

Chairperson Peterson reminded the board of the next meeting, scheduled for Thursday, June 16, 2022, at 8:00 AM (MT) in the E&O Conference room and via Zoom.



## ITEM 15. PUBLIC COMMENTS

Chairperson Peterson said he did not receive any public comment request forms and there were no questions from the audience.

## ITEM 16. BOARD COMMENTS

Dr. Aprahamian, being recently reappointed to the board, said she would like to say, “We’ve come a long way, baby!”

Mr. Dykhous said he carries two things with him, the SURF Economic Impact report and recently the article about the Brosnahan’s retirement because it speaks to the human part of work done at SURF. He said he would like to share SDSTA’s list of funding priorities and requested that it be sent to the board members.

Ms. Lebrun said she seconds Dr. Aprahamian’s and Mr. Dykhous’s comments, and she looks forward to receiving a funding priority list. She said “good work” to the staff for all they do to move the project forward.

Mr. Wheeler said thank you to Ms. and Mr. Brosnahan and Ms. Geary and to be sure to convey appreciation to them. He said Ms. Brosnahan was at SURF when he started and she’s been marvelous, as has Ms. Geary.

Mr. Rankin said he appreciates the opportunity to join in the meeting via Zoom, there’s always good information, and he looks forward to attending in person in June.

Mr. Engel said this is enjoyable work, he appreciates the opportunity, and looks forward to what comes next.

Mr. Headley thanked the board for their continued support, Mr. Engel for his support, as well as the SDSTA team. He said several retirees were mentioned by name, but 10 people will retire from SDSTA by the end of June and SDSTA is seeing prior Homestake staff going on to play after working at the lab.

Chairperson Peterson said he appreciates everyone involved in this project and thanked the board for picking up on the priority list. He said it’s important to address those projects as well as the Institute, which will be a multi-decade effort that will take a lot of thinking, creativity and enthusiasm. He said, please keep those energies up and let us (the board) know what we can do to accomplish those goals. He said thank you to the board and to the staff.

## ITEM 16. ADJOURN

Chairperson Peterson called for a motion to adjourn.

*Motion by Mr. Dykhous and seconded by Mr. Wheeler to adjourn. Motion passed unanimously.*

**Meeting adjourned at 10:38 AM.**

**Conflict of Interest Disclosure—Mr. Tim Engel**

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Invite members of the board to disclose anything that might be construed to be a conflict of interest relative to their role on the board.

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**Recommended Action:**  
*Informational.*

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**Disclosures Under SDCL CH. 3-23—Mr. Tim Engel**

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**Recommended Action:**

*Motion to approve or deny as appropriate.*

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**SURF Foundation—Mr. Mike Headley**

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- 6A. SURF Foundation status update, Director Staci Miller, *presentation*.
- 6B. Approval of SURF Foundation Amended Bylaws. (*see recommended motion below*)
- 6C. SURF Foundation board member appointments. (*see recommended motion below*)

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**Recommended Action:**

- 6B. Motion to approve SURF Foundation By-Laws amended June 7, 2022, as presented.*
- 6C. Motion to approve appointment of new SURF Foundation board members, as presented.*

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# **Sanford Underground Research Facility Foundation**

## **Amended Bylaws (effective, June 16, 2022)**

### **ARTICLE I *Purpose***

The purpose of Sanford Underground Research Facility Foundation (the “Corporation”) is to promote scientific opportunities at and through the Sanford Underground Research Facility and the South Dakota Science and Technology Authority through education, service and advocacy.

### **ARTICLE II *Board of Directors***

Section 2.1. General Powers: The Board of Directors (“the Board”) shall be responsible for the general governance of the Corporation. The Board has the power to govern the affairs and property of the Corporation in keeping with policies it establishes that define the scope of authority and limitations of the Officers and employees of the Corporation and of the Board.

Section 2.2. Composition and Number of Directors: Board members shall be sought who reflect the qualifications and diversity determined by the Board in its policies. The Board shall consist of at least five (5) and no more than twenty-five (25) members, as determined from time to time by the Board. The sitting Chairperson of the South Dakota Science and Technology and the immediate past Chairperson of the Corporation will serve as voting Directors on an ex officio basis and shall count against the total number of Directors called for by these Bylaws. All Directors, in their capacities as Directors, shall have identical rights and responsibilities.

Section 2.3. Tenure: Except for the initial Board, Directors shall serve a term of three (3) years from the date of taking office. The terms of the initial Board of Directors shall be staggered by the drawing of lots such that the terms of office of all Directors will not all expire at the same time. The initial Board as established in the Articles of Incorporation shall take office at the organizational meeting of the Corporation. Thereafter, unless otherwise directed by the appointing authority, Directors shall take office at the beginning of the Board meeting first occurring after their appointment. Except for Directors serving in an ex officio capacity, Directors may serve more than one term.

Section 2.4. Nomination and Election: The Chairperson of the Board of this Corporation shall appoint a Governance Committee as provided below in section 6.3. Prior to April 1 of each year, the Governance Committee shall present a slate of nominees for open Director positions for consideration by the Board of this Corporation. Prior to the earlier of June 15 or the annual meeting of the South Dakota Science and Technology Authority, the Board shall from the slate

offered by the Governance Committee present to the Board of Directors of the South Dakota Science and Technology Authority a nominee for each open Director position. During its annual meeting, the Board of Directors of the South Dakota Science and Technology Authority shall consider and act on the nominees presented by the Board of this Corporation. If the Board of Directors of the South Dakota Science and Technology Authority does not appoint a person or persons recommended by the Board of this Corporation, the Board of this Corporation shall promptly submit one or more substitute nominees for consideration by the Board of Directors of the South Dakota Science and Technology Authority.

Section 2.5. Vacancies: Any vacancy occurring in the Board of Directors or any position to be filled by reason of an increase in the number of Directors may be filled by the Board of Directors of the South Dakota Science and Technology Authority upon the recommendation of a qualified candidate by the Governance Committee and the Board of this Corporation as provided above in section 2.4. A Director appointed to fill a vacancy shall hold office for the unexpired term of his/her predecessor in office.

Section 2.6. Resignation: A Director may resign at any time by filing a written resignation with the Chair of the Board.

Section 2.7. Removal: The Board may remove any Director (except an ex officio member) for cause by a two-thirds (2/3) vote of all Directors then in office, at any regular or special meeting of the Board, provided that a statement of the reason or reasons shall have been mailed by Registered Mail to the Director proposed for removal at least ten (10) days before any final action is taken by the Board. The proposed removal and statement of reasons must be approved by the Executive Committee. This statement shall be accompanied by a notice of the time when, and the place where, the Board is to take action on the removal. If the circumstances so warrant, the Executive Committee may suspend a Director pending removal. The Director shall be given an opportunity to be heard and the matter considered by the Board at the time and place mentioned in the notice. The decision of the Board is final, although a decision not to remove does not preclude subsequent motions to remove for further or different reasons or upon the discovery of substantial new evidence. No member of the Board has any property right in his or her membership on the Board.

Section 2.8. Reimbursement of Expenses. Directors shall be reimbursed at such rates as are established from time-to-time by United States General Services Administration ("GSA") for Deadwood/Spearfish, Lawrence County, South Dakota, for necessary expenses, including travel and lodging expenses, incurred in connection with the performance of their duties as Directors. Reasonable and necessary expenses for which GSA has not established a rate will be reimbursed at actual cost upon approval by the Chair or another officer not seeking reimbursement.

Section 2.9. Director Emeritus. The Board from time to time may elect one or more Directors Emeritus. Directors Emeritus shall be nominated by a voting Director and elected by the voting members of the Board. Only prior voting members of the Board who served with distinction and excellence and are no longer voting members of the Board are eligible for election. A Director Emeritus shall be a member of the Board, but the office of Director Emeritus shall be an honorary and advisory position. A Director Emeritus shall not count toward the number of Directors provided for by these Bylaws, shall not count toward the determination of a quorum,

shall have no voting rights, and shall not require confirmation by the Board of Directors of the South Dakota Science and Technology Authority. Except in the case of materials subject to the attorney-client privilege or otherwise deemed not appropriate, a Director Emeritus shall be entitled to receive all written notices and information which are provided to the Board, to attend all Board meetings at their discretion, and to attend other events conducted by the Corporation.

### **ARTICLE III**

#### ***Officers of the Board of Directors***

Section 3.1. Positions: There shall be three (3) elected Officers of the Board of Directors: Chair, Vice-Chair, and Secretary-Treasurer, and the office of Immediate Past Chair. The roles and qualifications of these Officers shall be determined by the Board in its policies.

Section 3.2. Nomination and Election: The Governance Committee shall present a slate of elective Officers to the Board of Directors. The nominated Officers shall be drawn from among the members of the Board of Directors. The election of Officers shall be held at the annual meeting of the Board. The newly elected Officers and the Immediate Past Chair shall take office at the close of the annual meeting.

Section 3.3. Tenure: The term for each Officer shall be one year. The Immediate Past Chair shall serve until the then-serving Chair is no longer in office and becomes the Immediate Past Chair. No elective Officer may hold office for more than two consecutive terms. Partial terms served shall not count against the two consecutive term limit.

Section 3.4. Succession: In cases of a temporary absence of any elected Officer, the succession shall be Vice Chair and then Secretary-Treasurer. In the event of a permanent vacancy in any elected office, the succession shall be the same as noted above for the remaining term of the person succeeded and the Board shall elect a new Secretary-Treasurer to fill the unexpired term of office. If there is a temporary absence of the office of Immediate Past Chair, no temporary replacement will occur. If there is a permanent vacancy in the office of Immediate Past Chair, the Board shall select a replacement from other past Chairs who are still members of the Board; if there are no past Chairs who are still members of the Board, the Board shall select a replacement from the current membership of the Board.

### **ARTICLE IV**

#### ***Meetings of the Board of Directors***

Section 4.1. Regular and Annual Meeting: The Board shall meet at least once a year before an annual meeting to be held during the month of June, and otherwise as determined by Board policy. Notice shall be given to each Director at least ten (10) days prior to the date of every regular meeting of the Board. Establishment by Board action of the annual Board calendar shall fulfill the requirement for notice.

Section 4.2. Special Meetings: Special meetings of the Board of Directors may be called by the Chair or by a majority of the Board filing a written request for such a meeting with the Chair and stating the object date, hour, and place thereof. Except in the case of exigent

circumstances, written notice of special meetings shall be given seven (7) days prior to such a meeting.

Section 4.3. Quorum: One-half plus one (1) of the Directors then in office shall constitute a quorum for the transaction of business at any regular or special meeting of the Board of Directors, except where otherwise required by these Bylaws. Voting is by a majority unless otherwise specified in these Bylaws.

Section 4.4. Meeting Format: Except as otherwise provided by these Bylaws, the latest version of Roberts Rules of Order, Revised © shall govern.

Section 4.5. Meeting Notice: Notice of all regular and special meetings of the Board, an agenda of all items to be discussed at such meetings, and agenda support materials shall be delivered to all Directors prior to the meeting. Any Director may waive notice of any meeting. The attendance of a Director at any meeting also shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Notification may be made through regular mail or electronic transmission.

Section 4.6. Action: Any action required to be taken by the Board of Directors may be taken without a meeting if all Directors consent to said proposed action in writing or by electronic transmission pursuant to SDCL 47-23-6. The writing(s) or electronic transmission(s) shall be filed with the minutes of proceedings of the Board and maintained in the official files.

Section 4.7. Proxy and Alternates: Voting by Directors by proxies shall not be permitted. An absentee Board member may not designate an alternate to represent him or her at a Board meeting.

## **ARTICLE V**

### ***Staff***

The Board of Directors shall have the discretion to appoint a chief executive officer, who may employ staff within a budget established by the Board, and who shall be responsible for carrying out the day-to-day management and operations of the Corporation in accordance with the budget and policies established from time to time by the Board of Directors.

## **ARTICLE VI**

### ***Committees***

Section 6.1. Establishment and Operation of Committees: The Board of Directors shall establish such committees and task forces as it deems advisable to assist with governance, without compromising the Board's authority and in keeping with the policies established by the Board.

Section 6.2. Executive Committee: There is hereby established a standing committee known as the Executive Committee. The membership of the Executive Committee shall consist of the Officers of the Board. When the Board is not in session, the Executive Committee shall



have and may exercise all of the powers of the Board except any powers specifically reserved to the Board by resolution of the Board, and except the following powers: to nominate candidates to fill vacancies in the Board; to remove a member of the Board; to appoint, change the membership of, or fill vacancies in any committee appointed by the Board; to adopt, amend, or repeal the Articles of Incorporation or these Bylaws; to amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable; to fix the compensation of Directors for serving on the Board of Directors or on any committee; to adopt an agreement of merger or consolidation; or to dissolve the Corporation or revoke a determination to dissolve.

Section 6.3. Standing Committees: Standing Committees of the Board of Directors shall be the Executive Committee, Governance Committee, and Audit Committee. These committees shall operate in accordance with the roles and policies established by the Board. The Governance Committee shall consider and propose changes to the Articles of Incorporation and these Bylaws, propose candidates for open Board and Officer positions, and undertake such other duties and responsibilities as determined by the Board or the Chair. The primary functions of the Audit Committee are to assist the Board with its oversight of the Corporation's financial dealings and to independently review and cause the review of the Corporation's books, records, and financial dealings. The Board shall adopt a charter for the Audit Committee to more specifically establish its role and responsibilities. The Board Chair, in consultation with the chief executive officer, shall appoint committee chairs and committee members annually, except the Secretary-Treasurer may not serve on the Audit Committee.

## **ARTICLE VII**

### ***Fiscal Year***

The fiscal year of this Corporation shall begin on July 1 and terminate on June 30.

## **ARTICLE VIII Indemnification –**

### **Insurance**

The Corporation shall indemnify its Directors, officers, employees, and volunteers to the fullest extent permitted by the law of the State of South Dakota. The Corporation shall purchase such directors and officers liability and other insurance as the Board shall deem appropriate.

## **ARTICLE IX**

### ***Amendments***

These Bylaws may be amended at a regular meeting by a majority vote of all Directors then in office, provided that notice of the proposed amendment, together with a copy thereof, shall be distributed to each Director at least fifteen (15) days prior to the meeting at which the amendment is to be considered. An amendment affecting the power of the South Dakota Science and Technology Authority to appoint members of the Board of this Corporation shall be of no force or effect unless ratified by the South Dakota Science and Technology Authority.

## **ARTICLE X**

### ***Dissolution***

In the event of the dissolution of this Corporation and after the payment of all debt and return of charitable contributions as appropriate, all assets shall be distributed as provided in the Articles of Incorporation.

DRAFT

**Report from Audit Committee—Ms. Patricia Lebrun**

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- 7A. Annual appointment of committee members per Audit Charter, Chair Casey Peterson. (*See recommended motion below.*)
- 7B. Audit committee update, Ms. Pat Lebrun and Mr. Terry Miller, *informational*. (*Reference board packet for April 13 and June 2 meeting minutes.*)
- 7C. Annual review of Audit Charter—Audit Charter dated June 19, 2014 attached, Ms. Pat Lebrun.

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**Recommended Action:**

- 7A. *Motion to confirm chairperson's appointment of audit committee members.*

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## Audit Committee Meeting

April 13, 2022

### Participants:

Ms. Pat Lebrun, SDSTA Board of Director and Audit Committee Chair  
Mr. Dana Dykhouse, SDSTA Board of Director and Audit Committee Member  
Ms. Nancy Geary, SDSTA Chief Financial Officer  
Mr. Terry Miller, SDSTA Chief Financial Officer  
Mr. William (Bill) Kelly, SDSTA Contracts & Procurement Office Manager

A teleconference was held April 13, 2022, to discuss the Selection Report for Financial and Compliance Audit for the South Dakota Science and Technology Authority (SDSTA). The SDSTA is seeking a public accounting firm to conduct annual financial and compliance audits of the SDSTA for the fiscal years ending June 30, 2022, 2023 and 2024. Two firms provided proposals to the Request For Proposal (RFP) that was issued on February 28, 2022; Eide Baily and RSM. Both firms were found to meet the minimum requirements, therefore, both firms were evaluated by the selection committee.

The recommendation from the selection committee is that Eide Baily be provided the contract for the Financial and Compliance Audit based on providing the superior proposal for services and also having the lower cost.

### The following items were discussed:

1. Greetings were exchanged.
2. Dana and Pat briefly discussed the cost difference of each firm both in the first year and over the three-year time.
3. Pat stated that she wondered why other firms hadn't responded to the RFP, especially firms such as Ketel Thorstenson. Bill responded to her question, that he sent the RFP out to over 10 firms besides posting it. Ketel Thorstenson had responded that they didn't have the staff for the SDSTA audit with their already busy schedule.
4. Both Dana and Pat stated that Eide Baily is a good and reputable firm.
5. Terry briefly discussed the selection committee's evaluation meeting on April 8, 2022. Specifically, during the evaluation only Bill was aware of the price of each proposal. Neither Nancy nor Terry knew the proposed costs during the evaluation of each proposal.
6. It was moved by Dana to accept the committee's recommendation to contract with Eide Baily for the Financial and Compliance Audit of the SDSTA. Pat seconded it. Both voted Yea.

Meeting adjourned.

## **Audit Committee Meeting**

June 2, 2022

### **Participants:**

Ms. Pat Lebrun, SDSTA Board of Directors and Audit Committee Chair  
Mr. Dana Dykhouse, SDSTA Board of Directors and Audit Committee Member  
Mr. Terry Miller, SDSTA Chief Financial Officer

A teleconference was held June 2, 2022, to discuss the Audit Committee Charter for the South Dakota Science and Technology Authority (SDSTA) to address Section A. 2. of the charter, "Annually review and update this Charter."

Greetings were exchanged and the following items were discussed:

1. Pat and Dana mentioned that the Audit Committee reviews the Audit Committee Charter each year. Both have had a chance to review the current Charter, and there are no changes at this time.
2. Pat stated that our external auditors will be asked to review the Audit Committee Charter. Dana concurred that Eide Bailly should be asked review the Audit Committee Charter after they have conducted the FY2022 audit to give them a better understating of the SDSTA. Both agreed.
3. Pat mentioned she receives the Lighthouse Service (external ethics hotline) report monthly and that this is a good resource for us. There was no action for the SDSTA mentioned in this report. Pat forwarded a copy to Dana and Terry to monitor this as well.
4. Pat and Dana discussed that the Audit Committee should review internal controls for the SDSTA annually.
5. It was moved by Dana to accept the SDSTA Audit Committee Charter. Pat seconded it. Both voted Yea.

Meeting adjourned.

# **SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY**

## **AUDIT COMMITTEE CHARTER**

### **STATEMENT OF MISSION**

The mission of the South Dakota Science and Technology Authority (SDSTA) Audit Committee is to be the pro-active steward for oversight of the financial reporting and disclosure process for SDSTA, including the investigation of claimed breaches of ethics, theft, fraud, embezzlement and reports of whistle-blowers. Our responsibility is to the SDSTA Board of Directors to report independently on the results of the oversight so as to assist in maintaining and enhancing the quality of the financial reporting. The Audit Committee is committed to communication between and among directors, the external auditor and Chief Financial Officer (CFO).

#### **A. The Audit Committee has the following responsibilities and duties:**

##### **1. Appointment**

- Annually be appointed by the SDSTA Board of Directors at their annual meeting in June.
- At least one member will be deemed a “financial expert,” as defined by applicable law and regulation.

##### **2. Review**

- Annually review and update this Charter.
- Annually determine the independence of Audit Committee members through a certification by the SDSTA Board of Director’s Chairperson.
- Review the SDSTA’s annual financial statements and any reports or other financial information submitted to or from any governmental body, or the public, including any certification, report, opinion or review rendered by the external auditor or the SDSTA CFO.
- Review any report or memo or other communication from Federal and State regulators and reviewers, and attend as many entrance and exit conferences as possible.

##### **3. External Auditors/CFO/Independent Counsel/Other Advisors**

- The Audit Committee shall have the independent authority to engage any legal counsel or other advisors it deems necessary to carry out its duties.
- Periodically consult with the external auditor out of the presence of management about internal controls and the fullness and accuracy of the company’s financial statements.
- Make the selection, retention, and review the performance of, the external auditor, considering independence and effectiveness and approve the fees paid to the external auditor as well as the proposed fee. On an annual basis, the Audit Committee should review and discuss with the external auditor all significant relationships the external auditor has with the company to determine the auditor’s independence and consider the appropriateness of the non-audit services prior to their engagement.
- Periodically meet with the CFO on the results of exams, and be available to CFO for appropriate communications at any time they desire the meeting.

##### **4. Financial Reporting Process**

- In consultation with the external auditor, review the integrity of the SDSTA’s financial reporting processes.

## **SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY AUDIT COMMITTEE CHARTER**

- Consider the external auditor's judgments about the quality and appropriateness of the SDSTA's accounting principles, as applied in its financial reports and as promulgated by the Governmental Accounting Standards Board.
- Consider and forward to the SDSTA Board of Directors, if appropriate, recommendations for major changes to the SDSTA's auditing and accounting principles and practices as suggested by the external auditor, management or the CFO.
- Establish regular and separate systems of reporting to the Audit Committee by management and the external auditor regarding any significant judgments made in management's preparation of the financial statements and the Audit Committee's view of each as to appropriateness of such judgments.
- Following completion of the annual audit, review separately with management and the external auditor any significant difficulties encountered during the course of the audit, including any restrictions on the scope of work, or access to required information.
- Review and resolve any significant disagreement among management and the external auditor in connection with the preparation of the financial statements. Review in detail the passed audit adjustments and the materiality levels used by the external auditor, and the impact of Management's estimates used in the financial statement preparation.
- Review with the external auditor and management the extent to which changes or improvements in financial or accounting practices, as approved by the Audit Committee in prior reports or meetings, have been implemented.

### **5. Ethical and Legal Compliance**

- Establish, review and update periodically a Conflict of Interest Policy and ensure that management has established a system to enforce this Policy.
- Review management's monitoring of compliance with the SDSTA's Conflict of Interest Policy, and verify that management has the proper review system in place to ensure that financial statements, reports, and other financial information disseminated to governmental organizations, and the public, satisfy legal requirements.
- Review with SDSTA's retained legal counsel any legal matter that could have a significant impact on the SDSTA's financial statements.
- Periodically review individual committee member education and obtain resources, seminars and materials to keep the level of member's education current.
- Perform any other activities consistent with this Charter, the SDSTA's By-Laws and governing law, as the Audit Committee or the SDSTA Board of Directors deems necessary or appropriate.

### **6. Reporting**

In order to facilitate the proper execution of its duties and responsibilities, the Audit Committee shall conduct its reviews and investigations in a confidential manner. The Audit Committee shall report to the SDSTA Board the results of the Financial Reporting Process, consultations with External Auditors, the CFO or other Advisors, or any other issues they deem important for the SDSTA Board to meet its responsibilities. These reports shall include, but not be limited to, the results of the annual external audit or any internal audit on financial reports or compliance (including difficulties or disagreements encountered, if any, past



# **SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY**

## **AUDIT COMMITTEE CHARTER**

adjustments, materiality defined by the auditor, any legal matter having a material impact on the report, management letter comments, etc.), the integrity of the financial reporting system, the appropriateness of the accounting principles applied to the financial reports, the status of internal controls, any suggested change to any of the above systems the Audit Committee thinks should be made, any significant report or communication from any other matter that the Audit Committee deems critical information needed by the SDSTA Board. To the extent permitted by applicable law, the Audit Committee's reports to the Board of Directors shall be delivered in closed session.

The Audit Committee shall strive to provide the Board with the information it needs to manage the reporting and accounting for the SDSTA as well as utilize the reports to manage all of the other risks it faces. These reports will be made when information is received and available. The Annual Schedule below outlines some of the reporting dates anticipated.

### **7. Budget Process**

The Audit Committee will meet with the CFO in March to establish the annual budget for the Audit Committee to cover costs for audit fees, legal fees, consulting fees, continuing education travel and costs and miscellaneous costs.

### **B. Annual Schedule**

The Audit Committee will meet at its discretion but the following is a guideline for business to be conducted during the year:

December-January – Meet with external auditors to discuss preliminary audit findings, letters to management, passed adjustments, materiality, management estimates, and quality and appropriateness of accounting principles.

March-June – Present audit findings, letter of comments and other appropriate information to the SDSTA's Board of Directors at SDSTA annual meeting. Meet to update issues on hiring other outside auditors for review, as deemed necessary, of such areas as EDP, compliance, etc.

September – Request proposal for external audit. Meet with CFO.

October/November/December – Meet with CFO to review any issues regarding the audit. Meet to engage external financial auditor on entrance conference. Review all SDSTA regulators' reports (State and/or Federal). Certify as to committee member's independence.

### **C. Limitations on the Committee's Role:**

While the Audit Committee has the responsibilities and powers as stated above, it is not the Committee's duty to audit the SDSTA's financial statements or to determine that the SDSTA's financial statements are complete and accurate in accordance with generally accepted accounting principles (GAAP), as promulgated by the Governmental Accounting Standards Board. These are the responsibilities of management and the independent auditors.

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**Financial Report—Mr. Mike Headley**

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Financial Report update by SDSTA CFO Terry Miller:

- 8A. Financial summaries for May 2022, Mr. Terry Miller—attached. *(See suggested motion below.)*
- 8B. Amend FY2022 budget, Mr. Terry Miller—attached. *(See suggested motion below.)*
- 8C. Approval of LZ Operations Support grant, Mr. Mike Headley. *(See suggested motion below.)*
- 8D. Approval of FY2023 budget, Mr. Terry Miller—attached. *(See suggested motion below.)*
- 8E. May, Adam, Gerdes & Thompson hourly rate increase. *(See suggested motion below.)*

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**Recommended Action:**

- 8A. *Motion to accept financial report as presented.*
- 8B. *Motion to approve amended FY2022 budget as presented.*
- 8C. *Motion to authorize executive director to accept and expend LZ Operations Support Grant.*
- 8D. *Motion to approve FY2023 budget as presented.*
- 8E. *Motion to approve rate increase for May Adam Law Firm as presented.*

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**Sanford Lab Homestake Visitor Center**  
**Budget and YTD Actual**  
**FY2022**

	<b>FY2022 Budget (Jan to June)</b>	<b>Actual YTD May 2022</b>
<b>SLHVC</b>	\$ 255,506.16	\$ 270,536.24

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# SDSTA Operating Budget Summary FY2023

July 2022 - June 2023

		Sources of Revenue		Total Budget \$ FY2023	Budget \$ FY2022	Difference	Details on Differences
		Federal Funding	SDSTA Funds				
	Board of Directors		357,000	\$357,000	\$246,000	\$111,000	Additional Funding for Advocacy \$100K
	Executive Office (Includes SURF Foundation Expenses/Xenon Interest/Insurance,Marketing Unallowable)		956,331	\$956,331	\$897,905	\$58,426	increase in Xenon Insurance and Contractual
	Science Liaison - Collecting Liquid Nitrogen Costs (bill to contract users)		\$0	\$0	\$0	\$0	No Change
*	Science Center E & O		159,100	\$159,100	\$111,000	\$48,100	Increase showing additional Foundation Funding
**	SLHVC (Sanford Visitor Center)		754,193	\$754,193	\$255,506	\$498,687	Increase for differential of 6 months vs 12 months;Addit. Technology Upgrades Exhibit Area.
	<b>Total</b>		\$2,226,624	\$2,226,624	\$1,510,411	\$716,213	
*	Science C.E & O (Approx. \$18K from Chris B./Jack H. Memorials) Davis B. \$15K , \$25K STEM Stipends - Foundation Funding)						
**	SLHVC 2022 - 6 months; 2023 - 12 months						
	<b>Total Authority Operating Budgets</b>	\$0	\$2,226,624	\$ 2,226,624	\$1,510,411	\$716,213	
	<b>Federal Funding (includes Indirect Budget)</b>	\$43,077,441		\$43,077,441	\$43,365,491	(\$288,051)	See Details on Difference on Next Tab
	<b>Total for Approval</b>	\$43,077,441	\$2,226,624	\$ 45,304,065	\$44,875,902	\$428,162	
					Total FTE		
					SDSTA Funds	5.5 FTE + interns and part time Visitor Center(2FTE)	
					Other & Indirect	184	
SDSTA Funds includes funding from GOED for Xenon Interest					Total FTE	191.5	Net Increase of 3.5 FTE

SDSTA  
FY2023 Budget

<u>Funding Source</u>	<u>P.O/Subc.</u>	<u>FY23 Amount</u>	<u>FY22 Amount</u>	<u>Difference</u>	<u>Details on Differences</u>
CA Cooperative Agreement	DE-SC0020216	24,859,152	27,285,990	(2,426,838)	Increase in Regular Operations CA \$1.1M; decrease in IIP Projects \$3.5M -FY22 included entire Oro Hondo replacement but not completed in FY22
LBNL LZ Experiment Support/Research Grant	New Grant	669,006	476,051	192,955	Experiment Support Change to Grant
SIGMA-V	7371823	35,346	233,058	(197,712)	Decommissioning in September 2022
FRA Ross Logistics Support	674969	3,042,766	2,640,938	401,828	Comparable to prior year ( increase in Labor & Emp. Bene.)
FRA Engineer Support	671265	128,353	123,830	4,523	Very Comparable to prior year
FRA LBNF Grounds Keeping Support	New Contract	738,441	-	738,441	New Subcontract
Oak Ridge N.L. MJD	144149	15,600	21,000	(5,400)	Less Activity than Prior Year
Thyssen Mining (Property/Equip. Lease)	Lease	38,700	54,120	(15,420)	Equipment Lease slightly lower
RESPEC	03506A	27,583	10,000	17,583	Additional Work Scope
Caterpillar	Lease	94,997	94,997	-	Same Contract.
Indirects		13,427,497	12,425,508	1,001,989	Increases in FTE, Emp. Training, Insurance, IT Software Renewal Fees, IT Equip. (upgrade wireless & replace EOL Equip.), Misc. Contr. - Access Control System/ISO Cert., Work Wear, Web Site Development
Totals		<u>\$ 43,077,441</u>	<u>\$ 43,365,491</u>	<u>\$ (288,051)</u>	



**Executive Director's Report—Mr. Mike Headley**

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The Executive Director's Report includes the following:

- 9A. Declarations of surplus (3)—Shelving units, Kubota and miscellaneous equipment.
- 9B. SDSTA quarterly update—*informational*.
- 9C. SLHVC update—Ms. Deb Wolf and Ms. Kelly Kirk, *presentation*.
- 9D. SURF Artist-in-Residence (AiR) update—Ms. Gina Gibson and 2022 SURF AiR Gary Sczeraniewicz (join by phone), *presentation*.

*See recommended motion below.*

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**Recommended Action:**

*Motion to accept the Executive Director's Report as presented.*

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## DECLARATION OF SURPLUS PROPERTY

The South Dakota Science and Technology Authority (SDSTA) owns the below equipment that were not sturdy enough for our needs and were deemed unusable for the E&O Storage Room. Only 1 box out of the 8 units purchased was opened to make this determination and the unopened 7 units could not be returned to Menards. These were never assigned an asset number and all of the following units will be surplus using the standard bid process:

- 1 opened and disassembled unit – Edsal 5-Shelf Metal Freestanding Shelving Unit
- 7 unopened boxes – Edsal 5-Shelf Metal Freestanding Shelving Units

Having no further use for this property, I hereby declare the above listed items to be Surplus Property.

Dated at Lead, South Dakota this 19<sup>th</sup> day of April, 2022.



Mike Headley  
SDSTA Executive Director

## DECLARATION OF SURPLUS PROPERTY

The South Dakota Science and Technology Authority (SDSTA) owns the following generator that has reached its end-of-life cycle. It is not cost effective to repair the generator nor sell the failed item. The equipment will be scrapped:

- Kubota Generator – Asset No.: GN-XXB99-02

Having no further use for this property, I hereby declare the above listed items to be Surplus Property.

Dated at Lead, South Dakota this 29<sup>th</sup> day of April, 2022.

*Mike Headley*

Mike Headley  
SDSTA Executive Director

## DECLARATION OF SURPLUS PROPERTY

The South Dakota Science and Technology Authority (SDSTA) owns the below equipment that have reached their end-of-life cycle. These items are no longer usable nor is it cost effective to repair them. Therefore, the following equipment will be scrapped as they have no actual monetary value to be sold:

- (3) Spools of wire rope – no value and currently located outside the Ross headframe.
- (2) Galiger Pumps – net value of \$4,500 after depreciation and stored at the WWTP.
- (1) VFD 150 HP Control Panel for 8110 Tsurumi Pumps – value of \$1,693.83 after depreciation.
- (2) 8 Ton 1975 Locomotives – Asset No.: LM-XXU99-81 and LM-XXU99-82 which have no value after being fully depreciated and are currently being used for parts after being taken out of service.
- (1) 3 Ton Locomotive Battery – no value after being fully depreciated.

Having no further use for this property, I hereby declare the above listed items to be Surplus Property.

Dated at Lead, South Dakota this 2<sup>nd</sup> day of June, 2022.

*William McElroy*

William McElroy (on behalf of SDSTA Executive Director Mike Headley)  
SDSTA Operations Division Director

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**Annual Review of SDSTA Policies and Procedures—Mr. Mike Headley**

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Attached are the following updated SDSTA Policies reviewed by legal counsel and recommended for approval:

10A. Annual review of SDSTA Policy and Policy-Procedure Manual

- Section 2 Employee Handbook:
  - Employment Policy, *updated*.
  - Holidays Policy, *updated*.
  - Leave Policy, *updated*.
  - Travel Approval and Reimbursement - Employees Policy, *updated*.
  - Use of SDSTA Technology Resources and Internet Policy, *new (replaces Use of SDSTA-Owned IT Systems and Protection of Personal Privacy Policy)*.

*Informational—updated and new SDSTA Policy-Procedures (PP) approved by Executive Director Headley include:*

- Section 2 Employee Handbook:
  - *Alcohol, Controlled Substances and Testing – All Employees PP*
  - *Alcohol, Controlled Substances and Testing – Commercial Motor Vehicle Operators PP, new*.
  - *Employment PP, updated*.
  - *Inclement Weather PP, updated*.
  - *Personal Protective Equipment Reimbursement PP, updated*.
  - *Use of SDSTA Technology Resources and Internet PP, new. (Replaces Use of SDSTA-Owned IT Systems and Protection of Personal Privacy Procedure.)*

10B. Board members to sign annual statements for 2022 affirming compliance with Financial Conflict of Interest, attached—return signed statements to Mandy Knight.

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**Recommended Action:**

*Motion to approved updated Employment, Holiday Policy, Leave Policy, Personal Protective Equipment Reimbursement, Use of SDSTA Technology Resources and Internet and Travel Approval and Reimbursement - Employees Policies, as presented.*

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## Employment Policy

### A. Statement:

This policy defines the employee/employer relationship and the different classifications of employment between South Dakota Science and Technology Authority (SDS~~D~~TA) and its employees.

~~All South Dakota Science and Technology Authority (SDSTA) employees are terminable “at will,” without any tenure or expectation of continued employment. The employment relationship may be terminated by either the SDSTA or the employee, with or without cause, and with or without prior notice. Nothing in the policies adopted by the SDSTA is intended to create a contract of employment.~~

### B. Purpose:

SDSTA’s employment policy provides the structure for defining the employee/employer relationship and the different types and statuses an employee may acquire once they are hired by ~~the company~~SDSTA. This is important for the application of policies and administration of benefits.

### ~~—~~Policy Procedure:

### C. Employee/Employer Relationship:

Employment with South Dakota Science and Technology Authority (SDSTA) ~~South Dakota Science and Technology Authority (SDSTA)~~ is considered “at-will”, which means the employment relationship may be terminated by either the SDSTA or the employee, with or without cause, with or without prior notice, and without any length of employment or expectation of continued employment. Nothing in the policies adopted by the SDSTA is intended to create an expectation or contract of employment; all SDSTA employees are hired on an “at-will” basis.

~~A. —~~ All SDSTA employees

~~— will be expected to have the physical, mental and emotional capacity to perform assigned tasks competently, and in a manner that does not unreasonably threaten safety, health or property, including participation in emergency procedures applicable to their work location.~~

### D. The SDSTA shall have the following ~~E~~employee ~~C~~lassifications:

B.1. — For the purposes of this handbook, all SDSTA employees fall within one of these classifications: ~~below.~~

- a. Regular Full-Time Employees – At-will employees who regularly work at least 30 hours per week who were not hired on a short-term or temporary basis. Generally, they are eligible to participate in SDSTA’s benefit package, subject to terms, conditions and limitations of each benefit program as described in the Personnel Benefits Policy.
- b. Regular Part-Time Employees – At-will employees who regularly work fewer than 30 hours per week who were not hired on a short-term or temporary basis. Regular part-time

employees are generally not eligible to participate in SDSTA's benefit package but are eligible for prorated holiday pay and to receive statutory benefits.

- c. Non-Benefit Part-Time Employees – At-will employees who are not regularly scheduled and/or work intermittently and are expected to work less than thirty (30) hours per week who were not hired on a short-term or temporary basis. Non-Benefit Part-Time Employees generally are not eligible to participate in SDSTA's regular benefit package but are eligible to receive statutory benefits.
- d. Temporary Employees – At-will employees who are hired for a specific short-term purpose, project and/or time frame, ~~or on a short-term freelance, per diem or temporary basis.~~ Temporary employees can be hired as part-time or full-time. An example of a temporary employee would be an intern or seasonal employee. Temporary employees generally are not eligible to participate in SDSTA's regular benefit package but are eligible to receive statutory benefits.

If a regular part-time, non-benefit part-time or temporary employee becomes a regular full-time employee, the period spent as a part-time employee does not count toward the service time for benefits eligibility except longevity pay.

2. In addition to the above classifications, employees are categorized as either “non-exempt” or “exempt” for purposes of federal and state wage and hour laws.

- a. Non-Exempt - Employees classified as non-exempt are at-will employees whose positions do not fall within the executive, administrative, professional, outside sales or any other exemption ~~from overtime pay requirements by under the~~ federal and state wage and hour laws. These employees are paid time and one half of their regular rate of pay for actual hours worked in excess of forty (40) hours per week. Nonexempt employees may be paid on a salary, hourly or other basis.
- b. Exempt - Employees classified as exempt are at-will employees who ~~are not eligible for do not receive~~ overtime pay under the executive, administrative, professional, outside sales or another exemption, as prescribed ~~by under~~ federal and state wage and hour laws. Exempt employees are paid a salary, ~~regardless of the number of hours worked, -rather than by the hour.~~

~~The company~~SDSTA will ~~observe-abide by~~ any legal guidelines that apply to the classification of employees. Its own categories will be formulated in a manner that does not contradict any rule mandated by law and the benefits will be administered accordingly.

Employees will be informed of their employee classification upon hire and informed of any subsequent changes to the classifications throughout their employment.

## **E. Related procedures**

- 1. ~~Employment Policy-Procedure~~Salary Exempt Full-Time: An executive or administrative employee not paid on an hourly basis and who is expected to devote full time and attention to the job. Only SDSTA employees exempt from overtime per the Fair Labor Standards Act (FLSA) criteria will be placed in this classification.

- ~~2. Hourly Full Time: An employee who works forty (40) hours per week or more and is paid on an hourly basis.~~
  - ~~3. Probationary: The first 180 days for a full-time employee. The probationary period allows the new employee to determine if the job meets expectations and the SDSTA to initially evaluate the employee's suitability. Vacation and sick leave are accrued during the probationary period.~~
  - ~~4. Part Time: An employee who works less than twenty (20) hours per week. Part time employees are not eligible for vacation, paid holidays or any other SDSTA benefit described in the Personnel Benefits Policy, except social security and workers compensation benefits as provided by law.~~
  - ~~5. Temporary Employee: An employee hired for a temporary purpose. Such employee is not entitled to any benefits, including vacation, sick leave or paid holidays. An example of a temporary employee would be summer month college or high school student employee; person employed for specific purposes with no termination dates and the like.~~
- ~~— If a part time or temporary employee becomes a full time employee, the period of time spent as a part time or temporary employee does not count toward the waiting periods for insurance benefits, or the service time for other benefits except for longevity pay.~~
- ~~• Nothing in the policies adopted by the SDSTA is intended to create an expectation or contract of employment; all SDSTA employees are hired on an "at-will" basis.~~

## Holidays Policy to be approved at June 16 board meeting

### A. Statement

All regular full-time employees at the South Dakota Science and Technology Authority (~~“SDSTA”~~) receive their regular pay for the following federal and state holidays and any administrative leave granted by the Governor of South Dakota applicable to state employees generally. The eleven holidays are as follows:

New Year’s Day	January 1
Dr. Martin Luther King, Jr. Day	Third Monday in January
Presidents Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth/Emancipation Day	June 19
Independence Day	July 4
Labor Day	First Monday in September
Native Americans’ Day	Second Monday in October
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

If a holiday from the list falls on a Saturday, the preceding Friday is observed as the paid holiday. If a holiday falls on a Sunday, the following Monday is observed as the paid holiday.

For eligible regular part-time employees, Holiday pay is prorated based on holiday hours worked ~~for eligible regular part-time employees.~~

Eligible full-time employees will receive eight hours of pay at their straight-time hourly rate of pay for each observed holiday.

Eligible employees required to work on an observed holiday will be paid their straight-time hourly rate of pay for hours worked that day plus holiday pay up to ~~for~~ eight hours. Holiday hours are not considered work hours and do not count towards overtime pay.

For more information about holiday pay provisions, please contact Human Resources.

### B. Purpose

SDSTA provides paid time off for aforementioned holidays to employees so they may honor, celebrate, remember or mourn diverse historical, cultural and religious events and traditions. To practice equity and to express gratitude, SDSTA compensates employees who sacrifice holiday time to assure continued operation of SDSTA.

### C. Related **P**policies and **P**procedures

- Anti-Harassment Policy
- Diversity, Equity and Inclusion Policy
- Personnel Benefits Policy

**Leave Policy**, to be approved at June 16 board meeting.

**A. Vacation leave**

**A. It is the policy of the South Dakota Science and Technology Authority (SDSTA) that all vacation leave accruals shall commence from the employee's first date of service.**

**a)1.** Only full-time employees ~~(including probationary full-time employees)~~ will accumulate leave credits of 4.62 hours per bi-weekly pay period and may accumulate a maximum of twice the annual accrual. When an employee completes 15 years of service, the employee will receive 6.16 hours of leave credits per bi-weekly pay period, and may accumulate a maximum of twice the annual accrual. Vacation leave may be granted for vacation or to supplement other permitted and authorized leaves of absence.

**b)2.** Salaried employees will not be required to use vacation leave while traveling when the purpose of the trip is specifically for SDSTA business. When SDSTA business is incidental to the trip, vacation leave will be required.

**c)3.** Upon retirement or resignation, only full-time employees with 180 days of continuous service will be paid for accumulated vacation leave. Vacation cannot be used to extend employment beyond the last actual day of work.

**B. Sick leave**

**B. It is the policy of the SDSTA that all sick leave accruals shall commence from the employee's first date of service.**

**a)1.** Full-time employees accumulate sick leave credits of 4.32 hours per bi-weekly pay period without a maximum limitation. Sick leave may be granted for personal illness or disability, pregnancy of the employee or the employee's spouse, exposure to a contagious disease that would endanger the health of co-workers, eye and dental care, required medical examinations, counseling or treatment at approved centers for alcohol or drug abuse or psychiatric care. There is no minimum period of employment before sick leave may be used. If an employee gives notice of resignation and uses any sick leave hours during the notice period, a doctor's note will be required before the employee is compensated for time otherwise compensated for as sick leave.

**C. General provisions for the accumulation and use of vacation and sick leave**

**a)1.** Effective June 23, 2011, for all new hires, accumulated hours of sick leave can be carried over from the State of South Dakota to the SDSTA only at the discretion of the Executive Director. With approval, only those hours that have not been paid out by the State of South Dakota will be credited as a beginning balance at the SDSTA. Documentation to verify hours not paid by the state must be provided in writing to the SDSTA. These hours will be used only after hours accrued through employment with the SDSTA have been used.

- b)2. \_\_\_\_\_ Requests for leave must be submitted to the employee's supervisor in advance and in writing. When the circumstances do not permit the prior submission of requests for leave, the request must be submitted as soon as is conveniently possible upon the employee's return to work.
- e)3. \_\_\_\_\_ Employees terminated during the probationary-onboarding period will not be paid accrued vacation leave.
- d)4. \_\_\_\_\_ Employees may not use more vacation leave than they have accumulated.
- e)5. \_\_\_\_\_ Requests for leave other than sick leave must be approved by the employee's immediate supervisor prior to the requested departure time.
- f)6. \_\_\_\_\_ Employees must notify their supervisor of illness prior to the start of their work shift.
- g)7. \_\_\_\_\_ Any time absent from the job without prior authorization or notification may at the supervisor's discretion be considered absence without leave, for which the employee may not use sick or vacation leave and will not be paid. Unauthorized or unreported absences may be cause for disciplinary action.
- h)8. \_\_\_\_\_ Upon an employee's resignation, retirement or dismissal from employment because of reduction in staff, 25 percent of accumulated sick leave, up to a maximum of 480 hours, will be paid to such employee but only if the employee has been employed with the SDSTA continuously for at least 7 years, measured from the first date of employment. The accumulated leave will be paid at the pay rate as of the employee's last date on the payroll. In the case of dismissal other than a reduction in staff, no payment for accumulated sick leave will be made. For the purpose of this subsection, employment with the State of South Dakota immediately preceding employment with the SDSTA shall count toward the 7-year requirement for payment of accumulated sick leave.

#### **D. Personal leave**

If necessary, full-time employees may use accumulated sick leave for personal leave. The leave may be used for:

- a)1. \_\_\_\_\_ A death in the immediate family of the employee or the immediate family of the spouse or significant other of the employee. For the purposes of this Policy, the term "immediate family" means father, mother, step-parents, spouse, significant other, children, foster children, step-children, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, siblings, step-siblings, grandparents, grandparents-in-law grandchildren, aunts, uncles, aunts-in-law, uncles-in-law, nieces and nephews.
- b)2. \_\_\_\_\_ The temporary care of members of the immediate family of the employee or the employee's spouse or significant other (see list above).
- e)3. \_\_\_\_\_ The birth or adoption of a child.
- d)4. \_\_\_\_\_ Volunteer police or rescue work.

e)5. \_\_\_\_\_ A call to active duty of military reserve or National Guard members.

## E. Administrative Leave

Administrative leave is an administratively authorized absence from normal duty without loss of pay and benefits or use of other types of leave. Administrative leave may be approved in cases of reaction to natural, human-made or health-related emergencies. An emergency includes but is not limited to; inclement weather, utility failure, fire, terrorism, other forced evacuations or state of emergency. Administrative leave is not an entitlement, and SDSTA is not required to grant it. Only the Executive Director may approve a grant of administrative leave.

## F. Family and Medical Leave Act ("FMLA"):

SDSTA employees may be entitled to a leave of absence under the Family and Medical Leave Act (FMLA). This policy provides employees information concerning FMLA entitlements and obligations employees may have during such leaves. If employees have any questions concerning FMLA leave, they should contact Human Resources.

### 1. Eligibility

FMLA leave is available to "eligible employees." To be an "eligible employee," the employee must:

- a) have been employed by SDSTA for at least 12 months (which need not be consecutive);
- b) have been employed by SDSTA for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave; and
- c) be employed at a worksite where 50 or more employees are located within 75 miles of the worksite.

### 2. Entitlements

As described below, the FMLA provides eligible employees with a right to leave, health insurance benefits and, with some limited exceptions, job restoration.

#### a) Basic FMLA Leave Entitlement

The FMLA provides eligible employees up to 12 workweeks of unpaid leave for certain family and medical reasons during a 12-month period. The 12-month period is determined based on a rolling 12-month period measured backward from the date the employee uses their FMLA leave.

Leave may be taken for any one, or for a combination, of the following reasons:

- To care for the employee's child after birth or placement for



- adoption or foster care;
- To care for the employee's spouse, son, daughter, parent, or in-law who has a **serious health condition**;
  - For the employee's own serious health condition (including any period of incapacity due to pregnancy, prenatal medical care, or childbirth) that makes the employee unable to perform one or more of the essential functions of the employee's job; and/or
  - Because of any **qualifying exigency** arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or called to covered active-duty status (or has been notified of an impending call or order to covered active duty) in the Reserves component of the Armed Forces for deployment to a foreign country in support of contingency operation or Regular Armed Forces for deployment to a foreign country.

A **serious health condition** is an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents employees from performing the essential functions of their job or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than **three (3)** consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

**Qualifying exigencies** may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, caring for the parents of the military member on covered active duty and attending post-deployment reintegration briefings.

b) Additional Military Family Leave Entitlement (Injured Servicemember Leave)

In addition to the basic FMLA leave entitlement discussed above, an eligible employee who is the spouse, son, daughter, parent or next of kin of a **covered servicemember** is entitled to take up to 26 weeks of leave during a single 12-month period to care for the servicemember with a serious injury or illness. Leave to care for a servicemember shall only be available during a single-12-month period and, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during the single 12-month period. The single 12-month period begins on the first day an eligible employee takes leave to care for the injured servicemember.

A "**covered servicemember**" is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing

medical treatment, recuperation, or therapy, is otherwise in outpatient status or is on the temporary retired list, for a serious injury or illness. These individuals are referred to in this policy as "current members of the Armed Forces." **Covered servicemembers** also include a veteran who is discharged or released from military services under condition other than dishonorable at any time during the five years preceding the date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. These individuals are referred to in this policy as "covered veterans."

The FMLA definitions of a "serious injury or illness" for current Armed Forces members and covered veterans are distinct from the FMLA definition of "serious health condition" applicable to FMLA leave to care for a covered family member.

c) Intermittent Leave and Reduced Leave Schedules

FMLA leave usually will be taken for a period of consecutive days, weeks, or months. However, employees also are entitled to take FMLA leave intermittently or on a reduced leave schedule when medically necessary due to a serious health condition of the employee or covered family member or the serious injury or illness of a covered servicemember. Qualifying exigency leave also may be taken on an intermittent basis.

d) No Work While on Leave

The taking of another job while on family/medical leave or any other authorized leave of absence is grounds for immediate discharge, to the extent permitted by law.

e) Protection of Group Health Insurance Benefits

During FMLA leave, eligible employees are entitled to receive group health plan coverage on the same terms and conditions as if they had continued to work.

f) Restoration of Employment and Benefits

At the end of FMLA leave, employees generally have a right to return to the same or equivalent positions with equivalent pay, benefits, and other employment terms. SDSTA does not intend to deny reinstatement and rights to "key employees." Use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of an eligible employee's FMLA leave.

#### g) Notice of Eligibility for, and Designation of, FMLA Leave

Employees requesting FMLA leave are entitled to receive written notice from SDSTASDSTA informing them whether they are eligible for FMLA leave and, if not eligible, the reasons why they are not eligible.

When eligible for FMLA leave, employees are entitled to receive written notice of:

1. Their rights and responsibilities in connection with such leave.
2. SDSTA's designation of leave as FMLA-qualifying or non-qualifying, and if not FMLA-qualifying, the reasons why.
3. The amount of leave, if known, that will be counted against the employee's leave entitlement.

SDSTA may retroactively designate leave as FMLA leave with appropriate written notice to employees provided SDSTA's failure to designate leave as FMLA-qualifying at an earlier date did not cause harm or injury to the employee. In all cases where leaves qualify for FMLA protection, SDSTA and employee can mutually agree that leave be retroactively designated as FMLA leave.

### 3. Employee FMLA Leave Obligations

#### a) Provide Notice of the Need for Leave

Employees who take FMLA leave must timely notify SDSTA of their need for FMLA leave. The following describes the content and timing of such employee notices.

##### 1. Content of Employee Notice

To trigger FMLA leave protections, employees must inform their manager and/or their supervisor and Human Resources of the need for FMLA-qualifying leave and the anticipated timing and duration of the leave, if known. Employees may do this by either requesting FMLA leave specifically or explaining the reasons for leave so as to allow SDSTA to determine that the leave is FMLA-qualifying. For example, employees might explain that:

- a medical condition renders them unable to perform the functions of their job;
- they are pregnant or have been hospitalized overnight;
- they or a covered family member are under the continuing care of a health care provider;

- the leave is due to a qualifying exigency caused by a military member being on covered active duty or called to covered active duty status to a foreign country; or
- if the leave is for a family member, that the condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness.

Calling in "sick," without providing the reasons for the needed leave, will not be considered sufficient notice for FMLA leave under this policy. Employees must respond to SDSTA's questions to determine if absences are potentially FMLA-qualifying.

If employees fail to explain the reasons for FMLA leave, the leave may be denied. When employees seek leave due to FMLA-qualifying reasons for which SDSTA has previously provided FMLA-protected leave, they must specifically reference the qualifying reason for the leave or the need for FMLA leave.

## 2. Timing of Employee Notice

Employees must provide 30 days' advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days' notice is not possible, or the approximate timing of the need for leave is not foreseeable, employees must provide SDSTA notice of the need for leave as soon as practicable under the facts and circumstances of the particular case. Employees who fail to give 30 days' notice for foreseeable leave without a reasonable excuse for the delay, or otherwise fail to satisfy FMLA notice obligations, may have FMLA leave delayed or denied.

### b) Cooperate in the Scheduling of Planned Medical Treatment (Including Accepting Transfers to Alternative Positions) and Intermittent Leave or Reduced Leave Schedules

When planning medical treatment, employees must consult with SDSTA and make a reasonable effort to schedule treatment so as not to unduly disrupt SDSTA's operations, subject to the approval of the employee's health care provider. Employees must consult with SDSTA prior to the scheduling of treatment to work out a treatment schedule that best suits the needs of both SDSTA and the employees, subject to the approval of the employee's health care provider. If employees providing notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglect to fulfill this obligation, SDSTA may require employees to attempt to make such arrangements, subject to the approval of the employee's health care provider.

When employees take intermittent or reduced work schedule leave for foreseeable planned medical treatment for the employee or a family member, including during a period of recovery from a serious health condition or to care for a covered servicemember, SDSTA may temporarily transfer employees, during the period that the intermittent or reduced leave schedules are required, to alternative positions with equivalent pay and benefits for which the employees are qualified and which better accommodate recurring periods of leave.

When employees seek intermittent leave or a reduced leave schedule for reasons unrelated to the planning of medical treatment, upon request, employees must advise SDSTA of the reason why such leave is medically necessary. In such instances, SDSTA and employee shall attempt to work out a leave schedule that meets the employee's needs without unduly disrupting SDSTA's operations, subject to the approval of the employee's health care provider.

c) Submit Medical Certifications Supporting Need for FMLA Leave (unrelated to requests for Military Family Leave)

Depending on the nature of FMLA leave sought, employees may be required to submit medical certifications supporting their need for FMLA qualifying leave. As described below, there generally are three types of FMLA medical certifications: an **initial certification**, a **recertification**, and a **return to work/fitness for duty certification**.

It is the employee's responsibility to provide SDSTA with timely, complete, and sufficient medical certifications. Whenever SDSTA requests employees to provide FMLA medical certifications, employees must provide the requested certifications within 15 calendar days after SDSTA's request, unless it is not practicable to do so despite the employee's diligent, good faith efforts.

SDSTA will inform employees if submitted medical certifications are incomplete or insufficient and provide employees at least seven calendar days to cure deficiencies. SDSTA will deny FMLA leave to employees who fail to timely cure deficiencies or otherwise fail to timely submit requested medical certifications.

With the employee's permission, SDSTA's Human Resources may contact the employee's health care provider to authenticate or clarify completed and sufficient medical certifications. If employees choose not to provide SDSTA with authorization allowing it to clarify or authenticate certifications with health care providers, SDSTA may deny FMLA leave if certifications are unclear.

Whenever SDSTA deems it appropriate to do so, it may waive its right to receive timely, complete and/or sufficient FMLA medical certifications.

#### 1. Initial Medical Certifications

Employees requesting leave because of their own, or a covered relation's, serious health condition, or to care for a covered servicemember, must supply medical certification supporting the need for such leave from their health care provider or, if applicable, the health care provider of their covered family or service member. If employees provide at least 30 days' notice of medical leave, they should submit the medical certification before leave begins. A new initial medical certification will be required on an annual basis for serious medical conditions lasting beyond a single leave year.

If SDSTA has reason to doubt initial medical certifications, it may require employees to obtain a second opinion at SDSTA's expense. If the opinions of the initial and second health care providers differ, SDSTA may, at its expense, require employees to obtain a third, final and binding certification from a health care provider designated or approved jointly by SDSTA and the employee.

#### 2. Medical Recertifications

Depending on the circumstances and duration of FMLA leave, SDSTA may require employees to provide recertification of medical conditions giving rise to the need for leave. SDSTA will notify employees if recertification is required and will give employees at least 15 calendar days to provide medical recertification.

#### 3. Return to Work/Fitness for Duty Medical Certifications

Unless notified that providing such certifications is not necessary, employees returning to work from FMLA leaves that were taken because of their own serious health conditions that made them unable to perform their jobs must provide SDSTA with medical certification confirming they are able to return to work and the employees' ability to perform the essential functions of the employees' position, with or without reasonable accommodation. SDSTA may delay and/or deny job restoration until employees provide return to work/fitness for duty certifications.

#### d) Submit Certifications Supporting Need for Military Family Leave

Upon request, the first time employees seek leave due to qualifying exigencies arising out of the covered active duty or call to covered active duty status of a military member, SDSTA may require employees to provide:

1. a copy of the military member's active duty orders or other documentation issued by the military indicating the military member is on covered active duty or call to covered active duty status and the dates of the military member's covered active duty service; and
2. a certification from the employee setting forth information concerning the nature of the qualifying exigency for which leave is requested. Employees shall provide a copy of new active-duty orders or other documentation issued by the military for leaves arising out of qualifying exigencies arising out of a different covered active duty or call to covered active-duty status of the same or a different military member.

When leave is taken to care for a covered servicemember with a serious injury or illness, SDSTA may require employees to obtain certifications completed by an authorized health care provider of the covered servicemember. In addition, and in accordance with the FMLA regulations, SDSTA may request that the certification submitted by employees set forth additional information provided by the employee and/or the covered servicemember confirming entitlement to such leave.

e) Substitute Paid Leave for Unpaid FMLA Leave

Employees taking Unpaid FMLA must use their ~~any~~ accrued paid time off concurrently; while taking unpaid FMLA leave, sick leave first, and then vacation leave pay.

The substitution of paid time for unpaid FMLA leave time does not extend the length of FMLA leave and the paid time will run concurrently with the employee's FMLA entitlement.

Leaves of absence taken in connection with a disability leave plan or workers' compensation injury/illness shall run concurrently with any FMLA leave entitlement. Upon written request, SDSTA will allow employees to use accrued paid time to supplement any paid disability benefits.

f) Benefits While on FMLA Leave

Sick Leave: Employees do not accrue sick leave while on unpaid FMLA Leave.

Vacation Pay: Employees do not accrue vacation pay while on unpaid FMLA Leave.

Holidays: Employees are not eligible for holiday pay while on FMLA unless they are using accrued sick and/or vacation pay surrounding the paid holiday.



Inclement Weather Pay: Employees are not eligible for inclement weather pay while on FMLA.

SDRS Contributions: SDRS Contributions are suspended while on unpaid FMLA Leave.

g) Pay Employee's Share of Health Insurance Premiums

During FMLA leave, employees are entitled to continued group health plan coverage under the same conditions as if they had continued to work. Unless SDSTA notifies employees of other arrangements, whenever employees are receiving pay from SDSTA during FMLA leave, SDSTA will deduct the employee portion of the group health plan premium from the employee's paycheck in the same manner as if the employee was actively working.

If FMLA leave is unpaid, employees must pay their portion of the group health premium through a method determined by the SDSTA ~~upon leave~~.

SDSTA's obligation to maintain health care coverage ceases if the employee's premium payment is more than 30 days late. If the employee's payment is more than 15 days late, SDSTA will send a letter notifying the employee that coverage will be dropped on a specified date unless the co-payment is received before that date. If employees do not return to work within 30 calendar days at the end of the leave period (unless employees cannot return to work because of a serious health condition or other circumstances beyond their control), they will be required to reimburse SDSTA for the cost of the premiums SDSTA paid for maintaining coverage during their unpaid FMLA leave.

4. Questions and/or Complaints about FMLA Leave

If you have questions regarding this FMLA policy, please contact Human Resources. SDSTA is committed to complying with the FMLA and, whenever necessary, shall interpret and apply this policy in a manner consistent with the FMLA.

The FMLA makes it unlawful for employers to:

1. interfere with, restrain, or deny the exercise of any right provided under FMLA; or
2. discharge or discriminate against any person for opposing any practice made unlawful by FMLA or involvement in any proceeding under or relating to FMLA.

If employees believe their FMLA rights have been violated, they should contact Human Resources immediately. SDSTA will investigate any FMLA complaints and take prompt and appropriate remedial action to address



and/or remedy any FMLA violation. Employees also may file FMLA complaints with the United States Department of Labor or may bring private lawsuits alleging FMLA violations.

#### 5. Coordination of FMLA Leave with Other State and Federal Laws and Other Leave Policies. ~~Leave Policies~~

The FMLA does not affect any federal, state, or local law prohibiting discrimination, or supersede any State or local law that provides greater family or medical leave rights. For additional information concerning leave entitlements and obligations that might arise when FMLA leave is either not available or exhausted, please consult SDSTA's Human Resources.

~~The Family and Medical Leave Act of 1993 provides eligible employees with up to 12 weeks of unpaid, job-protected family and medical leave ("FML") during a calendar year for certain family and medical reasons or up to 26 weeks for a family caregiver of an injured or ill service member. Employees are eligible if they have worked for at least one year and for 1,250 hours over the previous 12 months.~~

##### ~~a) Reasons for taking leave.~~

~~FML must be granted for any of the following reasons:~~

- ~~1. To care for the employee's child after birth or placement for adoption or foster care (the employee is eligible to use this leave anytime within 12 months of the birth or placement);~~
- ~~2. To care for the employee's spouse, son or daughter (who is under eighteen years old, unless the son or daughter is not capable of self-care due to mental or physical disability), or parent, who has a serious health condition;~~
- ~~3. For a serious health condition that makes the employee unable to perform the employee's job;~~
- ~~4. Due to circumstances arising out of the fact that a covered military member (a spouse, son, daughter or parent) is on active duty or called to active duty status (e.g.: short-notice deployment, military events and related activities, childcare and school activities, making financial and legal arrangements, counseling, rest and recuperation, and post-deployment activities); or~~
- ~~5. To care for a family member (spouse, son, daughter, parent or next of kin) who incurred a serious injury/illness as a result of active military service (up to 26 weeks combined FML leave in a single 12-month period).~~

##### ~~b) Paid versus unpaid leave.~~

- ~~1. Non-Worker's Compensation: Employees are required to use their paid leave, up to a maximum of 12 weeks, prior to taking leave under FML. FML will follow consecutively for an additional 12 weeks (and up to 26 weeks for a family caregiver of an injured or ill service member). If the employee has less~~

~~than 12 weeks of paid leave available, the FML period will start once the paid leave is exhausted. If the employee has paid leave remaining available after the initial 12 weeks required to be used, the employee may use the remaining available paid leave during the FML period. To use paid leave before or during the FML period, the employee must have leave available and must meet all the leave requirements of that particular type of paid leave; for example, sick leave can only be used for the employee's own illness.~~

- ~~2. Worker's Compensation: Employees receiving temporary partial disability or temporary total disability benefits may take up to 10 hours of paid leave per week in addition to their worker's compensation benefits; provided, however, that the sum of the net (after payroll deductions) paid leave and workers compensation benefits may not exceed the net (after payroll deductions) salary to which the employee would be entitled if the employee were not receiving worker's compensation benefits. If the condition giving rise to the payment of workers compensation benefits constitutes a qualifying serious illness or injury under FML, then the absence shall be deemed leave under FML and the employee shall be so notified in writing. If after the FML 12-week period, the employee is unable to return to work, the employee's job is no longer protected pursuant to the FML.~~

~~c) Advance notice and medical certification~~

~~Except as otherwise provided herein, employees must provide advance notice of request for FML and appropriate proof of need for leave relating to a medical condition. Leave may be denied or delayed if these requirements are not met. The employee ordinarily must provide 30 days advance notice when the leave is foreseeable. In other circumstances, the notice must be given as soon as practicable. The SDSTA may require medical certification to support a request for leave because of a serious health condition, second or third opinions, periodic recertification, periodic reports regarding the employee's status and intent to return to work, and a fitness for duty report to return to work. Failure to provide this information may result in the denial of leave or other disciplinary action.~~

~~d) Job benefits and protection~~

- ~~1. During FML, the SDSTA will maintain the employee's health insurance coverage at the same cost to the employee as if the employee was on the job. Any other benefits for which the employee may be eligible will also be maintained, but the employee shall remain responsible for the usual cost of such benefits. If the employee is on leave without pay, the employee must contact the Human Resources Office to make arrangements for the timely payment of premiums.~~
- ~~2. Upon return from FML, employees other than certain highly compensated employees will be restored to their original position or a position with equivalent pay, benefits and other employment terms.~~

- ~~3. The use of FML will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.~~
- ~~4. The SDSTA may recover its share of insurance premiums if the employee fails to return after taking leave under certain circumstances.~~
- ~~e) Failure to return to work—If an employee fails to return to work after FML is exhausted, the employee may be subject to disciplinary action or termination due to inability to perform the essential functions of the job.~~
- ~~f) To the extent any provision of this Section E is inconsistent with the terms of the Family and Medical Leave Act as applicable at the time of the FML, the terms of the Family and Medical Leave Act shall govern.~~
- g) Within five days of a request for FML leave or when SDSTA acquires knowledge that leave may be for an FML qualifying reason, the SDSTA shall give persons whose leave is deemed FML leave eligibility notice and rights and responsibilities notice as required by FML.

## **G. Paid Parental Leave**

SDSTA will provide up to eight (8) weeks of paid parental leave to eligible employees following the birth of an employee's child or the placement of a child with an employee in connection with adoption. The purpose of paid parental leave is to enable the employee to care for and bond with a newborn(s) or a newly adopted child. Paid Parental Leave will run concurrently with Family and Medical Leave Act (FMLA) leave, as applicable. This benefit will be in effect for births or adoptions of eligible employees' children occurring on or after June 16, 2022.

### **1. Eligibility**

Eligible employees must meet the following criteria:

- Have been employed with SDSTA for at least 12 months (the 12 months do not need to be consecutive).
- Have worked at least 1,250 hours during the 12 consecutive months immediately preceding the date the leave would begin.
- Be a full- or part-time, regular employee (temporary employees and interns are not eligible for this benefit).

In addition, employees must meet one of the following criteria:

- Have given birth to a child/children.
- Be a spouse of a woman who has given birth to a child/children.
- Have adopted a child/children (the child/children must be age 17 or younger). The adoption of a new spouse's child/children is excluded from this policy.

### **2. Amount, time frame and duration of paid parental leave**

- Eligible employees will receive a maximum of eight (8) weeks of paid parental leave per birth or adoption of a child/children. The fact that a multiple birth or adoption occurs (e.g., the birth of twins or adoption of siblings) does not increase the 8-week total amount of paid parental leave granted for that event. In addition, in no case will an employee receive more than eight (8) weeks of paid parental leave in a rolling 12-month period, regardless of whether more than one birth or adoption event occurs within that 12-month time frame.
- If both parents are SDSTA employees, both are eligible for paid parental leave. -The parents may utilize paid parental leave concurrently or consecutively.
- Each week of paid parental leave is compensated at 100 percent of the employee's regular, straight-time weekly pay. Paid parental leave will be paid on a biweekly basis on regularly scheduled pay dates.
- Approved paid parental leave may be taken at any time during the 12-month period immediately following the birth, or placement of a child with the employee for adoption. Paid parental leave may not be used or extended beyond this 12-month time frame.
- Employees must take paid parental leave in one continuous period of leave and must use all paid parental leave during the 12-month time frame indicated above. Any unused paid parental leave will be forfeited at the end of the 12-month time frame.
- Upon termination of the individual's employment at the company, he or she will not be paid for any unused paid parental leave for which he or she was eligible.

### 3. Coordination with other policies

- Paid parental leave taken under this policy will run concurrently with leave under the FMLA; thus, any leave taken under this policy that falls under the definition of circumstances qualifying for leave due to the birth or placement of a child due to adoption, the leave will be counted toward the 12 weeks of available FMLA leave per a 12-month period. All other requirements and provisions under the FMLA will apply. In no case will the total amount of leave—whether paid or unpaid—granted to the employee under the FMLA exceed 12 weeks during the 12-month FMLA period. Please refer to the Family and Medical Leave Policy for further guidance on the FMLA.
- After the paid parental leave is exhausted, the balance of FMLA leave (if applicable) will be compensated through employees' accrued sick and/or vacation pay. Upon exhaustion of accrued sick and/or vacation pay, any remaining leave will be unpaid leave. Please refer to the Family and Medical Leave Policy for further guidance on the FMLA.
- SDSTA will maintain all benefits for employees during the paid parental leave period just as if they were taking any other company paid leave such as paid vacation leave or paid sick leave.

- If an SDSTA holiday occurs while the employee is on paid parental leave, such day will be charged to holiday pay; however, such holiday pay will not extend the total paid parental leave entitlement.
- An employee who takes paid parental leave that does not qualify for FMLA leave will be afforded the same level of job protection for the period of time that the employee is on paid parental leave as if the employee was on FMLA-qualifying leave.

#### 4. Requests for paid parental leave

- The employee will provide his or her supervisor and the Human Resources (HR) with notice of the request for leave at least 30 days prior to the proposed date of the leave (or if the leave was not foreseeable, as soon as possible). The employee must complete the necessary HR forms and provide all documentation as required by the HR Office to substantiate the request.
- As is the case with all SDSTA policies, the organization has the exclusive right to interpret this policy.

### G.H. Court and jury leave

Full-time ~~and probationary~~ employees are eligible for court and jury leave. The employee shall immediately notify the employee's supervisor if the employee expects to be absent from work due to the court and jury obligations. Absences will be administered as follows:

- a)1. Testifying in official capacity—If the employee is subpoenaed by either party to testify in any civil or criminal proceeding because of the employee's official capacity or is instructed by the supervisor to testify in an official capacity without being subpoenaed, the employee shall receive the employee's regular salary without loss of leave credits and may receive actual expenses according to state rates, but may not receive witness fees. The employee's supervisor and the SDSTA shall determine if the employee is testifying in an official capacity.
- b)2. Subpoenaed to testify in non-official capacity—If an SDSTA employee is subpoenaed to testify in court in a non-official capacity and is not a party to the case, the employee shall receive the employee's regular salary from the SDSTA without loss of leave credits for the time spent testifying during regular working hours and may receive in accordance with SDCL 19-5-1 or any comparable federal law, witness fees and mileage from the party who issued the subpoena. However, the employee may not take court and jury leave for travel time or time when the employee is not reasonably expected to testify regardless of whether the employee has been subpoenaed for that period of time. If the employee is absent from the workplace while not testifying, the employee must use vacation leave or leave without pay. This leave must be requested in advance and is subject to the supervisor's approval.
- c)3. Party or witness not subpoenaed to testify—If an employee is a party to or witness who has not been subpoenaed, the employee must use vacation leave

or leave without pay. This leave must be requested in advance and is subject to the supervisor's approval.

d)4. \_\_\_\_\_ Service on jury—If an SDSTA employee is summoned to serve on a jury, the employee shall receive the employee's regular salary without loss of leave credits for the time spent on jury duty during regular working hours and shall be entitled to retain the per diem and mileage provided for by SDCL 16-13-46 or any comparable federal law.

e)5. \_\_\_\_\_ The Executive Director is the final arbiter of whether an employee is eligible for court and jury leave.

#### **H.I. Military training leave**

Full-time employees are entitled to military training leave of up to 15 days per calendar year. Employees requesting military training leave must obtain a written certification from the commander of their reserve or National Guard unit indicating dates of the training period. This notice is to be submitted to the employee's supervisor at least 15 calendar days prior to the date of the employee's departure for training.

#### **I.J. Leave of absence without pay**

Prior permission must be obtained from the employee's supervisor to take a leave of absence without pay. If an employee has paid leave accumulated, the employee must use that before leave without pay is granted (see the Absenteeism and Tardiness Policy). While on leave without pay, employees will not accumulate leave credits and they must make provisions to pay for their own voluntary payroll deductions.

#### **J.K. Absence without leave**

Unauthorized and unreported absences may result in a deduction of pay and may be cause for disciplinary action. Employees must report the reason for any absence to their supervisor as soon as possible.

#### **K.L. Exceptions**

a)1. \_\_\_\_\_ The Executive Director may grant specific employees leave in addition to or different than that provided for in this policy if the Executive Director deems such changes necessary to hire or retain a key employee. All exceptions will be made in writing.

b)2. \_\_\_\_\_ Vacation leave granted by the Executive Director may be accumulated to a maximum of twice the annual accrual.

## **Travel and Approval and Reimbursement – Employees Policy, to be approved at June 16 board meeting**

South Dakota Science and Technology Authority (SDSTA) employees who anticipate traveling out-of-state or internationally on official SDSTA business must obtain supervisor approval prior to making travel arrangements. Supervisors will approve or deny requests in a timely manner.

Employees whose travel will be federally funded will obtain approval ~~from the funding agency as required by the deadline identified in the agreement with~~by the funding agency. Travelers must also comply with any additional funding agency requirements, including but not limited to:

- ~~• Provide documented cost comparisons or justifications to support travel cost/expense associated with airfare, lodging, and weekend travel, to ensure costs are effective and adhere to federal travel regulations;~~
- Limit tipping to 15%; and
- Limit reimbursement requests for lodging and meals and incidental expenses ~~reimbursement to current rates established by the U.S. Government's General Services Administration (GSA) Per Diem rates.~~

SDSTA employees must submit documentation evidencing expenses incurred for ~~meals and other~~ travel-related expenses on a form prescribed by the SDSTA to receive reimbursement.

Employees who wish to take vacation or personal leave in conjunction with official travel must limit the amount of leave taken while on travel to no more than the duration of the official travel time excluding travel days.

## **Use of SDSTA Technology Resources and Internet Policy**

### **A. Statement**

The South Dakota Science and Technology Authority (SDSTA) has established guidelines designed to protect the SDSTA against improper use of information technology systems. This policy applies to all employees, contractors, and partners who access the SDSTA information technology (IT) systems.

### **B. Purpose**

To avoid inappropriate or illegal internet use that creates legal or reputational risks for SDSTA, no software or hardware is to be installed on the SDSTA computers unless approved by the SDSTA IT Department. Also, use of the SDSTA internet resources shall not detract from performance of the SDSTA mission in operating the Sanford Underground Research Facility. All SDSTA employees are responsible for following the procedures outlined in the Use of SDSTA Technology Resources and Internet Policy-Procedure for the proper use of technology resources.

Violations of this policy will be considered serious, and may subject the employee to appropriate disciplinary action, up to and including termination, at the sole discretion of the SDSTA.

### **C. Related procedure**

- Use of SDSTA Technology Resources and Internet Policy-Procedure



## **Alcohol, Controlled Substances and Testing—All Employees Policy-Procedure**

The South Dakota Science and Technology Authority (SDSTA) recognizes the importance of protecting the health and safety of all employees and will take reasonable action to create and maintain a workplace free of the risks associated with use of unlawful drugs and/or alcohol.

### **A. Applicability**

This procedure applies to all SDSTA employees as a condition of initial and continued employment, or as applicable, access to the Sanford Underground Research Facility (SURF) and any other SDSTA-owned or controlled property.

This procedure sets out the requirements and describes the processes used at SURF to manage the use of unlawful drugs and/or alcohol.

### **B. Definitions**

Terms used in this procedure mean:

1. **Controlled Substances**—those substances listed in Schedules I - V of the Controlled Substances Act, 21 United States Code (USC) § 812 and 21 CFR §§ 1308.11-1308.15, as amended from time-to-time. Controlled Substances includes, but is not limited to, medical cannabis as provided for under South Dakota Codified Law (“SDCL”) Ch. 34-20G.
2. **Designated Employee Representative (DER)**—An employee(s) authorized by the employer to take immediate action(s) to remove an employee from safety-sensitive duties, or cause an employee to be removed from these covered duties and to make required decisions in the testing and evaluation processes.
3. **Dilute Specimen**—A urine sample that has a higher-than-average water content.
4. **Employee Assistance Program (EAP)**—An employee benefit program that assists employees with personal problems and/or work-related problems that may impact their job performance, health, mental and emotional well-being, including alcohol and substance abuse.
5. **Invalid Test Result**—A result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug or alcohol test.
6. **Medical Review Officer (MRO)**—A licensed physician who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for non-negative drug test results.
7. **Non-Negative Test Result**—A result that indicate the presence of a controlled substance in the tested sample.
8. **Reasonable Suspicion**—A determination, made by a trained supervisor or supervisors, based upon specific, contemporaneous, articulable observations of conduct, behavior or body odors, that a person may be under the influence of alcohol or controlled substances. Examples of evidence giving rise to a reasonable suspicion determination include physical evidence of illicit

substances, patterns of erratic or abnormal behavior, disorientation or confusion, or an inability to complete routine tasks.

9. Split Specimen Test—Testing of a urine sample that is split between two specimen cups in order to have a second sample tested.
10. Substance Abuse Professional (SAP)—A professional qualified by training and experience as specified by the U.S. Department of Transportation.
11. Supervisor—A person with authority and oversight responsibilities of a working group, such as a manager, foreman or lead person.
12. Third Party Administrator (TPA)—An outside company contracted to manage some or all of an employer's alcohol, controlled substances and testing policy and procedure.

### **C. Responsibilities**

1. Executive Director:
  - a. Ensures work practices meet the requirements of this procedure.
  - b. Approves and selects a DER(s).
  - c. Determines the number of employees in the workforce to be selected for random testing.
2. Department Director:
  - a. Understands the processes within this procedure.
  - b. Ensures necessary education and training is completed.
  - c. Enforces the content of this procedure throughout the department.
  - d. Considers alcohol and controlled substances risk factors in incident investigations and monitors and responds to trends in such incidents.
  - e. Assists in making decisions for alcohol and controlled substances testing requirements for post-accident/incident and/or reasonable suspicion scenarios.
3. ESH Director:
  - a. Assists Department Directors and Supervisors with alcohol and controlled substances advice and risk management strategies.
  - b. Considers alcohol and controlled substances risk factors in incident investigations and monitors and responds to trends in such incidents.
  - c. Assists in making decisions for alcohol and controlled substances testing requirements for post-accident/incident.
  - d. Makes reasonable suspicion determinations.
4. Supervisor:
  - a. Ensures personnel under their supervision comply with this procedure.
  - b. Ensures proper documentation is completed in the event of a reasonable suspicion test.
5. Designated Employee Representatives (DERs):

- a. May remove employees from safety-sensitive duties, or cause employees to be removed from safety-sensitive duties.
  - b. Makes required decisions in the testing and evaluation processes.
  - c. Contacts person for confidential and sensitive information.
  - d. Person who receives and is responsible for delivery of notices of random selection to employees.
  - e. Verifies employee compliance status.
  - f. Arranges a testing site when the occupational health nurse is not available.
6. Human Resources Office:
- a. Acts as DER.
7. Occupational Health Nurse:
- a. Maintains required qualifications for alcohol and controlled substances testing.
  - b. Schedules testing.
  - c. Administers alcohol and/or controlled substances test.
  - d. Schedules and conducts training.
  - e. Maintains records.
8. All Personnel:
- a. Comply with all requirements of this procedure.
  - b. Attend any alcohol and controlled substances training as directed.
  - c. Contact the ESH Department or the Human Resources Office with any questions in regard to this procedure.
  - d. Report violations of this policy to management.

#### **D. Procedure**

1. Testing is required under the following circumstances:
  - a. Pre-Employment Testing—SDSTA will require a negative controlled substance test result for pending job offers. The applicant will not be allowed to report for duty until a negative controlled substance test is confirmed. If the prospective employee fails to pass the controlled substance test, the offer of employment will be withdrawn. The foregoing notwithstanding, a test positive for THC will not by itself result in a withdrawn offer of employment if the Occupational Health Nurse verifies the applicant is authorized to use medical cannabis under SDCL Ch. 34-20G.
  - b. Random Testing—The choice of employees to be tested will be made by a TPA on a random basis. Each employee has an equal chance of being selected for random testing as the selection is made from the entire SDSTA employee pool, including employees previously selected.
  - c. Post-Accident and/or Incident Testing—All SDSTA employees causing or contributing to accidents and/or incidents that:

- Materially damage SDSTA vehicles, equipment or property, resulting in the need for repair, and/or
- Result in any injury which requires off-site medical treatment beyond First Aid to themselves or others.

Post-accident and/or incident testing for the presence of alcohol is to be performed within two (2) hours and no later than eight (8) hours after the accident and/or incident. Controlled substance testing must be administered within thirty-two (32) hours after the accident and/or incident.

- d. Reasonable Suspicion Testing—Reasonable suspicion testing should be performed when a supervisor has made a reasonable suspicion determination.

SDSTA may require additional testing as a condition of specific certification criteria. For example, explosives licensing.

2. Substances tested for include, but are not limited to, the controlled substances listed below, from the list in Schedules I-V of the Controlled Substance Act, 21 U.S.C. § 812:

- Amphetamines (meth, speed, crank, ecstasy);
- Cocaine (coke, crack);
- Opiates (heroin, opium, codeine, morphine);
- Phencyclidine (PCP, angel dust); and
- Tetrahydrocannabinol (THC, cannabinoids, marijuana, hash).

3. Testing and Collection Procedures—All testing will be conducted in accordance with the following guidelines:

- a. Alcohol Testing: Alcohol testing will be conducted by qualified personnel using approved Alcohol Screening Devices (ASD) or Evidential Breath Testing (EBT) devices in accordance with manufacturer's instructions. Testing is based on breath and/or saliva testing. If the blood alcohol content (BAC) is 0.02 or greater, a confirmation test will be conducted following a brief waiting period.
  - If the confirmation test result is 0.02 BAC or greater, the employee will be transported home.
  - If the confirmation test is less than 0.02 BAC, the test is considered negative.
- b. Drug Testing: Drug testing will be conducted using a urine specimen. In certain circumstances, the employee may be required to provide a specimen under direct observation. Direct observation will only be performed by an individual of the same sex. A non-negative test is subject to confirmation testing and will be further examined by the MRO.
- c. Reasonable Suspicion Testing: Testing for reasonable suspicion will be conducted as an observed collection and therefore may require off-site testing. The employee will not be allowed to work pending the results of the test.
- d. Split Test shall be performed for the following:
  - Dilute Specimen.

- Non–Negative (Instant) Test Result.
  - Invalid Test Result.
4. Confirmation Testing: Non-negative drug tests are confirmed using gas chromatography/mass spectrometry (GC/MS) or other reliable methodology. Non-negative alcohol tests are confirmed using an EBT unless otherwise required by law.
  5. Results and Re-testing: A qualified MRO will evaluate, interpret and discuss any non-negative results with the employee, at which time the employee will be given an opportunity to discuss any prescription/nonprescription medications. The employee may request retesting of the original specimen at his/her own expense. For alcohol tests, the breath alcohol technician will advise SDSTA of a positive result and SDSTA will notify the employee. An employee who tests negative for drugs and/or alcohol will be returned to work. In the event an employee is removed from their duties pending drug confirmation and the test result is negative, the removal from duties will be treated as administrative suspension with pay.  
  
An employee with a confirmed positive result may be removed from their duties and subject to discipline up to and including immediate termination and/or referral to a SAP.
  6. Costs of Testing: Testing required by SDSTA is at the SDSTA's expense.
  7. Medication: Although the proper use of medication is not prohibited, employees must notify SDSTA's Occupational Health Nurse and/or Human Resources when taking medications prescribed by a licensed health care professional which may affect safety or performance. Medication brought onto SDSTA property must be retained in its original container with its original label.

#### **E. Prohibited use**

1. Employees who violate any provision of the Alcohol, Controlled Substances and Testing Policy and Procedures will be removed from their duties and are subject to discipline up to and including immediate termination and/or referral to a SAP. Except as otherwise provided in this procedure, prospective employees violating the policy will not be hired. The following are prohibited by this procedure:
  - a. Using, possessing, manufacturing, selling, trading, transferring, distributing, dispensing, arranging or offering to distribute unlawful drugs, including medical cannabis, and/or alcohol while at work, performing job duties, off-site at training or meetings, on SURF property (including on-site personal vehicles), during lunches or breaks, or in SDSTA vehicles.
  - b. A positive test result indicating being under the influence of alcohol or drugs as specified in this policy-procedure.
  - c. Reporting to work or conducting duties with a BAC of 0.02 or greater.
  - d. Refusing to cooperate with any test, search or investigation, or failure to execute any paperwork or consent forms necessary for examinations or tests, including refusal to submit to any alcohol or controlled substances test.
  - e. Submitting an invalid specimen. (See definition for invalid test result).

**F. Employee Assistance Program (EAP) and seeking help**

The SDSTA encourages employees with substance abuse issues to seek help before health, safety and job performance are affected. Employees who need additional information should contact the Human Resources Office about the EAP and/or information on file in regard to certified alcohol and controlled substances abuse programs.

**G. Records**

Alcohol and controlled substances-related records are maintained in accordance with applicable law. In the event a required post-accident/post incident alcohol test is not administered within two (2) hours of the accident, SDSTA will prepare documentation regarding the reason the test was not administered. If a post-accident alcohol test is not administered within eight (8) hours of the accident, SDSTA will cease attempts to administer the test and will prepare the same record. If a post-accident drug test is not administered within thirty-two (32) hours, SDSTA will cease attempts to administer the test, and maintain a record stating the reasons the test was not promptly administered.

**H. Confidentiality**

SDSTA will maintain all information collected in connection with alcohol and controlled substances testing confidential except where disclosure is required by law or requested by the applicant/employee. Information obtained through testing that is unrelated to the use of a controlled substance or alcohol will be held in strict confidence by the MRO and will not be released to SDSTA.

**I. Education and training**

SDSTA regularly educates and trains employees about workplace health and safety risks posed by the unlawful use of drugs and alcohol. In addition, training on reasonable suspicion will be provided to all supervisors. SDSTA will retain records documenting attendee signatures, dates and training topics for all employee and supervisor training.

**J. Miscellaneous**

Nothing in the Alcohol, Controlled Substances and Testing Policy or this procedure shall be construed as creating a contract of employment or any right to notice and a hearing prior to termination or other disciplinary action. All employees of the SDSTA are employed on an at-will basis.

**K. Related documents**

- Alcohol, Controlled Substances and Testing Policy

## **Alcohol, Controlled Substances and Testing—Commercial Motor Vehicle Operators Policy-Procedure (NEW)**

This South Dakota Science and Technology Authority's (SDSTA's) Alcohol, Controlled Substances and Testing—Commercial Motor Vehicle Operators Policy-Procedure complements the SDSTA Alcohol, Controlled Substances and Testing Policy, and includes definitions, responsibilities, types of testing and procedures. It sets out the requirements and describes the processes used at SDSTA to manage the use of alcohol and controlled substances for Commercial Motor Vehicle Operators.

### **A. Applicability**

This procedure applies to all SDSTA employees whose job requires them to obtain and retain a Commercial Driver's License (CDL) and operate a Commercial Motor Vehicle (CMV) and are thus subject to Department of Transportation (DOT) alcohol and controlled substances testing regulations contained in 49 Code of Federal Regulations (CFR) Part 382, and 49 CFR Part 40. Compliance with the policy and this procedure is a condition of initial and continued employment with SDSTA, or as applicable, access to Sanford Underground Research Facility (SURF) and any other SDSTA-owned or controlled property.

### **B. Definitions**

#### **Terms used in this procedure mean:**

1. Alcohol—the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
2. Alcohol Use—the consumption of any beverage, mixture, or preparation, including any medication (prescribed or over-the-counter, intentional or unintentional) containing alcohol.
3. Commercial Driver's License (CDL)—a driver's license required to operate large, heavy, or placarded hazardous material vehicles in commerce, including trucks, buses, and trailers.
4. Commercial Learner's Permit—a permit that only authorizes a person to practice on public roads with a qualified CDL holder sitting next to the person
5. Commercial Motor Vehicle—as defined in 49 CFR 382.107. As of March 24, 2022, the term is defined as a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle (1) has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or (2) has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
6. Controlled Substances—those substances listed in Schedules I - V of the Controlled Substances Act, 21 United States Code (USC) § 812 and 21 CFR §§ 1308.11-1308.15, as amended from time-to-time. Controlled Substances

includes, but is not limited to, medical cannabis as provided for under South Dakota Codified Law (“SDCL”) Ch. 34-20G.

7. Designated Employee Representative (DER)—An employee(s) authorized by the employer to take immediate action(s) to remove an employee from safety-sensitive duties, or cause an employee to be removed from these covered duties and to make required decisions in the testing and evaluation processes.
8. Dilute Specimen—A urine sample that has a higher-than-average water content.
9. Driver—Any person who operates a Commercial Motor Vehicle.
10. Employee Assistance Program (EAP)—An employee benefit program that assists employees with personal problems and/or work-related problems that may impact their job performance, health, mental and emotional well-being, including alcohol and substance abuse.
11. Invalid Test Result —A result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug or alcohol test.
12. Motor Carrier Safety Administration Commercial Driver’s License or Drug and Alcohol Clearinghouse or “the Clearinghouse”—a secure online database that gives employers, the Federal Motor Carrier Administration, State Driver Licensing Agencies, and State law enforcement personnel real-time information about CDL and CLP holders’ alcohol and controlled substance violations.
13. Medical Review Officer or MRO—A licensed physician who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for non-negative drug test results.
14. Non-Negative Test Result—A result that indicate the presence of a Controlled Substance in the tested sample.
15. Reasonable Suspicion—A determination, made by a trained supervisor or supervisors, based upon specific, contemporaneous, articulable observations of conduct, behavior, or body odors, that a person may be under the influence of alcohol or controlled substances. Examples of evidence giving rise to a reasonable suspicion determination include physical evidence of illicit substances, patterns of erratic or abnormal behavior, disorientation or confusion, or an inability to complete routine tasks
16. Safety-Sensitive Functions—Means all time from the time a Driver begins to work or is required to be in readiness to work until the time the Driver is relieved from work and all responsibility for performing work. Safety-sensitive functions include:
  - (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the Driver has been relieved from duty by the employer;
  - (2) All time inspecting equipment or otherwise inspecting, servicing, or conditioning any Commercial Motor Vehicle at any time;
  - (3) All time spent at the driving controls of a Commercial Motor Vehicle in operation;



- (4) All time, other than driving time, in or upon any Commercial Motor Vehicle except time spent resting in a sleeper berth;
  - (5) All time loading or unloading a Commercial Motor Vehicle, supervising, or assisting in the loading or unloading, attending a Commercial Motor Vehicle being loaded or unloaded, remaining in readiness to operate the Commercial Motor Vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
  - (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled Commercial Motor Vehicle.
- 17. Split Specimen Test—Testing of a urine sample that is split between two specimen cups in order to have a second sample tested.
  - 18. Substance Abuse Professional or SAP—A professional qualified by training and experience as specified by the U.S. Department of Transportation (DOT).
  - 19. Supervisor—A person with authority and oversight responsibilities of a working group, such as a manager, foreman or lead person.
  - 20. Third Party Administrator or TPA—An outside company contracted to manage some or all of an employer's alcohol, controlled substances and testing policy and procedure.

### **C. Responsibilities**

- 1. Executive Director:
  - a. Ensures work practices meet the requirements of this procedure.
  - b. Approves and selects a DER(s).
- 2. Department Director:
  - a. Understands the processes within this procedure.
  - b. Ensures necessary education and training is completed.
  - c. Enforces the content of this procedure throughout the department.
  - d. Considers Alcohol and Controlled Substance risk factors in incident investigations and monitors and responds to trends in such incidents.
- 3. ESH Director:
  - a. Assists department directors and supervisors with alcohol and controlled substance advice and risk management strategies.
  - b. Considers alcohol and controlled substance risk factors in incident investigations and monitors and responds to trends in such incidents.
  - c. Assists in making decisions for alcohol and controlled substance testing requirements for post-accident/incident.
- 4. CDL Driver Supervisor:
  - a. Ensures personnel under their supervision comply with this procedure.
  - b. Attends a one-time DOT approved two-hour reasonable suspicion training which enables supervisors to recognize signs of drug and alcohol use.
  - c. Ensures proper documentation is completed in the event of a Reasonable Suspicion test.

5. Designated Employee Representatives (DERs):
  - a. May remove employees from safety-sensitive functions.
  - b. Makes required decisions in the testing and evaluation processes.
  - c. Contacts person for confidential and sensitive information.
  - d. Receives and is responsible for delivery of notices of random selection to employees.
  - e. Verifies employee compliance status.
  - f. Arranges a testing site when the occupational health nurse is not available.
6. Human Resources Office:
  - a. Acts as DER.
  - b. Receives notifications from drivers taking prescription medications that may or may not interfere with the driver's ability to perform safety sensitive functions.
7. Occupational Health Nurse:
  - a. Receives notifications from drivers taking prescription medications that may or may not interfere with the driver's ability to perform safety sensitive functions.
  - b. Schedules DOT alcohol and controlled substance testing.
  - c. Schedules and conducts training.
  - d. Maintains records.
8. SDSTA Employees Who Operate a Commercial Motor Vehicle
  - a. Complies with all requirements of this procedure.
  - b. Attends any alcohol and controlled substance training as directed.
  - c. Reports the use of medications prescribed by a licensed health care professional to Occupational Health Nurse, or Human Resources
  - d. Contacts the ESH Department or the Human Resources Office with any questions regarding this procedure.
  - e. Reports violations of the policy or procedure to management.

#### **D. Types of testing**

1. Testing is required under the following circumstances:
  - a. Pre-Employment Testing—SDSTA will require a negative controlled substance test result for pending job offers of safety-sensitive employees. This also applies to a current employee transferring from a non-safety-sensitive function into a safety-sensitive position The applicant/current employee will not be allowed to perform safety-sensitive functions until a negative drug test result (and negative alcohol test result – if administered) is confirmed. If the prospective employee fails to pass the controlled substance test, the offer of employment will be withdrawn.
  - b. Random Testing—Safety-sensitive employees are subject to unannounced random drug testing. Safety sensitive drivers are in a separate pool or

consortium, based on job function. The choice of employees to be tested will be made by a TPA on a random basis.

- c. Post-Accident and/or Incident Testing—In the event of an accident involving a CMV operating on a public road in commerce, the involved employee shall be subject to an Alcohol and Controlled Substance test in the following circumstances:

- If the accident involved the loss of human life;
- If the employee receives a citation for a moving traffic violation arising from the accident, and the accident involves either:
  - Bodily injury to any person who immediately receives medical treatment away from the scene of the accident; or
  - One or more motor vehicles incurring disabling damage requiring the motor vehicle to be transported away from the scene by tow.

Post-accident and/or incident testing for the presence of Alcohol is to be performed within two (2) hours and no later than eight (8) hours after the accident and/or incident. Controlled Substance testing must be administered within thirty-two (32) hours after the accident and/or incident.

- d. Reasonable Suspicion Testing—Reasonable Suspicion testing should be performed when one or more trained supervisors has made a Reasonable Suspicion determination
- e. Return-to-Duty & Follow-Up—Employees retained by SDSTA after a positive test result or a test refusal shall be subject to return-to-duty alcohol and controlled substances testing. No employee shall be permitted to perform any safety sensitive function until they have received a verified negative Alcohol and Controlled Substance test result. Thereafter, such employees will be subject to certain follow-up Alcohol and Controlled Substance testing as established by a SAP.
2. Substances tested for include, but are not limited to, the controlled substances listed below:
- Amphetamines (meth, speed, crank, ecstasy)
  - Cocaine (coke, crack)
  - Opiates (heroin, opium, codeine, morphine)
  - Phencyclidine (PCP, angel dust)
  - Tetrahydrocannabinol (THC, cannabinoids, marijuana, hash).
3. Testing and Collection Procedures—All testing will be conducted in accordance with the following guidelines:
- a. Alcohol Testing: Alcohol testing will be conducted by qualified personnel using approved Alcohol Screening Devices (ASD) or Evidential Breath Testing (EBT) devices in accordance with manufacturer's instructions. Testing is based on breath and/or saliva testing. If the blood alcohol content (BAC) is 0.02 or greater, a confirmation test will be conducted following a brief waiting period.
- If the confirmation test result is 0.02 BAC or greater, the employee will be transported home.

- If the confirmation test is less than 0.02 BAC, the test is considered negative.
- b. Drug Testing: Drug testing will be conducted using a urine specimen. In certain circumstances, the employee may be required to provide a specimen under direct observation. Direct observation will only be performed by an individual of the same sex. A non-negative test is subject to confirmation testing and will be further examined by the MRO.
- c. Reasonable Suspicion Testing: Testing based upon Reasonable Suspicion will be conducted as an observed collection and therefore may require off-site testing. The employee will not be allowed to work pending the results of the test.
- 4. Confirmation Testing: Non-negative Controlled Substance tests are confirmed using gas chromatography/mass spectrometry (GC/MS) or other reliable methodology. Non-negative Alcohol tests are confirmed using an EBT unless otherwise required by law.
- 5. Results and Re-testing: A qualified MRO will evaluate, interpret and discuss any non-negative results with the employee, at which time the employee will be given an opportunity to discuss any prescription/nonprescription medications. The employee may request retesting of the original specimen at their own expense. For Alcohol tests, the BAT will advise SDSTA of a positive result and SDSTA will notify the employee. An employee who tests negative for Alcohol and Controlled Substances will be returned to work. In the event an employee is removed from their duties pending Controlled Substance confirmation and the test result is negative, the removal from duties will be treated as administrative suspension with pay.
- 6. Costs of Testing: Testing required by SDSTA is at the SDSTA's expense.
- 7. Medication: Although the proper use of medication is not prohibited, employees must notify SDSTA's occupational health nurse and/or Human Resources when taking medications prescribed by a licensed health care professional which may affect safety or performance. Medication brought onto SDSTA property must be retained in its original container with its original label.

#### **E. Alcohol and controlled substances testing procedures**

Alcohol and/or controlled substance testing shall be conducted at a facility designated by the SDSTA. Specimen collection, analysis and reporting shall be conducted in accordance with the procedures outlined below which are consistent with the I regulations enumerated in 49 CFR Part 40 and all applicable guidance and state laws. These collection procedures are designed to protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

##### **1. Controlled Substance Testing Procedures**

- A DOT drug testing Chain of Custody Form ("CCF") (both printed or E-chain/E-CCF) will be used to document the chain of custody from the time the specimen is collected at the testing facility until it is tested at the laboratory.
- Before the employee proceeds to a predetermined testing clinic to provide their drug and/or alcohol test specimen, the employee will be

provided a pre-generated testing “passport” with instructions and information for the clinic. This will be given to the employee either electronically by email or text message, or the employee will receive a hard copy. The clinic will need to scan the employee’s passport to initiate the testing process, so the employee must have their passport available when you arrive

- The collection of the specimen must be conducted in a suitable location and must contain all necessary personnel, materials, equipment, facilities, and supervision to provide for collection, security and temporary storage and transportation of the specimen to a certified laboratory.
- The employee should have and present positive identification to the collector. The employee may also request positive identification of the collection site employee.
- The employee must provide a specimen meeting the specified volume and temperature requirements.
- All identifying information must be entered on the CCF by the collection site person. The CCF will be signed by the collector, certifying collection was accomplished in accordance with the instructions provided. The employee must also sign the CCF indicating the specimen was his/hers.
- A urinalysis will be performed by a laboratory certified by the Department of Health and Human Services (DHHS) that has been retained by SDSTA. The laboratory will be required to maintain strict compliance with federally approved chain-of-custody procedures, quality control, maintenance, and scientific analytical methodologies.
- The laboratory must report all test results directly to the SDSTA’s designated MRO. The MRO is responsible for reviewing and interpreting all confirmed positive, adulterated, substituted, or invalid drug test results. The MRO must determine whether alternative medical explanations could account for the test results. The MRO must also give the employee who has a positive, adulterated, substituted, or invalid Controlled Substance test an opportunity to discuss the results prior to making a final determination. After the decision is made, the MRO must notify the DER.
- An employee who receives a positive, adulterated, or substituted Controlled Substance Test result has 72 hours to request the test of the split specimen (which is provided at the time of original collection). If the employee requests the testing of the split, the MRO must direct (in writing) the lab to provide the split specimen to another certified laboratory for analysis. The employee will pay for the testing of the split specimen.

## 2. Alcohol Testing Procedures

Alcohol testing may be conducted by a qualified Screening Test Technician (STT) or BAT. STTs are only permitted to conduct the first test given to an employee by using either a breath or saliva test (Screening Test). A BAT is authorized to conduct a Screening Test, but, unlike a STT, is also authorized to conduct the second test given to an employee whose test result is **0.02** or above (Confirmation Test). For a Screening Test, the STT or BAT may use an approved Alcohol Screening Device (ASD) or an

Evidential Breath Testing device (EBT). For a Confirmation Test, the BAT is required to use an EBT.

a. Screening Tests

- The DOT Alcohol Testing Form (ATF) will be used to document the results of an alcohol screening test.
- The testing will be performed in a private setting. Only authorized personnel will have access and are the only individuals who can see or hear the test results.
- The employee should have and present positive identification to the STT or BAT at the test site. The employee may also request positive identification of the STT or BAT.
- When an ASD is used, the STT or BAT must check the device's expiration date and show it to the employee. A device may not be used after its expiration date.
- The STT or BAT will open an individually wrapped or sealed package containing the device in front of the employee and he/she will be asked to place the device in his/her mouth and use it in the manner described by the device's manufacturer.
- The employee must work with the STT or BAT to perform the test, which includes the insertion of the device mouthpiece in the employee's mouth and the exhalation (breathing out) must be performed in the manner described by the device's manufacturer.
- The STT or BAT should wear single-use examination gloves and must change the gloves following each test.
- When the device is removed from the employee's mouth, the STT or BAT must follow the manufacturer's instructions to ensure the device is activated.
- If the procedures listed above cannot be successfully completed, the device must be discarded, and a new test must be conducted using a new device. The employee will be offered the choice of using the new device or having the STT or BAT use the new device for the test.
- If the new test cannot be successfully completed, the employee will be directed to immediately take a screening test using an EBT.
- When an EBT is used, the mouthpiece of the breath testing device must be sealed before use and opened in the employee's presence. The mouthpiece is then inserted into the breath testing device.
- The employee must blow forcefully into the mouthpiece of the testing device for at least 6 seconds or until an adequate amount of breath has been obtained.
- Once the test is completed, the BAT must show the employee the results.
- The result displayed on the device must be read within 15 minutes of the test. The STT or BAT must show the employee the device and its reading and enter the result on the ATF.
- If the reading on the ASD or EBT is less than **0.02**, both the employee and the STT or BAT must sign and date the result form. The form will then be confidentially forwarded to the SDSTA's DER. No further testing is authorized.

- If the reading on the ASD or EBT is **0.02** or more, a confirmation test must be performed.

b. Confirmation Tests

- If the result of the screening test is an Alcohol concentration of 0.02 or greater, a confirmation test will be performed. If a different BAT will conduct the confirmation test, the BAT who conducts the screening test will complete and sign Step 3 of the ATF. The BAT will provide the employee with Copy 2 of the form.
- In the presence of the employee, the BAT will conduct an “air blank” to ensure that the device is working correctly. The BAT must show the reading to the employee. The air blank result must be **0.00**. If the reading is greater than **0.00**, the BAT will conduct one more air blank. If the reading is greater than **0.00**, testing will not proceed using the instrument. However, testing may proceed on another instrument.
- The BAT will instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test and will not be less than 15 minutes. The BAT will explain to the employee the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee’s benefit. The BAT will also explain that the test will be conducted at the end of the waiting period. If the employee has disregarded the instruction, the BAT will so note in the “Remarks” section of the ATF.
- If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT will initiate a new breath alcohol testing form. The BAT will complete Step 1 on the form. The employee will then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification will be regarded as a refusal to take the test. The BAT will note in the “Remarks” section of the form that a different BAT conducted the screening process.
- If the employee does not sign the certification in Step 4 of the form, it will not be considered a refusal to be tested. In this event, the BAT will note the failure to sign in the “Remarks” section of the form.
- A breath alcohol test is invalid under the following circumstances:
  - The EBT does not pass its next external calibration check (invalidates all test results of 0.02 or greater on tests conducted since the last valid external calibration test); this does not invalidate negative tests.
  - The BAT does not observe the minimum 15-minute waiting period prior to the confirmation test.
  - The BAT does not perform an air blank on the EBT before a confirmation test or such an air blank does not result in a reading of **0.00**.
  - The BAT does not sign the form.
  - An EBT fails to print a confirmation test result.
  - The sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

## F. DOT alcohol and controlled substances consequences

1. Consequences of Using Drugs or Alcohol While Performing Safety-Sensitive Functions—A covered employee who has engaged in prohibited drug or alcohol use during the performance of a safety-sensitive function will be immediately removed from performing safety-sensitive functions. All DOT positives will be reported to the federal Drug and Alcohol Testing Clearinghouse as required by law. Further, the employee will be subject to disciplinary action, up to and including termination.
2. Consequences of a Verified Positive Drug Test—A covered employee who receives one (1) verified positive drug test result on a DOT required test will be immediately removed from safety-sensitive duties. An employee who has a positive DOT drug test cannot return to the performance of safety-sensitive functions until and unless the employee successfully completes the return-to-duty process described later. Also be aware that all DOT positives will be reported to the federal Drug and Alcohol Testing Clearinghouse. Notwithstanding the foregoing, an employee that receives one (1) verified positive drug test result will be subject to disciplinary action, up to and including termination.
3. Consequences of a Alcohol Test with a Concentration Greater than 0.04—A covered employee who receives one (1) alcohol test with a result indicating an alcohol concentration of **0.04** or greater will be immediately removed from safety-sensitive duties. An employee who has a positive alcohol test cannot return to the performance of safety-sensitive functions until and unless the employee successfully completes the return-to-duty process described later. Also be aware that all DOT positives will be reported to the federal Drug and Alcohol Testing Clearinghouse. Notwithstanding the foregoing, an employee whose test results indicate an alcohol concentration greater than **0.04** will be subject to disciplinary action, up to and including termination.
4. Consequences of an Alcohol Test with a Concentration Greater than 0.02 but Less than 0.04—A covered employee who is found to have an alcohol concentration of **0.02** or greater but less than **0.04** will be immediately removed from performing safety-sensitive functions until the employee is retested with a result below **0.02** or until the start of the employee's next regularly scheduled duty period, if it occurs at least 8 hours following administration of the test. Notwithstanding the foregoing, an employee whose test results indicate an alcohol concentration greater than **0.02** will be subject to disciplinary action, up to and including termination. See also Alcohol, Controlled Substances and Testing—All Employees Policy-Procedure.
5. Consequences of Refusing to Submit to a Required Drug and/or Alcohol Test—A covered employee who refuses to submit to a required drug and/or alcohol test or who receives a verified adulterated or substituted drug test result will be immediately removed from performing safety-sensitive functions. An employee cannot return to the performance of safety-sensitive duties until and unless the employee successfully completes the return-to-duty process described later. Also be aware that all DOT refusals are considered the same as a positive test and will be reported to the federal Drug and Alcohol Testing Clearinghouse as required by law. Notwithstanding the foregoing, an employee that refuses to



submit to a required drug and/or alcohol test will be subject to disciplinary action, up to and including termination.

#### **G. Prohibited use**

1. Employees who violate any provision of the Alcohol, Controlled Substances and Testing Policy and/or Procedure will be removed from their safety-sensitive duties and are subject to discipline up to and including immediate termination and/or referral to a SAP. Be advised that the use of marijuana for medicinal purposes is not a legitimate explanation. Under federal law, the use of marijuana does not have a legitimate medical use in the United States. Except as otherwise provided in this procedure, prospective employees violating the policy will not be hired. The following are prohibited by this procedure:
  - a. Using, possessing, manufacturing, selling, trading, transferring, distributing, dispensing, arranging or offering to distribute unlawful drugs, including medical cannabis, and/or alcohol while at work, performing job duties, off-site at training or meetings, on SURF property (including on-site personal vehicles), during lunches or breaks, or in SDSTA vehicles.
  - b. A positive test result indicating being under the influence of alcohol or drugs as specified in this policy.
  - c. Reporting to work or conducting duties with a BAC of 0.04 or greater.
  - d. Refusing to cooperate with any test, search or investigation, or failure to execute any paperwork or consent forms necessary for examinations or tests, including refusal to submit to any alcohol or controlled substance test.
  - e. Submitting an invalid specimen.
  - f. Performance of any safety-sensitive function within 4 hours after consuming alcohol.
  - g. Consumption of alcohol for 8 hours after an accident unless the employee has been given a post-accident test. This applies to employees with knowledge of an accident involving a commercial motor vehicle operating on a public road in commerce for which they performed a safety-sensitive function at or near the time of the accident.

#### **H. Return-to-duty process and follow-up procedures (if applicable)**

SDSTA is not required to provide a Substance Abuse Professional (SAP) evaluation or any subsequent recommended education or treatment through an employee assistance program for an employee who has violated a DOT drug and alcohol regulation. If the SDSTA, at its sole discretion, offers the employee an opportunity to return to a DOT safety-sensitive duty following a violation, the SDSTA must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of the regulations and that the employee successfully complies with the SAP's evaluation recommendations.

1. SAP Responsibility
  - Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;

- Referring the employee to an appropriate education and/or treatment program (EAP);
- Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;
- Providing the DER with a follow-up drug and/or alcohol testing plan for the employee;
- Providing the SDSTA and the employee with recommendations for continuing education and/or treatment.

## 2. Return-to-Duty Testing

If the SDSTA decides to permit the employee to return to the performance of safety-sensitive functions, SDSTA must ensure that the employee takes a return-to-duty test. The return-to-duty test cannot occur until:

- The employee has been evaluated by a SAP to determine what education and/or treatment the employee needs to resolve problems related to alcohol or drug use;
- The employee has successfully complied with the prescribed education and/or treatment;
- The employee has been re-evaluated by the SAP to ensure that the employee has properly followed the education and/or treatment program.

## 3. Follow-Up Testing

- A SAP must establish a written follow-up testing plan for each employee who has committed a DOT drug or alcohol regulation violation and who seeks to resume the performance of safety-sensitive functions. The SAP does not establish this plan until after it is determined that the employee has successfully complied with the education and/or treatment recommendations.
- The SAP must present a copy of the follow-up testing plan directly to the SDSTA's DER.
- The SAP is the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if an employee had a positive drug test, but the SAP evaluation or the treatment program professionals determined that the employee has an alcohol problem as well, the SAP should require that the employee have follow-up tests for both drugs and alcohol.
- The SAP must, at a minimum, direct that the employee be subject to six (6) unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions. The SAP may, however, require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty.
- The SAP may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period. The SAP is not to establish the actual dates for the follow-up tests he/she prescribes. The decision on specific dates to test is the responsibility of the SDSTA.

SDSTA will not impose additional testing requirements on the employee that go beyond the SAP's follow-up and random testing plan.

## **I. Employee Assistance Program and seeking help**

The SDSTA encourages employees with substance abuse issues to seek help before health, safety and job performance are affected. Employees who need additional information should contact the Human Resources Office about the EAP and/or information on file in regard to certified alcohol and controlled substances abuse programs.

## **J. Records**

Alcohol and controlled substance-related records are maintained and released in accordance with applicable law. In the event a required post-accident/post incident alcohol test is not administered within two (2) hours of the accident, SDSTA will prepare documentation regarding the reason the test was not administered. If a post-accident alcohol test is not administered within eight (8) hours of the accident, SDSTA will cease attempts to administer the test and will prepare the same record. If a post-accident drug test is not administered within thirty-two (32) hours, SDSTA will cease attempts to administer the test, and maintain a record stating the reasons the test was not promptly administered.

It should be noted that beginning January 2020, all DOT alcohol and controlled substances positives and refusals will be reported to the federal Drug and Alcohol Testing Clearinghouse as required by law.

## **K. Confidentiality**

SDSTA will maintain all information collected in connection with alcohol and controlled substances testing confidential except where disclosure is required by law (see subsection L below) or requested by the applicant/employee. Information obtained through testing that is unrelated to the use of a controlled substance or alcohol will be held in strict confidence by the MRO and will not be released to SDSTA.

## **L. Participation in National Drug & Alcohol Clearinghouse**

Effective January 6, 2020, the Code of Federal Regulations Title 49: Part-382-Subpart G added a regulation to establish the Federal Motor Carrier Safety Administration (FMCSA) Commercial Driver's License Drug & Alcohol Clearinghouse. This nationwide database was established to assist Commercial Motor Vehicle employers and the Department of Transportation to identify specific CDL holders who are in violation of any drug and alcohol testing regulations.

1. Commercial Driver's License (CDL) employer responsibility:  
The regulation requires SDSTA and its service agents to populate the Clearinghouse with the following information:
  - a. Employees' DOT alcohol and controlled substances violations under Part 382 of the Federal Motor Carrier Safety Regulations as part of the hiring process, and
  - b. Posting to the Clearinghouse all prohibited driver activity, who have tested positive for prohibited drugs or alcohol use, as well as refusals to take required drug tests, and other alcohol and controlled substances violations.

- c. The requirement to query the Clearinghouse annually for information relating to prohibited alcohol and controlled substances testing behavior by the employee. See limited query consent form.
  - d. Verification of a CDL driver's completed steps in the DOT return-to-duty process.
2. What are a covered employee driver's responsibility and rights?
- a. Employers will be required to run a pre-employment query of the Drug & Alcohol Clearinghouse before allowing the driver to perform a safety-sensitive function. Drivers will be required to electronically consent to this query on the Clearinghouse website.
  - b. On an annual basis, employers will be required to run a report to verify whether information has been reported on you to the Clearinghouse. You will be required to provide your employer and Third-Party Administrator consent to perform a limited query on your Clearinghouse records.
  - c. If the report indicates that information has been reported on you, you will be required to provide an additional consent allowing your employer to obtain a full report that specifies violations received.
  - d. If at any time you refuse to provide consent to obtain Clearinghouse information, you will be immediately removed from safety-sensitive functions (driving).
  - e. All covered employee drivers have a right to review their Clearinghouse information, and if the driver finds a discrepancy or disagree with the records, they are encouraged to write to FMCSA and dispute any issues in question and potentially correct any incorrect records. All these processes are easily defined and available online at <https://clearinghouse.fmcsa.dot.gov/>
3. What constitutes a violation that will be reported to the Clearinghouse?
- a. A verified positive, adulterated, substituted controlled substance result;
  - b. An alcohol result of 0.04 or higher;
  - c. Refusing to take a required drug and/or alcohol test;
  - d. Documented "actual knowledge" violations which include:
    - 1. On-duty drug and/or alcohol use, including a DUI violation;
    - 2. Use of alcohol within 4 hours of going on-duty;
    - 3. Use of alcohol within 8 hours following a qualifying accident;
    - 4. Use of a Schedule 1 drug or non-prescribed use of prescription medication.
4. Additional information that will be reported to the Clearinghouse
- a. Completion of the Return-to-Duty process following a violation. This includes:
    - a. Substance Abuse Professional (SAP) reports;
    - b. A negative Return-to-Duty drug and/or alcohol test;
    - c. Completion of any required Follow-up drug and/or alcohol tests.

## **M. Education and training**

SDSTA regularly educates and trains employees about workplace health and safety risks posed by the unlawful use of drugs and alcohol. In addition, training on reasonable suspicion will be provided to all supervisors. SDSTA will retain records documenting attendee signatures, dates and training topics for all employee and supervisor training.

## **N. Miscellaneous**

Nothing in the Alcohol, Controlled Substances and Testing Policy or this procedure shall be construed as creating a contract of employment or any right to notice and a hearing prior to termination or other disciplinary action. All employees of the SDSTA are employed on an at-will basis.

## **O. Related documents**

- Alcohol, Controlled Substances and Testing Policy
- Alcohol, Controlled Substances and Testing—All Employees Policy-Procedure
- <https://clearinghouse.fmcsa.dot.gov/>

## **Employment Policy-Procedure**

Employment procedures have been developed by the South Dakota Science and Technology Authority (SDSTA) to ensure the employer-employee relationship is understood and that applicable federal, state and local rules are met.

### **A. Definitions**

1. At-will employment – At-will employment means employment is for an indefinite period of time and may be terminated either by employer or employee at any time for any reason, except an illegal one, or for no reason.
2. Regular Full-Time Employees – At-will employees who regularly work at least 30 hours per week who were not hired on a short-term or temporary basis.
3. Regular Part-Time Employees – At-will employees who regularly work fewer than 30 hours per week who were not hired on a short-term or temporary basis.
4. Non-Benefit Part-Time Employees – At-will employees who are not regularly scheduled and/or work intermittently and are expected to work less than thirty (30) hours per week and were not hired on a short-term or temporary basis.
5. Temporary Employees – At-will employees who are hired for a specific short-term purpose, project and/or time frame. Temporary employees can be hired as part-time or full-time.
6. Non-Exempt – An individual who qualifies to earn at least minimum wage and who is not exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) and is therefore entitled to overtime pay for all hours worked beyond 40 in a workweek. Nonexempt employees may be paid on a salary, hourly or other basis.
7. Exempt – An individual who is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) because they are classified as executive, professional, administrative, an outside sales employee, or other exemption and meets the specific criteria for the exemption. Exempt employees are paid a salary, regardless of the number of hours worked, rather than by the hour.
8. Onboarding - Defined as the system or process in which new hires are integrated into the organization.

### **B. Responsibilities**

1. Employees – All employees have the responsibility to understand their “at-will” employment status and their employee classifications, and if unsure, to inquire to seek clarification.
2. Management – All members of management have a responsibility to understand the “at-will” doctrine of employment, as well as the employee classifications, and to manage accordingly.
3. Human Resources – The Human Resources office is responsible for designating, communicating, and seeking acknowledgement of the “at-will” employment relationship and

employee classifications to potential employees and/or current employees as well as changes in classifications throughout employment.

## **C. Guidelines**

### **1. SDSTA Employment**

- a. All SDSTA employees are hired on an “at-will” basis.
- b. The SDSTA is an equal opportunity employer and shall take affirmative action as called for by applicable laws to employ and to advance in employment all persons pursuant to the Equal Opportunity and Affirmative Action Policy.

### **2. Employee Classifications**

- a. All SDSTA employees will be classified as Regular Full-Time, Regular Part-Time, Non-Benefit Part-Time, or Temporary Employees.
- b. All SDSTA employees will be categorized as either Non-Exempt or Exempt for purposes of federal and state wage and hour laws.
- c. Employees will be informed of their employee relationship and employee classifications upon hire and informed of any subsequent changes to the classifications throughout their employment.

### **3. Hiring Process**

- a. All applicants must apply in writing and/or digitally as directed by the SDSTA webpage: <http://www.sanfordlab.org>. A resume is required.
- b. Following review of all submitted resumes, the SDSTA will establish a list of the most qualified candidates, who will be interviewed. If not selected, an acknowledgment will be sent within ninety (90) days of filling the position.
- c. A conditional offer of employment will be made to the candidate selected after the interview process, designating the “at-will” relationship and employee classifications. The applicant must acknowledge the SDSTA’s employment and safety policies in writing, consent to and pass a pre-screening physical, consent to and pass the required regulated substance, background and reference checks and comply with any other conditions imposed by the SDSTA.
- d. The standard pre-employment background check will include:
  - Social Security number verification and trace
  - Educational degree and professional license verification
  - Employment history verification
  - Moving violation records
  - Local, state and federal criminal records search

- e. Following acceptance of the offer of employment and compliance with the conditions for employment, the new employee will be given a start date and location to report for an orientation session. During the orientation, the new employee will be given workplace rules, policies and other relevant information about the employee's position. The new employee must have completed an application, all required tax forms, acknowledgments of policies and other required forms before meeting with the supervisor and beginning work.

Effective June 23, 2011, for all new hires, accumulated hours of sick leave can be carried over from the State of South Dakota to the SDSTA only at the discretion of the Executive Director. With approval, only those hours that have not been paid out by the State of South Dakota will be credited as a beginning balance at the SDSTA. Documentation to verify hours not paid by the state must be provided in writing to the SDSTA. These hours will be used only after hours accrued through employment with the SDSTA have been used.

Relocation allowance: The SDSTA may pay relocation expenses to a prospective employee in certain instances, such as when hiring for a specific skill set. Each offer will be determined on a case-by-case basis and approved by the Executive Director.

- Relocation compensation shall be comprised of the actual cost of moving household items, including reimbursable expenses, or one month's salary, whichever is less. Reimbursable expenses include gas, food and lodging for the prospective employee and household residents from that person's place of residence to a location mutually agreed upon by the prospective employee and the SDSTA. Receipts must accompany all requests for reimbursement.
- If an employee voluntarily leaves the employ of the SDSTA within one (1) year following a move, the employee shall repay all relocation-related expenses paid by the SDSTA. Exceptions may be made for an employee unable to continue due to illness or injury, dismissal or a reduction in workforce. An employee's obligation to reimburse SDSTA as provided in this paragraph may not be enforced by withholding salary if doing so would result in the employee's salary being less than the applicable minimum wage.

- f. Employee Rehire: Depending on the circumstances, the SDSTA may consider a former employee for rehire; however, there is no guarantee of rehire. Former employees are subject to the SDSTA's standard hiring process as described above. To be considered for rehire, former employees must have performed adequately during their previous employment with SDSTA and must have left employment with SDSTA for any of the following reasons:

- Voluntary resignation
- SDSTA lay-off
- Termination for reasons other than illegal or unethical behavior

Rehire decisions rest with the Executive Director and Human Resources.



#### 4. Onboarding Process

The Onboarding Process refers to our efforts to help new employees settle into their new job. The first 180 days of employment of a regular full-time or regular part-time employee shall be the onboarding period. The onboarding period allows the new employee to evaluate SDSTA and the employee's job content and the SDSTA has a similar opportunity to onboard and initially evaluate the employee's suitability in terms of knowledge, skills, abilities, interest, work habits and overall performance. During that time, resources, training, and communication and feedback between the supervisor and the employee should be frequent and consistent and intended to help the employee succeed in the job. Evaluation of a new employee's work performance shall be prepared and discussed with the employee prior to the end of the onboarding period. Successful completion of the onboarding period does not guarantee continued employment. Nothing herein shall be interpreted as modifying the "at will" relationship described in the preceding paragraph; thus, throughout the onboarding period and thereafter, Employee is and shall remain an "at will" employee.

#### **D. Related documents**

- Employment Policy
- Equal Opportunity and Affirmative Action Policy and Policy-Procedure
- Americans with Disabilities Act Policy
- Diversity, Equity and Inclusion Policy

## **Inclement Weather Policy-Procedure**

The safety of South Dakota Science and Technology Authority (SDSTA) staff, science researchers, contractor personnel and visitors is SDSTA's top concern. Travel to and from Sanford Underground Research Facility (SURF) must be minimized during inclement weather events to reduce the risk of injury.

### **A. Applicability**

This procedure will be followed when inclement weather conditions could affect continuity of operations at SURF. It applies to all personnel working on-site at SURF and describes the course of action to be followed during inclement weather conditions.

### **B. Definitions**

1. **Essential Personnel**—SDSTA, science or contractor personnel required to support critical SURF functions throughout an inclement weather emergency. Essential Personnel maintain and monitor the SDSTA's facilities and selected science systems during inclement weather, the lack of which may cause the cessation of normal activities at SURF for an extended period of time. Essential Personnel include (at a minimum): two Infrastructure Technicians for the Ross Shaft, two Infrastructure Technicians for the Yates Shaft, one Hoist Operator for the Ross Shaft, one Hoist Operator for the Yates Shaft, one Waste Water Treatment Plant Operator, one Facility Technician and two Emergency Response Team members for essential snow removal.
2. **Non-essential Personnel**—Personnel whose duties do not fall into the category of "Essential Personnel."
3. **Duty Officer**—An SDSTA personnel knowledgeable in the facility operations assigned to serve as the initial point of contact in managing facility emergencies.
4. **Delayed Reporting**—Authorization for non-essential personnel to arrive at work later than normal due to weather or road conditions that inhibit safe passage to the SURF. Delayed reporting details will be announced on the SURF Operations Status Phone and via email.
5. **Laboratory Closure**—The time period when only Essential Personnel are authorized to be working at SURF. Laboratory closures are announced on the SURF Operations Status Phone and via email.
6. **SURF Operations Status Phone (605-722-0002)**—A dedicated phone line which provides current status information on SURF emergency closures and re-openings to SDSTA, science or contractor personnel.
7. **Liberal Leave**—A leave policy that allows personnel to take annual leave or leave without pay without first having to obtain permission of a supervisor; subject to SDSTA policies, procedures and work requirements. Liberal leave status is announced on the SURF Operations Status Phone and via email.

8. Normal Operating Hours—Standard operating hours for SURF are from 7:00 AM to 4:00 PM (Mountain Time), Monday through Friday. For the purposes of this procedure, normal hours do not include swing and graveyard shift work hours, weekends or holidays.

## **C. Procedures for making weather-related determinations**

### **1. Normal Operating Hours**

During normal operating hours, the Laboratory Director will monitor weather conditions on a continual basis. If a threatening condition develops, in consultation with other SDSTA managers, the Laboratory Director will determine a course of action. The Laboratory Director may authorize early release of non-essential personnel and closing of SURF. Notification to SURF management will be sent out via email and telephone as appropriate so that arrangements can be made to release non-essential personnel and to notify Essential Personnel of their work requirements. Notification will be relayed through several avenues to include telephone contact and a SURF-wide email. SURF managers will be responsible for contacting their respective contractor counterparts and relaying closure information.

SURF supervisors will be responsible for notifying their employees and contractor management counterparts of decisions affecting the operations at the SURF due to inclement weather. Actions may include but are not limited to: calling in Essential Personnel early to start shifts or arranging to have personnel remain on duty until replacements can safely arrive.

### **2. Outside of Normal Operating Hours**

The Laboratory Director will monitor weather conditions on a continual basis. If a threatening weather condition develops, in consultation with other SDSTA managers, the Laboratory Director will make a decision for laboratory closure or to implement liberal leave. The Laboratory Director's decision will be made no later than 4:00 AM in order to allow enough time to disseminate pertinent information to SURF personnel. The Laboratory Director will continue to monitor weather conditions throughout the emergency. The Laboratory Director will re-open SURF once safe conditions exist for travel.

All SDSTA staff, science user and contractor personnel shall from time-to-time call the SURF Operations Status Phone number for updated notices of closure, liberal leave policy or re-opening after a closure. Employees may call their supervisor for clarification, if necessary.

Employees are ultimately responsible for being at work during their scheduled work period, unless SURF is closed or they are on a leave status.

## **D. Communicating a decision to close or re-open**

When the Laboratory Director decides to close or re-open SURF, the following actions will occur:

- The Laboratory Director will update the message on the SURF Operations Status Phone number so current information is available.
- The Laboratory Director will contact the SDSTA's management team to relay the current status.
- The Directors of Hoists and Shafts, Surface Operations and Utilities and Underground Operations, with their respective foremen, will relay instructions for essential staff to remain on duty or come to SURF as appropriate.
- SURF Managers will coordinate with their respective contractor counterparts to relay status and coordinate contractor activities.

#### **E. Science operations during facility closures**

- Science researcher and visitor access to the facility will not be allowed on-site during a laboratory closure, except for critical phases of experiment operations, experiment emergencies, or to resupply critical consumables such as liquid nitrogen to ensure the experiment can remain in a safe configuration.
- Science access to address emergencies or essential monitoring functions must be approved by the on-call Duty Officer. The Duty Officer will inform the Laboratory Director of any approvals to allow science personnel on-site during the event.
- Normal, daily science shifts will not be supported during a laboratory closure.

#### **F. Compensation and telecommuting during facility closures**

SURF will budget up to five inclement weather days per fiscal year as allowable under federal procurement guidelines. As funds are available, full-time hourly staff members, who are:

- Full-time hourly Essential Personnel who must attend work during the laboratory closure will receive a \$5.00 per hour addition to their hourly rate for both straight time and overtime hours worked.
- Non-essential personnel will be compensated for their normal shift during a laboratory closure. Time Sheet recording for non-essential personnel should be as follows: The total number of hours for the employee's shift remains the same in the case of an inclement weather event. Record the number of hours physically worked under the applicable project code(s). Also, record the number of hours not worked due to the inclement weather event under "Leave Other". The total of the two (project code hours and leave other hours) should equal the employee's normal shift number of hours. If the employee does not return to work when the inclement weather event has ended, record time not worked under "Leave without Pay" or "Vacation" as appropriate. At the discretion of the employee's supervisor, lost work hours may be gained within the same week of the event. Unreported absences may be cause for disciplinary action.

- Salaried full-time staff members, including those who must work during a laboratory closure, will receive their regular compensation.

During a laboratory closure, salaried full-time members who can telecommute from an off-site location to perform their work duties are encouraged to do so. For hours worked when telecommuting, staff shall charge those hours to their normal charge code(s).

#### **G. Other personnel matters**

An individual supervisor may reasonably increase the number of Essential Personnel required to deal with the potential of multiple day inclement weather events where travel to bring in additional staff for shift changes is not advised.

During a laboratory closure due to inclement weather, non-essential personnel are not permitted on the SURF site without their supervisor's approval. Supervisors of Essential Personnel may only be on-site during the event to facilitate essential operations. The supervisor will inform the Laboratory Director of any approvals to allow non-essential personnel on-site during the event.

#### **H. Reference documents**

- Inclement Weather Policy

## **Personal Protective Equipment Reimbursement Policy-Procedure**

### **Summary**

The South Dakota Science and Technology Authority's (SDSTA's) Personal Protective Equipment (PPE) Reimbursement Policy-Procedure complements the SDSTA Policy and includes definitions, guidelines and the process used for reimbursement of PPE expenses.

### **A. Applicability**

This procedure applies to all SDSTA employees. SDSTA will reimburse the purchase of PPE on an individual basis to SDSTA employees who specifically require PPE to perform their work. Per state fiscal year (July 1–June 30), each employee will have access up to \$400 in total reimbursement.

### **B. Definitions**

Terms used in this procedure mean:

1. Personal Protective Equipment (PPE)—Anything worn or carried by a person for the purpose of protecting the person from a hazard. Safety equipment worn by employees may include safety-toe footwear, hard hats, safety glasses, respirators, coveralls, etc.
2. Work Wear Program—An SDSTA established program that provides work wear to employees to increase visual awareness of Operations in regard to safety and professionalism. The program is managed by the Surface Operations and Utilities Department and is an employee benefit paid fully by SDSTA.

### **C. Responsibilities**

1. Supervisors:
  - a. Ensure employees under their supervision comply with this procedure.
  - b. Ensure proper documentation is completed before approving and submitting to the Finance Office.
2. All Personnel:
  - a. Comply with all requirements of this procedure.
  - b. Contact the Environment, Safety and Health (ESH) Department and/or Finance Office with any questions relating to this procedure.

### **D. Guidelines and procedures**

#### **1. General PPE**

SDSTA will reimburse the purchase of PPE on an individual basis to SDSTA employees who specifically require PPE to perform their work. Per state fiscal year (July 1–June 30), each employee will have access up to \$400 in total

reimbursement. Prior approval by their supervisor is required for any type of PPE purchase.

- Non-warehouse items allowable for reimbursement include but not limited to:
  - Safety-toe footwear
  - Rain suits
  - Reflective clothing
  - Fire retardant clothing
  - Prescription safety glasses (costs that are not covered by the SDSTA's safety glass program)
- Warehouse items that will be provided include but not limited to:
  - Safety gloves
  - Hard hats
  - Hard hat bands
  - Standard eye protection
  - Ear protection
  - Respirators (replacement cartridges)
  - Fall arrest systems
  - Arm guards
  - Hot work coverings

If an employee chooses to purchase any stocked warehouse item(s) elsewhere, each item purchased must be approved by the ESH Department and meet SDSTA PPE requirements before use. This amount will be deducted from the \$400 per employee budget.

## 2. Specialty PPE

The SDSTA will also provide specialty PPE to be used in projects that involve metal and electrical work. The employee should confirm with their supervisor if an item is allowable for reimbursement prior to making any purchase.

Fire retardant clothing for electricians is required and provided under the SDSTA Work Wear Program. If other Operations staff elect to wear fire retardant clothing instead of the already provided hot work coats, they must use their \$400 allocation for such purchases.

## 3. Underground laboratory clean space PPE

The SDSTA will provide reimbursement for clean safety-toe shoes required for working in cleanroom areas in the underground laboratory. The SDSTA will provide all other PPE required. Note: Additional PPE or specialized or duplicate tools should be purchased through the respective department's budget. This reimbursement will not be included in the \$400 budget described in Section A.

4. Procedure for PPE reimbursement

- a. In advance of purchasing PPE item(s), complete a PPE Pre-approval Request form and submit to the supervisor for approval.
- b. Upon supervisor approval, purchase the item(s) and submit a completed/signed SDSTA expense report to the supervisor for signature. The original merchant receipt must be attached to the completed expense report. The receipt must detail the individual item(s) purchased (i.e. the generic reference "clothing" will not be accepted).

Note: The "PPE Pre-approval Request" and "SDSTA Expense Report" forms can be found in DocuShare.

- c. Submit to the Finance Office in the Business Services Department. All reimbursements are direct deposited on the 15<sup>th</sup> of the month. Reimbursements do not get processed through payroll. Applicable sales tax will be included in the reimbursement.

**E. Reference documents**

- Personal Protective Equipment Reimbursement Policy



## **Use of SDSTA Technology Resources and Internet Policy-Procedures (NEW)**

This Use of SDSTA Technology Resources Policy-Procedure complements the Use of SDSTA Technology Resources Policy and applies to all employees, contractors, and partners who access the SDSTA/Sanford Underground Research Facility (SURF) network and computers. This policy-procedure outlines the guidelines for using SDSTA information technology (IT) systems, including SDSTA's internet connection, network and equipment.

### **A. Definitions**

#### **Terms used in this procedure mean:**

1. Cellular phone, cell phone, mobile phone—A portable telephone that can make and receive calls over a radio frequency link while the user is moving within a telephone service area.
2. Email—A method of exchanging messages between people using electronic devices.
3. Internet—A network of networks that consists of private, public, academic, business and government networks of local to global scope.
4. Internet 2—A not-for-profit United States computer networking consortium led by members from the research and education communities, industry and government.
5. Internet traffic—All traffic that goes to or comes from off-site systems which are not connected via remote access services.
6. Non-priority internet traffic—All traffic that is not related to organizational endeavors. i.e.: surfing the web during breaks/lunches.
7. Priority internet traffic—traffic which aligns most closely with the core mission of SDSTA.
8. SDSTA issued equipment—any phones, laptops, tablets or any other electronic equipment, that belongs to SDSTA.

### **B. Responsibilities**

1. Information Technology (IT) Director
  - a. Assists department directors and supervisors with understanding what is and is not acceptable use of IT system resources.
  - b. Assists in making decisions for restricting access to IT system resources in cases where misconduct has occurred.
  - c. Assists in investigation instances of misconduct with respect to the use of IT systems.
2. Department Director
  - a. Understands the processes within this procedure.
  - b. Enforces the content of this procedure throughout the department.
  - c. Assists supervisors and employees with understanding what is and is not acceptable use of IT system resources.

- d. Assists in investigating instances of misconduct with respect to the use of IT systems.
- 3. Supervisor
  - a. Ensures personnel under their supervision comply with this procedure.
  - b. Ensures proper documentation is completed in the event of any instances of misconduct with respect to the use of IT systems.

## **C. Procedure**

### **1. Internet use**

All internet use is subject to applicable federal and state laws, as well as the Use of SDSTA Technology Resources Policy. Furthermore, use of the SDSTA internet shall be consistent with the SDSTA's mission and core values.

Personal use of the Internet is allowed, provided it does not put excessive load on the network and is tempered with common sense and good judgment.

Internet access may be restricted or revoked for individuals using excessive Internet bandwidth or violating any law or SDSTA policy.

The connection from SDSTA to the internet is a very important resource.

Access must be protected and prioritized to meet the overall goals of conducting research and business needs. IT reserves the right to prioritize, and if necessary, filter traffic to ensure that the goals of the SDSTA mission are supported. All SDSTA bandwidth should be utilized, but once saturation or near-saturation conditions exist, priority will go to priority internet traffic.

### **2. Internet traffic**

Priority internet traffic will be given priority. Access for Non-priority Internet traffic is not guaranteed. A best effort will be made to allow non-priority internet traffic to transit the business connection to the internet. However, IT reserves the right to further prioritize or filter non-priority internet traffic as necessary to maintain the stability and availability of the internet connection for priority internet traffic.

### **3. Employee internet usage elements**

- a) Appropriate employee internet usage—Employees, contractors, and partners are advised to use SDSTA internet connections for the following reasons:
  - To complete their job duties.
  - To seek out information that they can use to improve their work.
  - To access social media accounts, while conforming to the SDSTA Social Media Policy.

SDSTA does not want to restrict employees' access to websites of their choice, but does expect employees, contractors, and partners to exercise good judgment and remain productive at work while using the internet. Any

use of the SDSTA network and connection must follow the SDSTA Confidentiality Policy and Employment Records and Personal Data Policy. Employees, contractors, and partners should:

- Keep their passwords secret at all times.
- Log into their SDSTA accounts only from safe devices.
- Use strong passwords to log into work-related websites and services.

b) Employees, contractors, and partners must not use the SDSTA network to:

- Download or upload obscene, offensive or illegal material.
- Send confidential information to unauthorized recipients.
- Invade another person's privacy and sensitive information.
- Download or upload movies, music and other copyrighted material and software.
- Visit potentially dangerous websites that can compromise the safety of SDSTA IT systems.
- Perform unauthorized or illegal actions, like hacking, fraud, or buying/selling illegal goods.

SDSTA also advises employees, contractors, and partners to be careful when downloading and opening/executing files and software. If they're unsure if a file is safe, they should ask their supervisor/ IT staff. SDSTA will install anti-virus and disk encryption software on SDSTA computers. Employees, contractors, and partners may not deactivate or configure settings and firewalls without managerial or IT approval. SDSTA will not assume any responsibility if employee, contractor or partner devices are infected by malicious software, or if their personal data are compromised as a result of inappropriate use.

#### **4. SDSTA-issued equipment**

SDSTA expects employees, contractors and partners to respect and protect SDSTA-issued equipment. SDSTA employees, contractors, and partners are responsible for SDSTA-issued equipment whenever they take it out of their offices.

#### **5. Email**

Employees, contractors and partners may use their SDSTA email accounts for both work-related and personal purposes as long as they do not violate this policy-procedure. Employees, contractors and partners should not use the SDSTA email to:

- Register to illegal, unsafe, disreputable or suspect websites and services.
- Send obscene, offensive or discriminatory messages and content.
- Send unauthorized advertisements or solicitation emails.

SDSTA has the right to monitor work emails and personal emails sent using SDSTA-issued equipment. SDSTA also has the right to monitor websites that employees, contractors, and partners visit on SDSTA-issued equipment, or on equipment attached to SDSTA networks.

## **6. Disciplinary action**

Misuse of SDSTA IT systems will be dealt with on a case-by-case basis. The individual subject to charges of misuse will be dealt with in a manner consistent with the applicable laws of the state of South Dakota, and the policies of the SDSTA. The IT Director is responsible for making these misuses known to the appropriate supervisors. The IT Director may impose temporary restrictions on the offender's access to SDSTA IT systems in order to ensure that SDSTA's IT systems remain stable and secure for all SDSTA users.

Serious violations will be cause for termination of employment, or legal action when appropriate. Examples of serious violations are:

- Using the SDSTA internet connection to steal or engage in other illegal activities.
- Causing SDSTA's IT systems to be infected by viruses, worms or other malicious software.
- Sending offensive or inappropriate emails.

## **7. Employee cell phone use**

- a) Prudent use—SDSTA employees are expected to use their cell phones prudently during working hours. Despite their benefits, personal cell phones may cause problems in the workplace. Employees who use their cell phones excessively may:
  - Get distracted from their work.
  - Disturb colleagues by speaking on their phones.
  - Cause security issues from inappropriate use of company-issued equipment or misuse of SDSTA IT systems.
  - Cause problems or accidents when they use their phones inside SDSTA vehicles or near areas where using phones is prohibited.
- b) How to properly use cell phones in the workplace—Employees can benefit from using cell phones. They are allowed to use their phones:
  - To make business calls.
  - To use productivity apps.
  - To check important messages.
  - To make brief personal calls away from the working space of colleagues.
  - During breaks or at lunch hour and while in a stationary vehicle.
- c) SDSTA employees are advised to:
  - Use SDSTA-issued phones for business purposes only and preserve them in good working order.
  - Surf the internet, text and talk on the phone only for a few minutes per day.
  - Turn off or silence their phones when asked.

d) SDSTA employees are not allowed to:

- Play games on the cell phone during working hours.
- Use their device (personal or SDSTA-issued) for any reason while driving an SDSTA vehicle.
- Use their cell phone's camera or microphone to record confidential information or without the knowledge and permission of the persons being recorded.
- Use their phones in areas where cellular network use is explicitly prohibited.
- Speak on their phones within earshot of colleagues' working space during working hours.
- Download or upload inappropriate, illegal or obscene material on a SDSTA cell phone.
- Download or upload inappropriate, illegal or obscene material on personal cell phone using a SDSTA internet connection.

e) Disciplinary consequences

SDSTA retains the right to monitor employees for excessive or inappropriate use of their cell phones. If an SDSTA employee's phone usage causes a decline in productivity or interferes with operations, management will suspend that employee's right to use a cellular device. Employees may face severe disciplinary action up to and including termination, in cases when they:

- Cause a security breach.
- Violate the SDSTA Confidentiality Policy.
- Cause an accident by recklessly using a mobile device.

**D. Related documents**

- Confidentiality Policy
- Employment Records and Personal Data Policy-Procedure
- SDSTA Social Media Policy and Policy-Procedure
- Use of SDSTA Technology Resources and Internet Policy

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**Report from Nominating Committee—Vice Chairperson Dana Dykhouse**

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**Nominating Committee Report**

May 25, 2022

Participants:

Mr. Dana Dykhouse, SDSTA Board of Director and Nominating Committee Chair  
Mr. Roger Musick, SDSTA Board of Director and Nominating Committee Member

Mr. Dykhouse and Mr. Musick communicated as the nominating committee on May 25, 2022 for the purpose of nominating the slate officers for the 2022-2023 board year. The slate of officers is as follows:

Chairperson: Mr. Casey Peterson  
Vice-Chairperson: Mr. Dana Dykhouse  
Secretary Treasurer: Ms. Patricia Lebrun

The nominating committee has contacted all of the candidates and they are each willing to serve in this capacity for another year.

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**Recommended Action:**  
*Informational.*

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**Election of Officers—Chairperson Casey Peterson**

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*See suggested motion below.*

**South Dakota Science and Technology Authority  
Election Procedures Policy**

Adopted 6/24/08

The Board of Directors shall follow the following procedure for the nomination and election of officers.

- A. The nomination and election process shall be held in open session.
- B. At the last meeting of the Board before the Annual Meeting, the Chairperson shall appoint a Nominating Committee.
- C. The following procedure shall be utilized at the Annual Meeting:
  1. The Chairperson shall call for the report of the Nominating Committee.
  2. After the Nominating Committee reports, the Chairperson shall ask if any Board member intends to make additional nominations.
  3. If no Board member indicates the intention to make additional nominations, the Chairperson shall call for a motion to elect the slate recommended by the Nominating Committee.
  4. If any Board member indicates the intention to make an additional nomination for any office, the slate recommended by the Nominating Committee shall be deemed rejected and the following procedure shall be utilized:
    - a. The Chairperson shall call for oral nominations for the office of Chairperson. Once it appears that all nominations have been made, a motion that nominations cease would be in order. This motion may be made with or without a call for such motion by the Chairperson.
    - b. If there is only one nominee, a motion that all nominations cease and that the nominee be elected Chairperson would be in order. This motion may be made with or without a call for such motion by the Chairperson.
    - c. If there is more than one nominee, nominations shall continue until there is a successful motion that nominations cease.
    - d. Upon passage of a motion that nominations cease, the Chairperson shall call for a vote. Each Board member shall announce his or her vote out loud. Counsel for the Authority shall tabulate the vote and announce the results.
    - e. The successful candidate shall immediately take office as Chairperson and conduct the remainder of the election and the meeting.
    - f. The Chairperson shall follow the procedure set forth above for each of the remaining offices.
- D. Pursuant to SDCL 1-16H-11, the affirmative vote of no less than four Board members is necessary to elect any officer. If no candidate receives four votes, the Board will vote twice more. If no candidate receives four votes after three attempts, the election for that office will be deemed adjourned until the next meeting of the Board. At the next meeting, the Board shall commence the election procedure set forth above in Section C.4, but only as to any office not filled at the prior meeting. This procedure shall continue from meeting-to-meeting until a candidate receives at least four votes. Pursuant to Article III, Section 1 of the Bylaws, the officers in office as of the commencement of the Annual Meeting shall remain in office until their successors are duly elected.

This policy shall remain in effect until specifically rescinded or modified.

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**Recommended Action:**

*Motion to accept the report from the nominating committee and to elect Casey Peterson as Chairperson, Dana Dykhouse as Vice Chairperson and Patricia Lebrun as Secretary/Treasurer, to take office at the end of the June 16, 2022 board meeting.*

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**Executive Session—Chairperson Casey Peterson**

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Meeting closed to public during executive session.

*See recommended motion below.*

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**Recommended Action:**

*Motion to enter executive session to discuss personnel matters and to consult with legal counsel concerning contractual and legal matters—SDCL 1-25-2(1), (3) and (4); 19-19-502.*

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**Report from Executive Session—Chairperson Casey Peterson**

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*See recommended motion below.*

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**Recommended Action:**

*“The board consulted with legal counsel concerning contractual and legal matters. No action was taken.”*

*OR*

*...as discussed and stated otherwise*

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**Approval of FY2023 Office of Risk Management Intergovernmental Agreement—  
Mr. Mike Headley**

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Attached is the FY2023 Intergovernmental Agreement between the Bureau of Administration, Office of Risk Management of the State of South Dakota and SDSTA. *(See suggested motion below.)*

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**Recommended Action:**

*Motion to approve FY2023 Intergovernmental Agreement between the Bureau of Administration, Office of Risk Management of the State of SD and SDSTA and authorize SDSTA Executive Director to sign agreement.*

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INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE  
BUREAU OF ADMINISTRATION,  
OFFICE OF RISK MANAGEMENT  
OF THE STATE OF SOUTH DAKOTA  
AND THE  
SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY

This INTERGOVERNMENTAL AGREEMENT (“AGREEMENT”) is made and effective the 1<sup>st</sup> day of July, 2022<sup>1</sup>, between the South Dakota Bureau of Administration, Office of Risk Management, 1429 E. Sioux Avenue, Pierre, South Dakota 57501 (“ORM”), and the South Dakota Science and Technology Authority, 630 E. Summit, Lead, South Dakota, 57754 (“SDSTA”) pursuant to SDCL Ch. 1-24 and in particular SDCL 1-24-8.

Introduction and Purpose

The State of South Dakota established SDSTA to facilitate the development of the former Homestake gold mine into an underground science laboratory (the “Sanford Underground Research Facility” or “SURF”) and to lead the operation of SURF. The mission of the SDSTA is “to advance world class science and inspire learning across generations.”

When operating as an active mine, the Homestake gold mine was regulated by the U.S. Mine Safety and Health Administration (“MSHA”) and the South Dakota Department of Environment and Natural Resources (“DENR”)¹. SDSTA received title to the Homestake site in 2006 from Homestake Mining Company of California after the 2003 closure of the mining facility.

MSHA and DENR continued to administer and enforce safety and environmental programs until 2008, at which time the SDSTA sought to clarify MSHA’s regulatory role. MSHA determined at that time it no longer had regulatory jurisdiction over the safety and health operations at the Homestake site due to the completion of mining reclamation and the new function of the site.

The U.S. Occupational Safety and Health Administration’s (“OSHA’s”) 29 CFR 1926² and 29 CFR 1910³ are considered the most applicable of the available standards for safety and health for most activities conducted in support of the development and operation of SURF except for the underground shafts, hoists and ventilation systems. In these instances, MSHA’s 30 CFR⁴ standards are employed (see appendix A).

Although OSHA standards are being applied to the work conducted at SURF, OSHA does not have jurisdictional authority for enforcement of those regulations because SDSTA is for the purposes of OSHA standards and regulation a “political subdivision” as defined in 29 CFR 1975.5 because it is administered by individuals who are appointed by the Governor.

ORM has the responsibility to oversee the state’s risk management activities. Accordingly, ORM is the agency that is mandated to provide the inspection and audit of state institutions and

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<sup>1</sup> Pursuant to Executive Reorganization Order 2021-03 DENR was merged with the South Dakota Department of Agriculture and is now referred to as Department of Agriculture and Natural Resources (DANR).

<sup>2</sup> Title 29 Code of Federal Regulations Part 1926, “Safety and Health Regulations for Construction”

<sup>3</sup> Title 29 Code of Federal Regulations Part 1910, “Occupational Safety and Health Standards”

<sup>4</sup> Title 30 Code of Federal Regulations Parts 15, 49, and 57”

facilities and has been designated to serve as the authority having jurisdiction (“AHJ”) for occupational safety and health at SURF. In cooperation with the SDSTA, ORM also provides leadership in risk management, loss control and insurance matters at SURF.

SDSTA has entered into a lease (the “Lease”) with the United States of America, acting through the Department of Energy (the “Government”), dated March 29, 2016, whereby SDSTA has leased to the Government certain surface and subsurface real estate for the purpose of constructing, operating and maintaining the Long-Baseline Neutrino Facility (“LBNF”) and the Deep Underground Neutrino Experiment (“DUNE”), and related infrastructure (the “Leased Space”). Fermi Research Alliance, LLC (“FRA”) manages the LBNF/DUNE project for the Government through Contract No. DE-AC02-07CH11359 between FRA and the Government for the operation of the Fermi National Accelerator Laboratory (“Fermilab”). ORM’s jurisdiction hereunder shall not include the Leased Space, but SDSTA and ORM shall continue to consult and cooperate concerning occupational safety, health, risk management, loss control and insurance related to the Leased Space.

The purpose of this Agreement is to clarify the roles and responsibilities, expectations and communications for ORM to serve as the AHJ for SDSTA in the implementation of the occupational safety and health standards.

This Agreement is authorized pursuant to SDCL Ch. 1-24 and SDCL 1-16H-32.

#### Agreement

##### A. Safety Standards Applicable to SDSTA.

Until amended in writing by ORM, the safety standards applicable to SDSTA’s facilities and operations will be as set out in Appendix A, attached hereto and incorporated herein by this reference. The parties agree that ORM may unilaterally amend Appendix A at any time and in their sole discretion, and all such amendments shall be incorporated herein effective upon 30 days written notice to SDSTA. The parties further acknowledge and agree that the agency having jurisdiction over the enforcement of building (International Building Code) and fire safety (National Fire Protection Association) codes and standards is the City of Lead, South Dakota. ORM shall not have jurisdiction to apply or enforce any building codes or fire safety standards but will identify, notify and consult with the entity having enforcement authority with respect to such codes and standards.

##### B. Responsibilities of the ORM.

ORM will:

1. Provide for safety, loss control and regulatory compliance audits and inspections of SDSTA’s documentation, records and facilities.
2. Review claims to identify trends or situations requiring loss prevention efforts.
3. Advise SDSTA on applicable laws, regulations and standards which contribute to a safe work environment at SURF.
4. Provide for loss control training.
5. Upon request, review contracts for appropriate risk management language.

6. The Director of ORM and the Board of Directors of SDSTA (which may delegate authority to the Executive Director of SDSTA) have sole authority to select, negotiate and bind insurance coverage.
7. Provide enforcement of the safety standards made applicable to SDSTA's facilities by this Agreement.
8. Identify safety and risk exposures and take appropriate steps to address such safety and risk exposures.
9. Provide copies of the results of safety or compliance reviews, inspections or audits to SDSTA upon completion.
10. Attend quarterly meetings held with SDSTA and FRA through the duration of LBNF construction for discussion of matters related to occupational safety, health, risk management, loss control and insurance.
11. Attend any SDSTA Board meetings wherein there will be considerations regarding safety and insurance.

C. Risk Management Responsibilities of SDSTA.

SDSTA will:

1. Be responsible for coordinating and implementing risk management programs within its departments and at its facilities with the assistance of ORM. SDSTA will provide a safe workplace and conduct operations in a manner that protects employees, contractors, visitors and the public from harm. The SDSTA shall conform to its safety policy: "Perform all work safely, with full regard to the well-being of all stakeholders and the environment."
2. Perform all activities at SURF in a safe and environmentally sound manner.
3. Pursuant to Section 6.7 of the Property Donation Agreement<sup>5</sup> between SDSTA and Homestake, undertake all measures necessary to comply with federal, state, and local laws and regulations, including, without limitation, laws relating to workers' compensation, mine health and safety, and all Environmental, Health and Safety Laws (as defined in the Property Donation Agreement), and shall apply in a timely manner for all Environmental Permits (as defined in the Property Donation Agreement) and all other permits, licenses and approvals necessary for its operations.
4. Assist ORM in identifying, measuring and minimizing exposures to loss by:
  - a. Conducting facility inspections to identify and address safety hazards;
  - b. Conducting services and operations in accordance with applicable laws, regulations and safety standards;
  - c. Properly reporting accidents, incidents and unsafe conditions;
  - d. Reviewing losses to identify trends or situations requiring loss prevention efforts;
  - e. Ensuring policies and procedures remain current, are communicated to all employees and enforced;
  - f. Drafting all contracts with the appropriate risk management language;
  - g. Communicating changes in exposures to ORM; and
  - h. Evaluating ORM's recommendations.

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<sup>5</sup> Property Donation Agreement Between and Among Homestake Mining Company of California, The State of South Dakota and the South Dakota Science and Technology Authority, April 14, 2006.

5. Comply with all safety and enforcement directives and actions given by ORM.
6. The Board of Directors of SDSTA (which may delegate its authority to the Executive Director of SDSTA) and the Director of ORM have sole authority to select, negotiate, and bind insurance coverage.
7. Arrange quarterly meetings between SDSTA, ORM and FRA through the duration of LBNF construction for discussion of matters related to occupational safety, health, risk management, loss control and insurance.
8. Invite ORM to all SDSTA Board meetings, supply ORM copies of the agendas and specifically advise ORM whether the Board will be considering matters of safety and insurance.
9. Provide ORM with a schedule of any outside inspections and calendar events reasonably in advance.
10. Comply with requests from ORM for information and documents related to safety or compliance reviews, inspections or audits, including, to the extent available to SDSTA, any such reviews, inspections or audits related to activities in the Leased Space.

D. Agreement Administration.

The cooperative undertaking herein described shall be administered by the Parties through their risk management contact persons: ORM through its Director and SDSTA through its Executive Director or authorized designees as contemplated in SDCL 1-24-5.

E. Reporting.

SDSTA employees and SURF users and contractors may contact ORM directly and without risk of retaliation if they feel there is substantial risk of harm to persons or the environment that is not being addressed by SDSTA management. SDSTA will communicate this procedure to all employees and will post notifications regarding this throughout SDSTA facilities. The notification will include ORM's phone number and email addresses as designated by ORM.

F. Site Access Rules.

1. SDSTA will provide accommodations for ORM to have unencumbered access to SDSTA facilities and operations.
2. The parties acknowledge and agree that representatives of ORM conducting activities relating to this Agreement are "Authorized Entrants" as that term as used in the Property Donation Agreement.
3. Access to underground and other hazardous environments shall be provided.

G. Right to Inspect.

1. ORM has the right to inspect SDSTA facilities at will and with no advance notification when there is cause.
2. ORM will otherwise provide reasonable notification in advance of scheduled visits.
3. ORM may require SDSTA to undertake third party inspections or oversight visits, or may

contract for such inspection and oversight visits in its own right at SDSTA's expense. ORM will consult and coordinate with SDSTA in advance concerning unanticipated expenses relating to inspection or oversight visits.

4. SDSTA will provide timely notifications to ORM when third party inspections or oversight visits are scheduled, and ORM may observe such third-party inspections or oversight visits at ORM's discretion.
5. SDSTA will provide ORM the results and any findings from all third-party reviews or inspections that are related to the ORM's scope as stated in this agreement.

#### H. Payment of Costs.

SDSTA will upon request reimburse ORM for services and related charges at the rates shown in Appendix B and actual expenses and other costs incurred by ORM in connection with ORM's responsibilities hereunder. Costs of travel, lodging and meals will be reimbursed at state rates as established by the State Board of Finance. ORM shall provide or cause to be provided to SDSTA a written invoice, on no less than a quarterly basis, for costs and services incurred by ORM under this Agreement. SDSTA will contest any portions of the invoice it deems unreasonable and pay any uncontested amount within thirty (30) days of receipt of the invoice. SDSTA agrees to pay all uncontested costs and expenses within forty-five (45) days of receipt of invoice.

#### I. Indemnification and Insurance.

SDSTA will indemnify and hold the officers, agents and employees of the State of South Dakota ("Indemnified Parties") harmless from and against any and all claims, causes, actions or causes of action made or asserted against the Indemnified Parties arising out of related to ORM's duties and responsibilities under this Agreement. SDSTA shall cause the Indemnified Parties to be named as additional insureds under SDSTA's general liability policy. The limits of liability of SDSTA's general liability policy shall not be less than \$75 million. SDSTA shall provide such proof of the existence and enforceability of the insurance required by this paragraph as ORM may from time to time reasonably request. Nothing in this paragraph (I) shall require SDSTA to indemnify ORM or its officers, employees or agents against any claims or losses resulting solely from the negligence or intentional acts of its officers, employees or agents of ORM.

#### J. Exclusion of Leased Space.

ORM hereby acknowledges receipt of a copy of the Lease. For so long as the Lease remains in force or the parties agree otherwise, ORM's jurisdiction hereunder shall not include the Leased Space. SDSTA and ORM will continue to consult and cooperate concerning occupational safety and health related to the Leased Space.

#### K. Duration of Agreement.

This Agreement shall be in effect from July 1, 2022<sup>1</sup>, through June 30, 2023<sup>2</sup>.

L. Remedies - Enforcement.

ORM is entitled to all remedies necessary to carry out the terms of this Agreement and enforcement of the environment, safety and health standards made applicable to SDSTA and its facilities by this Agreement. Without limiting the generality of the foregoing, ORM may pursuant to the terms of this Agreement issue an administrative order directing SDSTA to cease operations and/or close all or any portion of its facilities until such time as the environment, safety and health standards violation giving rise to the administrative order has been resolved to ORM's reasonable satisfaction.

When ORM has identified insurance gaps that ORM believes create risk and exposure to SDSTA and SURF and that have not been resolved to ORM's reasonable satisfaction, the ORM Director will provide written notice to the SDSTA Board Chairperson requesting a timely resolution. Resolutions and remedies regarding the identified insurance coverage concerns will be agreed to by The decision of ORM and the SDSTA Board of Directors will be final. If there is no agreed upon resolution in a timely manner, this Agreement is subject to termination. A copy of all written notices shall also be provided to the Governor's Office.

M. Retention of Records.

Each party hereto agrees to retain all documentation and records relating to the services and inspections provided for hereunder and for payment and reimbursements for expenses under this Agreement for a period of three (3) years after termination of this Agreement. Such records shall be available for inspection at any reasonable time by personnel authorized therefore by the State of South Dakota.

N. Funding Out.

This Agreement depends upon the continued availability of appropriate funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by ORM. Termination for any of these reasons is not a default by the ORM nor does it give rise to a claim against ORM.

O. Nature of Agreement.

This Agreement is intended to be an agreement for services by a public agency as contemplated by SDCL 1-24-8. The parties acknowledge that no separate entity as contemplated by SDCL 1-24-4 is being created to implement this Agreement. This Agreement is intended to only govern the rights and interest of the parties named herein. 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. SDSTA is authorized to enter this Agreement by virtue of SDCL 1-16H-32.

P. Governing Law-Venue.

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

Q. Notice.

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Director of ORM, and by and to the Executive Director of SDSTA, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that the notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

R. Filing of Agreement.

The parties acknowledge that the ORM will file a true copy of this Agreement with the Office of Attorney General and the Legislative Research Council within fourteen (14) days of the execution hereof, as required by SDCL 1-24-6.1.

S. Alterations and Entire Agreement.

Except as provided in section A. of this Agreement, no amendment, alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by both parties. No oral understanding or agreement not incorporated herein may be binding on any of the parties hereto. Terms expressly stated within the Agreement constitute the entire agreement between ORM and SDSTA. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, except as specifically provided herein.

T. Partial Invalidity.

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

U. Authorization of Agreement.

By the signature of their representatives below, ORM and SDSTA certify that approval of this Agreement by ordinance, resolution or other appropriate means has been obtained by that governmental body'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. A copy of any SDSTA

In Witness hereto the parties signify this Agreement by signatures affixed below:

Mike Headley  
Executive Director  
South Dakota Science and Technology  
Authority

Scott W. Bollinger  
Commissioner  
Bureau of Administration  
State of South Dakota



## Appendix A – SURF Environment, Safety and Health Standards

### 1.0 Workplace Safety

Below-the-Hook Lifting Devices & Slings/Rigging Hardware	OSHA 1910 / 1926, ASME B30.20
Chemical Labeling and Identification	NFPA 704, 29 CFR 1910.1200
Cranes & Hoists	
(Excludes underground conveyances – See <i>Personnel Hoisting, Wire Ropes, Headframe and Sheaves, Conveyances, Hoisting Procedures, Shafts, Inspection and Maintenance</i> )	29 CFR 1910, Subpart N, OSHA General Industry Standards
Diesel Particulate Matter	30 CFR 7.5060 - .5075
Disablement and Impairment	SURF ESH Manual
<a href="#">Emergency Management Standard</a>	<a href="#">National Incident Management System</a>
Emergency Eyewash and Shower Equipment (Installation, Inspection, Maintenance and Use)	ANSI Z358.1-2009, 29 CFR 1910.151(c)
Escapeways and Refuges	30 CFR 57.11050- .11059
Explosives Materials Management	27 CFR 555, 29 CFR 1926, Subpart U, 29 CFR 1910.109, 30 CFR 15, 30 CFR Part 57.6000 Subpart E, ATF Form 5400.14/5400.15 Part I
MSHA/ATF Agreement, MSHA/ATF Equivalency Agreement	Memorandum of Understanding between the Department of Justice (ATF) and the Department of Labor (MSHA), Metal and Non-Metal General Inspection Procedures Handbook No.PH13-IV-1
State of South Dakota Explosives Permit Application for Permit to Purchase, Use, Transport, Sell or Manufacture Explosives Form	South Dakota Department of Public Safety Office of State Fire Marshal Explosives Permit
Fall Prevention and Protection	29 CFR 1910, Subpart D & F / 1926, Subpart M
Fatigue Management	SURF ESH Manual
Ground Control	30 CFR 57.3200-3401
Hazardous Communications	29 CFR 1910.1200 / 1926.59
Materials Handling and Storage	29 CFR 1910, Subpart N
MSHA Mine Rescue Teams	30 CFR 49, Subpart A
National Fire Alarm Code	NFPA 72
Oxygen Deficiency Hazards (ODH)	Fermilab ES&H Manual (FESHM 5064)
Personal Protective Equipment	29 CFR 1910, Subpart I
Personnel Hoisting, Wire Ropes, Headframe and Sheaves, Conveyances, Hoisting Procedures, Shafts, Inspection and Maintenance	30 CFR Part 57.19000 - .19134
Quality Assurance	Integrated Management System covering International Organization Standardization (ISO) 9001, 14001, and 45001
Radiation Safety	Nuclear Regulatory Commission License Number 40-35101-01
Respiratory Protection	29 CFR 1910.134 / 1926.10, 30 CFR 57.15030
Scaffolds	29 CFR 1926, Subpart L
Severe Weather Management	NFPA-780, National Weather Service (NWS)
Stairways	29 CFR 1926, Subpart X, IBC 2018
Underground Construction	29 CFR 1926.800 (p) (1,2)

Ventilation and Ventilation Plan  
Ventilation Underground  
Walking-Working Surfaces

30 CFR 57.22212 - .22229 (b)  
30 CFR 57.8518 -.8535  
29 CFR 1910, Subpart D

## 2.0 Building Codes and References

Automatic Sprinklers  
Boilers and Pressure Vessel Code  
(Sections I through XII including applicable Code Cases)  
Building Codes  
Building Services Piping  
Community Noise Exposure  
Cranes and Hoist Standards  
Electrical Safety in the Workplace  
Emergency and Standby Power Systems  
Personnel Elevators (Refer to Section 1.0 for underground personnel  
and material hoists)  
Fire Protection for Laboratories Using Chemicals  
Flammable and Combustible Liquids Code  
Fuel Gas Piping  
Installation of Lightning Protection Systems (and UL86A)  
Life Safety Code  
National Electrical Code  
National Electrical Safety Code  
Pipeline Transportation Systems for Liquid Components  
Portable Fire Extinguishers  
Power Piping  
Process Piping  
Recommended Practice for Electrical Equipment Maintenance  
Refrigeration Piping and Heat Transfer Components  
Storage, Use, and Handling of Compressed Gases and Cryogenic  
Fluids in Portable and Stationary Containers, Cylinders, and Tanks  
Standpipe and Hose Systems  
Subterranean Spaces  
Ventilation for Acceptable Indoor Air Quality

NFPA 13  
ASME BPVC  
IBC 2018  
ASME 31.9  
SD Lead City Ordinance  
ASME  
NFPA 70 E  
NFPA 110  
ASME A17.1  
NFPA 45  
NFPA 30  
ASME B31.2 (ii)  
NFPA 780  
NFPA 101  
NFPA 70  
ANSI C2  
ASME B31.4 (iv)  
NFPA 10  
ASME B31.1 (i)  
ASME B31.3 (iii)  
NFPA 70 B  
ASME B31.5 (v)  
NFPA 55  
NFPA 14  
NFPA 520  
ANSI/ASHRAE 62-2004

## 3.0 Environmental and Waste Management

Designation, Reportable Quantities, and Notification  
Hazardous Chemical Reporting, Community Right to Know  
Hazardous Materials Transportation Act  
Hazardous Waste Determination  
National Emissions Standards for Hazardous Air Pollutants  
National Environmental Policy Act Implementing Procedures  
National Pollution Discharge Elimination System (NPDES)  
Guidelines Establishing Test Procedures for the Analysis of  
Pollutants

40 CFR 302 (CERCLA)  
40 CFR 370  
49 CFR 171-180  
40 CFR 262.11  
40 CFR 61, Subpart A  
10 CFR 1021  
40 CFR 122

Polychlorinated Biphenyls (PCB)	40 CFR 761
Protection of Environment – Hazardous Waste Management System (Hazardous Waste Regulations)	40 CFR 260-273
Solid Waste	40 CFR 239-259
Spill Prevention, Control and Countermeasure Procedures	40 CFR 112
Universal Waste Management	40 CFR 273
Management of Used Oil	40 CFR 279
Underground Injection Control Program: Criteria and Standards	40 CFR 144 & 146
Underground Storage Tanks	40 CFR 280

### **3.1 SD-DANR: Codified Law**

Administrative Procedure for Appropriation of Water	46-2A, 46-5
Air Pollution Control	34A-1
Asbestos Abatement Training Project	34-44
Definitions and General Provisions (Water Rights)	46-1
Environmental Impact of Government Actions	34A-9
Groundwater and Wells	46-6
Hazardous Waste Management	34A-11
Petroleum Inspection and Release Compensation	34A-13
Safe Drinking Water	34A-3A
Solid Waste Management	34A-6
Water Pollution Control	34A-2
Weed and Pest Control	38-22

### **3.2 SD Administrative Rule**

Administrative Fees	74.08
Air Pollution	74:36:00
Asbestos Control Program	74:31:00
Compliance Procedures for Water Pollution Control	74:50:00
Groundwater Quality	74:54:00
Hazardous Waste	74:28:00
Petroleum Inspection and Release Compensation	74:32:00
Regulated Substance Discharge	74:34:00
Solid Waste	74:27:00
Surface Water Discharge Permits	74:52:00
Surface Water Quality	74:51:00
Underground Injection Control	74:55:00
Water Hygiene	74:04:00
Water Rights	74.02
Water Supply and Treatment Systems	74:53:00
Water System Operators	74.21

## 4.0 Additional References

The following are a selection of additional trade organizations and references that may govern the SDSTA's selection and installation of products:

ACGIH Threshold Limit Values

American Concrete Institute (ACI) – ACI-318

American Industrial Hygiene Association (AIHA)

American Institute of Steel Construction (AISC) – Manual of Steel Construction

American National Standards Institute (ANSI)

American Society for Testing and Materials (ASTM)

American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)

American Society of Mechanical Engineers (ASME)

American Water Works Association (AWWA)

Department of Transportation (DOT)

Institute of Electrical and Electronics Engineers (IEEE)

National Electrical Manufacturers Association (NEMA)

National Fire Protection Association (NFPA)

National Institute for Occupational Safety and Health (NIOSH)

National Institute of Standards & Technology (NIST)

Underwriters Laboratories, Inc. (UL)

## Appendix B – ORM Fee Schedule

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SDSTA shall pay for services performed by ORM personnel hereunder for actual hours worked using the following fee schedule, which is subject to change as provided below:

<u>Position Title</u>	<u>Rate</u>
Director	\$ <del>66.28</del> 70.49
State Risk Manager	\$ <del>45.64</del> 48.77
Risk Analyst	\$ <del>36.93</del> 39.55
Risk Analyst	\$ <del>40.59</del> 43.56
Risk Analyst	\$ <del>35.22</del> 38.57
Risk Analyst	\$ <del>34.22</del> 36.21
Risk Analyst	\$ <del>32.08</del> 36.03
Administrative Assistant	\$ <del>24.66</del> 25.00
Legal Counsel	\$ <del>60.30</del> 66.55

The parties acknowledge and agree that the fees payable on account of the above-described personnel are based on their respective rates of compensation paid by ORM, and that in the ordinary course of ORM's business those rates may change during the term of the Agreement. As often as ORM may reasonably request, ORM shall advise SDSTA of any such changes in writing. Absent written objection from SDSTA within thirty (30) days of such notice, the change in rate shall be deemed an amendment to the Agreement. Any notices given under this paragraph shall be attached to the Agreement and absent objection from SDSTA as provided herein shall become a part of the Agreement.

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**Confirm date and time of next meeting—Chairperson Casey Peterson**

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The next board meeting will be held on Thursday, September 22 beginning at 8:00 AM (Mountain Time).

2022 Regular Quarterly Board Schedule	
Thu, March 24	08:00 am (MT)
Thu, June 16	08:00 am (MT)
Thu, September 22	08:00 am (MT)
Thu, December 15	09:00 am (MT)

*South Dakota Science and Technology Authority / Sanford Underground Research Facility  
Education & Outreach Building (large conference room and zoom)  
630 E. Summit Street  
Lead, SD 57754  
Questions? Contact Mandy Knight, [mknight@sanfordlab.org](mailto:mknight@sanfordlab.org)  
Direct Line: 605.722.4022, Cell: 605.641.0475*

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**Recommended Action:**  
*Informational.*

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**Public Comments—Chairperson Casey Peterson**

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Reminder to ask guests who did not identify themselves at the beginning of the meeting to do so at this time.

Discuss any public comment request forms submitted.

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**Board Comments—Chairperson Casey Peterson**

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1. Dr. Ani Aprahamian
2. Mr. Dana Dykhouse, Vice-Chairperson
3. Dr. Chris Fall
4. Ms. Pat Lebrun, Secretary-Treasurer
5. Mr. Roger Musick
6. Mr. Ron Wheeler
7. Dr. Jim Rankin, Ex-officio member
8. Mr. Casey Peterson, Chairperson

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**Recommended Action:**

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**Adjourn—Chairperson Casey Peterson**

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*See recommended motion below.*

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**Recommended Action:**

*Motion to adjourn.*

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