

The Partnership for Assessment of Readiness for College and Careers (PARCC) Operational Assessments

Liquidated Damages

- A. Summary: Accurate and timely delivery is imperative and, as a result, the following provisions for liquidated damages for the failure to complete Consequential, Critical, and Extremely Critical Deliverables ("Liquidated Damages Deliverables") are defined in this SOW Attachment 1.
1. Availability of Liquidated Damages: The parties reasonably believe that Contractor's failure to provide Liquidated Damages Deliverables that conform to the specifications and delivery schedule for such Liquidated Damages Deliverables is likely to result in damage to the PARCC Governing State to which such Deliverable was due to be delivered.. Though the amount of such damage cannot reasonably or easily be calculated with certainty, the parties agree that the Liquidated Damages specified herein are the parties' reasonable anticipation of the amount of such damages at the time of entering into the contract. Liquidated Damages will be applicable and enforceable regardless of whether a PARCC Customer suffers actual damage.
 2. Exclusive Remedy: The assessment of Liquidated Damages shall be the exclusive remedy for late delivery by Contractor of Liquidated Damages Deliverables that conform to relevant specifications. However, this clause will not preclude breach of contract claims based not on late delivery of such Liquidated Damages Deliverables, but which instead are on based Contractor's ultimate failure to deliver conforming Liquidated Damages Deliverables before conclusion of the Notice and Correction Process specified below.
 3. Waiver: The PARCC Governing State may waive the imposition of an otherwise enforceable liquidated damages or a portion thereof in a given instance. Such waiver, in any instance, shall not constitute a waiver in any future instance, nor establish any right on behalf of the Contractor to a waiver. No waiver by the PARCC Governing State shall be effective unless expressed and in writing, and any such waiver will not act as a waiver of any other rights.
- B. Liquidated Damage Deliverables Notice and Acceptance Process:
1. Delivery, Review, and Acceptance or Rejection:
 - i. Delivery of Liquidated Damages Deliverables. When Contractor initially delivers a Liquidated Damages Deliverable that Contractor reasonably believes conforms to the relevant specification, Contractor also will provide the PARCC Governing State with written (electronic or other form acceptable to the customer) notice of such delivery (the "Conforming Delivery Notice.")
 - ii. Review for Conformity with Specification. Upon receipt of such Liquidated Damages Deliverable and Conforming Delivery Notice, the PARCC Governing State will review such Liquidated Damage Deliverable to determine whether it conforms to the relevant specification. The PARCC Governing State will be

- allowed a time period specified in the agreed upon project schedule for review of the applicable deliverable.
- iii. If the PARCC Governing State reasonably determines that such Liquidated Damage Deliverable does not conform to the relevant specification, the PARCC Governing State will provide written notice to Contractor specifying how the Deliverable fails to conform (the "Rejection Notice.")
 - iv. If the PARCC Governing State does not provide Contractor with a Rejection Notice within the time specified in the project schedule, the Deliverable will be deemed accepted.
2. Notice of Intent to Assess Liquidated Damages: In the event the PARCC Governing State intends to assess Liquidated Damages hereunder, it shall provide Contractor with written notice of such intent within five (5) days after (a) the date on the delivery schedule on which a Liquidated Damage Deliverable was due to be delivered to the PARCC Governing State, or (b) the date on which the PARCC Governing State reasonably issues a Rejection Notice. Such Notice of Intent to Assess Liquidated Damages shall state the basis for the assessment of Liquidated Damages.
- C. Liquidated Damages Cap: No PARCC Governing State may collect from Contractor, or withhold from payment to Contractor, Liquidated Damages of more than ten percent (10%) of its Annual Total Actual Compensation owed to Contractor pursuant to SOW Attachment 3. In addition, the aggregate assessment of Liquidated Damages from all sources may not exceed 10% of the sum of Annual State Total Contract Values for all PARCC Governing States, as determined pursuant to SOW Attachment 3.
- D. Collection of Liquidated Damages:
1. Liquidated Damages may be assessed at any time during the term of the Contract (subject to the provisions herein regarding proper notice, response to such notice, and dispute resolution.) However, in the event a proposed assessment (or the sum of total of all assessments at any given time) exceeds the Liquidated Damages Cap stated above, the liquidated damages shall not be due until the exact value of the applicable Liquidated Damages cap is determined. A PARCC Governing State, or (where applicable) the Procuring Agency, may collect Liquidated Damages from the Quarterly Retainage (as applicable). Liquidated Damages may be factored in to the Reconciliation process established in Paragraph (23) of SOW Attachment 3, Compensation. If it is determined that Contractor has paid Liquidated Damages in excess of the applicable Liquidated Damages Cap, the amount due to Contractor for such overpayment may be invoiced to the Procuring Agency in the final Monthly Invoice.
- E. Adjustment to Due Dates: For purposes of the deliverable due-dates included in this SOW Attachment 1, the following terms regarding due date adjustments shall apply:
1. Contractor Proposed Adjustments: In the event the Contractor wishes to propose a change of due date for a Liquidated Damages Deliverable, the Contractor may propose the change to the PARCC Governing State, in writing, for its consideration. The PARCC Governing State will use state specific as well as PARCC Consortium wide information to determine whether it can support such a delay. If the PARCC Customer agrees, the modified deadline shall be come the effective deadline for purposes assessing liquidated damages.

2. **PARCC Proposed Adjustments:** In the event the PARCC Governing State wishes to change a deadline for a Critical or Extremely Critical Work Task to a date which shortens the Contractor's time for meeting the deadline, it shall notify the Contractor of the new proposed deadline in writing. If the Contractor determines that by exercise of every reasonable effort, the Contractor will be unable to meet the new deadline, the Contractor shall offer a proposed shortened deadline which the Contractor can meet by the exercise of every reasonable effort. In the alternative, the Contractor may propose a contract amendment in which the additional personnel hours needed to achieve the shortened deadline are compensated by a price adjustment.
3. **PARCC Dependent Deliverables:** In the event of any delays by the PARCC Governing State in furnishing information, specifications, or dependent deliverables required for completion of a Liquidated Damage Deliverable(s), the due date for completion of the Liquidated Damage Deliverable shall be extended a reasonable amount of time attributable to the delay created by such occurrences or a new due date shall be negotiated. Contractor shall provide the PARCC Governing State and the PARCC Consortium with notice of any PARCC Dependent Deliverable delays during Weekly Program Management meetings.

F. Liquidated Damages Amounts:

1. **Calculation of Liquidated Damages.** Liquidated Damages will be calculated by multiplying the applicable Liquidated Damage by the number of days between (a) the date on which a conforming Liquidated Damage Deliverable was required to have been delivered, based on the agreed upon delivery schedule, and (b) the date on which a conforming Liquidated Damage Deliverable was accepted (or deemed accepted), less (c) any days comprising a relevant Review Period, as follows.
 - i. **Consequential Deliverables:** five hundred dollars (\$500) per day commencing the 3rd day after the Consequential Deliverable was required to have been delivered .
 - ii. **Critical Deliverables:** two thousand dollars (\$2,000.00) per day.
 - iii. **Extremely Critical Deliverables:** ten thousand dollars (\$10,000.00) per day.
2. **Apportionment of Liquidated Damages:**
 - i. Liquidated Damages will be apportioned by Governing State according to the reasonably estimated number of affected students in that state compared to the reasonably estimated number of affected students overall (for example, if 10% of the affected students are in State A, State A would be allocated 10% of the relevant Liquidated Damages.)
 - ii. For Liquidated Damages Deliverables that do not have specific student impacts, Liquidated Damages will be allocated by affected Governing State according to the each state's Annual State Student Testing Commitment as a percentage of the total of all affected states' Annual State Student Testing Commitment.
 - iii. Upon execution of this agreement, the parties agree to meet and negotiate in good faith the following issues pertaining to Liquidated Damages:
 1. Specifications for each Liquidated Damages Deliverable for which there is not a clear and complete specification set forth in the RFP and Contractor proposal.
 2. Appropriate Governing State Review Periods for each Liquidated Damages Deliverable.

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Deliverables		*Liquidated Damages Classification
Deliverables for Section V.A.1.B: Technology Requirements for Test Development		
1	Interoperability Conformance and Validation The Contractor will be responsible for creating and executing a quality assurance plan approved by the Partnership to validate that assessment items developed under this Contract conform to the Partnership's interoperability standards and will display, function, capture student responses, and score properly in an interoperable manner defined by the Partnership and the U.S. Department of Education, as detailed in Section V.B.1.	CRITICAL
Deliverables for Section V.A.1.C: Item Development Planning & Targets		
2	Deliver annually, all items, tasks, texts, stimulus materials, and scoring materials (including answer keys, rubrics, and plausible student responses matched to each of the score points on the rubrics) adhering to PARCC specifications described in Sections V.A.1.A.-V.A.1.D, including but not limited to: Contractor will develop items that allow for accessibility features and accommodations that preserve the constructs targeted for measurement in each assessment item in order to increase access for all students. Contractor will apply the appropriate interoperability tagging of accessibility features to ensure portability of delivery for the online delivery platform.	EXTREMELY CRITICAL
Deliverables for Section V.A.1.I: Test Development Specifications		
3	Deliver Annual Test Development Specifications	CONSEQUENTIAL
Deliverables for Section V.B.1: Technology Requirements		
4	Provide services and functionalities required in V.B.1, according to timeline agreed upon in baseline project schedule, for shared services system.	CRITICAL
5	Test registration that meets requirements and is available on-time, on first day of registration window for each administration	EXTREMELY CRITICAL
6	Begin online test delivery that meets requirements and is on-time for each assessment administration window no later than 7am ET	EXTREMELY CRITICAL
7	Provide item banking that meets requirements: support the secure management of assessment items at various stages of development and deployment, as well as descriptive item metadata, forms metadata, and test administration statistical metadata.	EXTREMELY CRITICAL
Deliverables for Section V.B.2.B: Security		
8	Deliver Security Plan	CONSEQUENTIAL
Deliverables for Section V.B.2.C: Test Form Construction		
9	Deliver Test Construction Specifications	CONSEQUENTIAL
10	Deliver Computer-Based Forms	CRITICAL
11	Deliver Paper-Based Forms	CRITICAL
Deliverables for Section V.B.2.D: Training Materials and Test Manuals		
12	Deliver Training Materials, includes coordinated communications related to test registration and test delivery with all PARCC	CONSEQUENTIAL

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	stakeholders as described in section V.B.1.	
13	Deliver Test Administration Manuals	CONSEQUENTIAL
Deliverables for Section V.B.2.E: Student Registration		
14	Provide Enrollment Reports by State, based on Student and Organizational Registration Data, after close of each administration registration window	CRITICAL
Deliverables for Section V.B.2.F: Print Materials		
15	Test Books and Answer Documents meet requirements	EXTREMELY CRITICAL
16	Mathematics Reference Sheets meet requirements	CRITICAL
Deliverables for Section V.B.2.F: Pre-Identification		
17	Deliver Pre-Identification Labels	CRITICAL
Deliverables for Section V.B.2.I: Packaging, Distribution, and Retrieval		
18	Deliver Large Print & Braille Materials	CRITICAL
19	Deliver Test Materials (includes test books, answer documents, mathematics reference sheets, manipulatives)	CRITICAL
Deliverables for Section V.B.2.J: Scanning and Editing Student Responses		
20	Upload images of paper-based and online student responses to Data Warehouse, with the exception of TEI items.	CRITICAL
Deliverables for Section V.B.2.K: Scoring		
21	Deliver Scoring Specifications	CONSEQUENTIAL
22	Deliver Handscoring Specifications	CONSEQUENTIAL
23	For each administration, deliver Rule-Based Frequency Distribution, Rangefinding Responses, Scoring Guides, Training Sets, Qualifying Sets, and Validity Sets	CRITICAL
Deliverables for Section V.B.2.M: Customer Support and Help Desk		
24	Integrate and Deliver Customer Support and Help Desk Services for Operational and Practice Tests (V.B.5)	See "Customer Call Center Liquidated Damages" Section
Deliverables for Section V.B.3: Automated Scoring		
25	Proof-of concept research design	CONSEQUENTIAL
26	Report of results of proof-of-concept study	CONSEQUENTIAL
27	Provide an annual report comparing AI and human scoring, including reliability and validity information.	EXTREMELY CRITICAL
Deliverables for Section V.B.5: Practice Tests and Release of Items		
28	Provide released items and modules, equivalent to two blueprint per content area, per grade for release each year. Released items and modules must include necessary permissions, as described in V.B.5. and meet delivery format, interoperability, and quality requirements.	CRITICAL
29	Meet annual requirements for on-time delivery of practice tests and scoring materials, as described in section V.B.5 of redline proposal. Scoring materials include answer keys, rubrics, anchor papers, and scoring rules for use with released items and practice tests.	CRITICAL
30	Provide computer-based and paper-based tutorial modules for each grade level/course, four per mode designed by grade-band	CONSEQUENTIAL

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Deliverables for Section V.C.1. Data Analysis		
31	Provide data analysis plan and specifications	CONSEQUENTIAL
32	Provide raw and processed data files, according to agreed file format.	EXTREMELY CRITICAL
Deliverables for Section V.C.2: Data Forensics		
33	Report summarizing findings of analyses described in the Data Forensics specifications no later than 2 months after the administration of the assessment.	CRITICAL
34	Database of proctors/classrooms, schools and districts that were flagged by statistical data forensic methods during the data analyses.	CRITICAL
Deliverables for Section V.C.4. Technology and Data Requirements		
35	Provide electronic student data files for uploading into PARCC's Data Management and Reporting System.	EXTREMELY CRITICAL
Deliverables for Section V.C.6. Technical Documentation for Assessment Administration		
36	Provide draft and final Technical Manual as specified in section V.C.6 of the redline proposal.	CONSEQUENTIAL
Deliverables for Section V.C.7. Quality Control		
37	Quality control systems verify the accuracy of the data processing, cleaning, and analyses.	EXTREMELY CRITICAL
Deliverables for Section V.D.2: Data Upload & Generating Reports		
38	Uploaded student and summary data files as stipulated in V.C.3 for each summative and retest administration into PARCC's Data Management and Reporting System, meeting requirements in section V.B.1 for conformance to PARCC interoperability standards and guidelines, section V.C.2 for organization of data within files, section V.C.4 for uploading to Data Management and Reporting System, and V.D.1 for design of student and summary data files.	EXTREMELY CRITICAL
39	Detailed reports on when scoring/reporting errors have been discovered and protocols for correcting the error	CRITICAL
Deliverables for Section V.D.3. Score Interpretation Guides		
40	Separate print-ready and web-based, interactive score interpretation guides, for each of the summative and retest assessments that are inclusive of the final-report designs.	CONSEQUENTIAL
41	Translated materials to interpret parent reports of up to 10 languages.	CONSEQUENTIAL
Deliverables for Section V.D.6. Paper-Based Student Reports		
42	Printed and delivered paper-based student reports	EXTREMELY CRITICAL
Deliverables for Section V.E.1 Standard Setting Timeline		
43	Development and implementation of all standard setting activities and materials following the agreed upon milestones for all activities and materials	CRITICAL
Deliverables for Section V.E.3. Standard Setting: Logistical Requirements		
44	Detailed workplan for all activities that lead to the approval of final standard setting method(s) by the Partnership	CONSEQUENTIAL

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Deliverables for Section V.E.5. Special Studies to Inform Standard Setting		
45	The final study plan three weeks in advance of the start of the study (as described in Table V.E.1).The final plan shall be approved by PARCC before the study is conducted.	CONSEQUENTIAL
46	All data (raw, or scored, or coded or processed) collected and processed for each study provided to PARCC in a digital format specified by PARCC upon execution of the contract.	CONSEQUENTIAL
47	Final study report within two weeks after the feedback for the draft report is provided or a date mutually-agreed upon by the Partnership and the Contractor	CRITICAL
Deliverables for Section V.E.6. Standard Setting Design & Implementation		
48	Detailed standard setting design and method(s) to be approved by PARCC GB and ACCR (by 6/10/2014) that includes information on training, use of empirical data, round-by-round implementation, panelist feedback, and evaluations and related documentation and presentations	CONSEQUENTIAL
Deliverables for Section V.E.7. Review of Cut Scores		
49	Final cut scores, impact data, decision consistency and accuracy, and variability (standard error) around cut scores and other relevant information in format to be approved by PARCC.	CRITICAL
Deliverables for Section V.E.8. Standard Setting Technical Documentation		
50	The Contractor shall complete the draft manual within 3 months of approval of final cut scores. PARCC will provide feedback on the draft and the Contractor shall complete the final report within 6 weeks of the PARCC feedback or a date mutually-agreed upon by the Partnership and the Contractor. In addition, Contractor shall include Quality control specifications as described in Section V.E.9	CONSEQUENTIAL
Deliverable for Section V.E.9. Quality Control		
51	Deliver quality control specifications to the Partnership that describe in detail all of the steps to be implemented to demonstrate that data input and resulting reports are correct and free of security breaches	CONSEQUENTIAL
Deliverables for Section V.F.1.C. Communications Management		
52	Deliver Annual Program Review, including Quality Metrics as described in V.F.1.F	CONSEQUENTIAL
Deliverables for Section V.F.1.G. Risk Management		
53	Deliver Monthly Risk Register	CONSEQUENTIAL

***Liquidated Damages Classifications:**

CONSEQUENTIAL - modest schedule of liquidated damages

CRITICAL - substantial schedule of liquidated damages

EXTREMELY CRITICAL - severe schedule of liquidated damages

Customer Call Center Liquidated Damage

Contractor may be assessed liquidated damages of \$50,000 for any calendar month that Contractor does not achieve, for at least ninety-five percent (95%) of the Service Hours in the calendar month:

- (a) an average speed to answer time of not greater than 5 minutes, and
- (b) a maximum speed to answer time of not greater than 10 minutes.

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In the event the Customer Satisfaction survey conducted at the end of the call in the first year of the contract results in at least 75% of all people that complete the survey indicating that the Contractor's customer service "met expectations" or "exceeded expectations" then the average speed to answer call time per hour can continue at five minutes in the second year of the contract. In the event the survey results indicate that less than 75% of all people that complete the survey indicate that the Contractor's customer service did not meet expectations, then the average speed to answer call time per hour will reduce to 3 minutes in the second year of the contract.

Item Edit Liquidated Damage

Pearson will utilize its current Item Bank to provide item development and review services during the 2014-15 and 2015-16 item development cycles. As part of the services, Pearson and PARCC will memorialize PARCC's required item edits in writing during item review meetings and make such edits to the items within the Item Bank. In the event Pearson neglects to make such edits in the Item Bank within the period of time provided for in the Project Schedule after a relevant item review meeting, Contractor may be assessed liquidated damages in the amount of \$350 for each item for which Pearson failed to make such required edits. This Liquidated Damage applies in the event the neglected edit is identified in advance of distribution of testing materials or online forms. In the event a neglected edit is identified after distribution of testing materials or forms, the applicable Liquidated Damage Deliverable in the table above shall be the remedy for such error.