

Appendix B Sub-Recipient Agreement Template

Grant Agreement Between

State of South Dakota
Department of Labor and Regulation
123 W. Missouri Ave.
Pierre SD 57501

Referred to as Sub-Recipient

☐ Referred to as State ☐

The State hereby enters in to an agreement for an award of (Federal) and/or (State) financial assistance to a subrecipient.

1. SUB-RECIPIENT'S South Dakota Vendor Number is _____; and Sub-Recipient's Dun & Bradstreet Universal Numbering System (DUNS) Number is _____. The pass through entity requirements as described in 2 CFR 200.331 are attached hereto as Exhibit A and incorporated herein. The information in Exhibit A may change without Sub-Recipient's consent if there is a change in the award or funding stream. In the event of a change, the State will provide updated information at least annually.

2. PERIOD OF PERFORMANCE:

- A. This agreement shall be effective as of _____ and shall end on _____, unless sooner terminated pursuant to the terms hereof.

- B. This agreement is the result of request for proposal process, RFP # _____

3. BASIS FOR SUBAWARD AMOUNTS:

This grant is made for the purpose of _____.

Amount provided by State/Grantor is	\$
Amount matched by Sub-Recipient	\$
Total Grant Amount	\$

Dollars provided by State/Grantor consist of the following:

Non-Federal State dollars	\$
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4. PROVISIONS (add an addendum if needed):

- A. The Sub-Recipient agrees to:

1. _____.

2. Does this agreement involve Protected Health Information (PHI)? YES () NO (X)
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the agreement (refer to attachment) .

- B. The State agrees to:

5. **PROPERTY MANAGEMENT STANDARDS:**

The Sub-Recipient agrees to observe Federal Government uniform standards governing the utilization of property whose cost was charged to a project supported by a Federal grant.

6. **TECHNICAL ASSISTANCE:**

The State agrees to provide technical assistance regarding the State's rules, regulations and policies to the Sub-Recipient and to assist in the correction of problem areas identified by the State's monitoring activities.

7. **LICENSING AND STANDARD COMPLIANCE:**

The Sub-Recipient agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Sub-Recipient will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Sub-Recipient's failure to ensure the safety of all individuals served is assumed entirely by the Sub-Recipient.

8. **ASSURANCE REQUIREMENTS:**

The Sub-Recipient agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive orders 12549 and 12689), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

9. **RISK ASSESSMENTS, SPECIFIC CONDITIONS AND REMEDIES**

Risk assessments will be ongoing throughout the project period. Sub-recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-recipient understands and agrees that the requirements under the grant award may change as a result of the risk assessment/monitoring process.

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including but not limited to: temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by sub-recipient, debarment or other remedies including civil and/or criminal penalties as appropriate.

10. **MONITORING PLAN AND REPORTING**

The Sub-recipient agrees to allow the State to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the State, monitoring may include on-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied.

11. RETENTION AND INSPECTION OF RECORDS:

The Sub-Recipient agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Sub-Recipient agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Sub-Recipient's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment under this Agreement shall be returned to the State within thirty days after written notification to the Sub-Recipient.

12. WORK PRODUCT:

Sub-Recipient hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Sub-Recipient in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Sub-Recipient without the written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Sub-Recipient agrees to return all information received from the State to State's custody upon the end of the term of this contract, unless otherwise agreed in a writing signed by both parties.

13. AUDIT REQUIREMENTS:

Sub-recipient must comply with all federal audit requirements, including: 2 CFR Part 200 Subpart F – Audit Requirements; and any other application law or regulation.

A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part. The audit shall be completed and filed with the State by the end of the eighth month following the end of the fiscal year being audited. The audit should be sent to:

SD Department of Labor and Regulation
Emily Ward, Director of Administrative Services
123 W. Missouri Ave.
Pierre, SD 57501

For nonprofit sub-recipients, if federal funds of \$750,000 or more in federal awards have been expended by the Sub-Recipient during the Sub-Recipient's fiscal year, the audit shall be conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Audits shall be completed and filed with the Department of Legislative Audit by the end of the eighth month following the end of the fiscal year being audited. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
A-133 Coordinator
427 South Chapelle
c/o 500 East Capitol
Pierre, SD 57501-5070

For either an entity-wide, independent financial audit or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the Department or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely satisfied.

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business for audit by personnel authorized by the State. The State and/or federal agency has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

14. COST PRINCIPLES:

Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

15. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

16. FUNDING:

This contract depends upon the continued availability of appropriated 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 the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

17. AMENDMENTS:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto. The Sub-Recipient agrees to amend this Agreement in order to comply with new rules of the State Board of Internal Control as promulgated in accordance with SDCL §1-56-3, or with changes to the Uniform Administrative Rules of 2 CFR Part 200.

18. CONTROLLING LAW:

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit

pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

19. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

20. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

21. IT STANDARDS:

Sub-Recipient warrants that if any software and hardware is developed or purchased for the state it will be in compliance with the BIT Standards including but not limited to the standards for security, file naming conventions, executable module names, Job Control Language, systems software, and systems software release levels, temporary work areas, executable program size, forms management, network access, tape management, hosting requirements, administrative controls, and job stream procedures prior to the installation and acceptance of the final project. BIT standards can be found at <http://bit.sd.gov/standards/>.

22. 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 _____ on behalf of the State, and by and to the Sub-Recipient, 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 notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

23. SUBCONTRACTORS/SUB-SUB-RECIPIENTS:

The Sub-Recipient will not use subcontractors or sub--recipients to perform work under this agreement without the express prior written consent from the State. The State reserves the right to reject any person from the contract presenting insufficient skills or inappropriate behavior.

The Sub-Recipient will include provisions in its subcontracts or sub-grants requiring its subcontractors and/or sub-Sub-Recipients to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Sub-Recipient will cause its subcontractors, sub-recipients, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors and or sub-recipients. The Sub-Recipient is required to assist in this process as needed.

24. HOLD HARMLESS:

The Sub-Recipient agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Sub-Recipient to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

25. INSURANCE:

Before beginning work under this Agreement, the Sub-Recipient shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Sub-Recipient, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Sub-Recipient agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Sub-Recipient shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

The Sub-Recipient shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

The Sub-Recipient shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Worker's Compensation Insurance:

The Sub-Recipient shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

The Sub-Recipient agrees to procure and maintain professional liability insurance with limit not less than \$1,000,000.

26. CONFLICT OF INTEREST:

Sub-Recipient agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

27. TERMS:

By accepting this agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written Approval by the State shall be in violation of the terms of this agreement, and the agreement shall be subject to termination.

28. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Sub-Recipient certifies, by signing this agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

29. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Sub-Recipient by the State. Sub-Recipient acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Sub-Recipient shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Sub-Recipient is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Sub-Recipient shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Sub-Recipient; (ii) was known to Sub-Recipient without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Sub-Recipient without the benefit or influence of the State's information; (v) becomes known to Sub-Recipient without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Sub-Recipient understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State of the information disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the agreement except as required by applicable law or as necessary to carry out the terms of the agreement or to enforce that party's rights under this agreement. Sub-Recipient acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws, including but not limited to posting this Agreement on the State's website. If work assignment performed in the course of this Agreement required security requirements or clearance, the Sub-Recipient will be required to undergo investigation.

Sub-recipient acknowledges that the State shares general information, including performance information, about Sub-recipient among and between other State agencies upon request of such agencies for the purpose of making determinations of the risk involved with potential, subsequent grant awards and for other purposes. Sub-recipient expressly consents and agrees to such uses by the State.

30. RECIPIENT, SUB-RECIPIENT ATTESTATION

By signing this Agreement, Recipient or Sub-Recipient attests to the following requirements as set forth in SDCL § 1-56-10:

- (A) A conflict of interest policy is enforced within the recipient's or sub-recipient's organization;
- (B) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website;
- (C) An effective internal control system is employed by the recipient's or sub-recipient's organization; and

(D) If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were raised and addressed by the State prior to signing this Agreement.

In the event of a significant change in the conflict of interest policy, sub-recipient agrees to provide immediate notice of such change to the State, and provide a copy of the new conflict of interest policy. Sub-recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

31. CLOSEOUT

A. For purposes of this Agreement, "Date of Completion" shall mean the date when the Agreement expires pursuant to its terms or is terminated in accordance with paragraph 15.

B. The Sub-Recipient shall submit a final financial report to the State. Within the limits of the Agreement amount, the State may make upward or downward cost adjustments on the basis of the information contained in the report. Agreement obligations will remain in force until all final reports are reviewed and approved by the State.

C. The Sub-Recipient, along with the final financial report, will refund to the State any unexpended funds or unobligated (unencumbered) cash advances.

D. All outstanding obligations (encumbered funds) which have not been paid out as of the Date of Completion must be liquidated prior to the submission of the final report.

E. Whether or not audits were conducted during the Agreement term, a final financial and compliance audit may be initiated up to three years after the Agreement completion date beginning with the date the Sub-Recipient submits the final reports.

F. If either the final financial report or the final audit discloses an overpayment to the Sub-Recipient, the State may, at its option, either require the Sub-Recipient to repay the overpayment by the State or deduct the amount of overpayment from monies due the Sub-Recipient under this Grant Agreement or under any other Agreement between the Sub-Recipient and the State.

G. The Sub-Recipient shall provide, along with the final financial report, a written accounting of property acquired with Agreement funds or received from the State.

32. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

Sub-Recipient Signature

Date

State - Cabinet Secretary

Date

DLR Program Contact Person _____
Phone _____

DLR Fiscal Contact Person _____
Phone _____

Sub-Recipient Program Contact Person _____
Phone _____
Email Address _____

Sub-Recipient Fiscal Contact Person _____
Phone _____
Sub-Recipient Fiscal Email Address _____

Exhibit A

State Agency _____

Program Name _____

CFDA # _____

Name of Entity Receiving Funds _____

Contract / Agreement Number _____

Funding Source(s) _____

RFP Number (if applicable) _____

(1) Federal Award Identification:

(i) Sub-recipient name (which must match the name associated with its unique entity identifier):

(ii) Sub-recipient's unique entity identifier: _____

(iii) Federal Award Identification Number (FAIN): _____

(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency: _____

(v) Sub-award Period of Performance Start and End Date: _____

(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the sub-recipient:

(vii) Total Amount of Federal Funds Obligated to the sub-recipient by the pass-through entity including the current obligation: _____

(viii) Total Amount of the Federal Award committed to the sub-recipient by the pass-through entity:

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA): _____

(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity: _____

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement: _____

(xii) Identification of whether the award is R&D: _____

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs): _____

For items below enter requirements or list specific section of grant agreement that includes these requirements.

(2) All requirements imposed by the pass-through entity on the sub-recipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award

(3) Any additional requirements that the pass-through entity imposes on the sub-recipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports: _____

(4) An approved federally recognized indirect cost rate negotiated between the sub-recipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the sub-recipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f): _____

(5) A requirement that the sub-recipient permit the pass-through entity and auditors to have access to the sub-recipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part: _____ [Already in base agreement]

(6) Appropriate terms and conditions concerning closeout of the sub-award: _____ [Already in base agreement]

§200.501 Audit requirements

A non-federal entity that expends \$750,000 or more of Federal awards during the fiscal year is subject to the audit requirements of 2 CFR 200.501 _____ [Already in base agreement]

State Agency Review / Approval _____
(Enter name of person approving) (Date)

Comments:
