



**STATE OF OKLAHOMA STATEWIDE CONTRACT NO. 1023 WITH IMAGINE
LEARNING, LLC**

This State of Oklahoma Statewide Contract #1023 - Online Course Curriculum for K-12 Education (“Contract”) is entered into between the State of Oklahoma by and through the Office of Management and Enterprise Services (“State”) and Imagine Learning, LLC (“Supplier”) and is effective as of the date of last signature to this Contract. The initial term of the Contract shall be for 1 year with six (6) one-year options to renew.

Purpose

The State is awarding this Contract to Supplier for the provision of online course curriculum and other digital tools to enhance K-12 education, as more particularly described in certain Contract Documents. Supplier submitted a proposal with no BAFO or master terms. The proposal contained additional terms and exceptions to the Solicitation. This Contract memorializes the agreement of the parties with respect to the negotiated terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Statewide Contract Terms, Attachment C;
 - 2.4. Information Technology Terms, Attachment D;
 - 2.5. Additional Terms, Attachment E1;
 - 2.6. Master Terms, Attachment E2;
 - 2.7. Pricing, Attachment E3;
 - 2.8. Value Add, Attachment E4;
 - 2.9. Third Party Terms, Attachment E5;
 - 2.10. Service Level Agreement; E6; and
 - 2.11. Exceptions, Attachment F.

3. The parties additionally agree:

3.1. Except for financial information and information deemed confidential by the State pursuant to applicable law, rule, regulation, or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.

3.2. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.

3.3. Any other third-party product terms and conditions or clauses in an electronic license, subscription, maintenance, support, or similar agreement shall be binding only upon the State's written acceptance of those additional terms.

3.4. The Supplier's response to Specifications and Requirements are incorporated by reference into this Contract.

3.5. To the extent any terms or conditions in the vendor's document Attachments E1 through E6 conflict with applicable terms in Attachments A through D and F the terms in Attachments A through D and F shall control.

4. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

STATE OF OKLAHOMA
by and through the
OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES

IMAGINE LEARNING, LLC

By: 
Joe McIntosh Jul 30, 2024 15:28 CDT

Name: Paul McIntosh

Title: CIO

Date: Jul 30, 2024

By: 
Leslie Curtis Jul 30, 2024 09:32 PDT

Name: Leslie Curtis

Title: SVP and Chief Experience Officer

Date: Jul 30, 2024

ATTACHMENT A
EVENT NO. 00000425

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded by the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract Document.

PURPOSE

The Contract is awarded as a statewide contract on behalf of the Information Services Division (ISD) is seeking qualified suppliers for providing online course curriculum and other digital tools to enhance K-12 education. Oklahoma Statute 70-1-111 makes supplemental learning opportunities available to local school district students using online technology in a nontraditional classroom setting.

Contract Term and Renewal Options

The initial Contract term, which begins on effective date of Contract, is one year and there are Six (6) one-year options to renew the Contract to run consecutive with SW1023.

Scope

To have products listed with the Horizon Consortium, vendors must first be approved as supplier through the Oklahoma Management and Enterprise System (OMES). Potential vendors must respond to this Request for Proposal (RFP) and provide all required documentation according to the deadline listed in the RFP solicitation.

- 1) Bidders must agree to abide by the following:
 - a) Oklahoma Online Course Catalog
 - i) Upon execution of contract, bidder will provide to Horizon all relevant information needed to complete required fields in the Oklahoma Online Course Catalog. Entries must be verified annually.
- 2) Course review requirements
 - a) Online Course Providers must supply the following at the time of course review:
 - i) The name of the institution or organization providing the online content;
 - ii) Course title and subject code (using appropriate course title and subject code as established by the Oklahoma State Department of Education's approved Subject Codes for the appropriate academic year);
 - iii) Number of students who may be admitted to the course per instructor;

- iv) Explanation of the alignment between Oklahoma content standards and course content and assignments;
 - v) Instructor credentials and qualifications;
 - vi) Course NCAA eligibility status.
- 3) At the time of the course review, guest access to the course will be required for the reviewers. If substantive changes are made to a course since its last certification, it must be submitted for review regardless of its current status in the review cycle. Substantive changes would include altering the intended course outcomes, significantly changing instructional strategies or assessment protocols used in the course as a whole, or any revision that impacts standards alignment. Only courses certified (or pending review) by the Statewide Virtual Charter School Board will be accepted into the Oklahoma Online Course Catalog.
 - 4) Course Providers whose courses have undergone review and approval by a recognized third-party entity must provide the results of those reviews. Depending on the results of the external review, a course may be recommended for state certification with no additional review or with a modified review process (e.g. review only for alignment to state standards).
 - 5) Course Providers of Advanced Placement (AP) courses must provide the results of their College Board AP Course Audit and Authorization. No other course evaluation will be conducted for AP Courses. If a course is authorized by the College Board as an AP course, it is automatically listed as “state-certified” in the Oklahoma Online Course Catalog. Online Providers must provide evidence annually of AP Authorization Renewal.
 - 6) Course review and certification process
 - 7) All approved vendors will have the online courses they submitted published in the Oklahoma Online Course Catalog and reviewed according to the schedule adopted by HORIZON.
 - 8) Course reviews will be conducted by content experts and pedagogical experts selected by Horizon. Courses will be evaluated using rubrics to determine alignment with the current academic standards approved by the State of Oklahoma (or nationally/ internationally accepted content standards set for courses whose content is not included in state standards) and national standards for quality in online course design. Course Providers whose courses have undergone review and approval by a recognized third-party entity must provide the results of those reviews. Depending on the results of the external review, a course may be recommended for state certification with no additional review or with a modified review process (e.g. review only for alignment to state standards). Online Course Providers of Advanced Placement (AP) courses must provide the results of the AP Course Audit and Authorization. No other course evaluation will be conducted for AP Courses. Online Providers must provide evidence annually of AP Authorization Renewal.
 - 9) If results of the initial review suggest that a course will not be recommended for certification, the Course Provider will be contacted with the review results and will have fifteen (15) calendar days to revise material or provide additional information pertinent to the review. These revisions will be examined by the course reviewers and, if appropriate, the rubric scores will be modified. Once the course review is complete, results of the evaluation will be presented to the Statewide Virtual Charter School Board (SVCSB). Horizon will consider the evidence and vote whether to certify or not certify the course. The decision will be made on a simple majority vote. If Horizon votes to not certify a course, the course will be removed from the Oklahoma Online Course Catalog and the Course Provider will be notified of the reasons the course was not certified. The Course Provider may revise the course and resubmit for additional Course Review and certification consideration. Resubmitted courses will be

reviewed after all submitted courses have undergone an initial review. Courses approved will be certified for a five-year period. After which, Course Providers must apply for renewal. Certified courses will be identified as such and have their course review ratings published in the Oklahoma Online Course Catalog available on the OSOCP website. Courses pending review will be identified as such in the Oklahoma Online Course Catalog.

- 10) Certified courses remaining in good standing
- 11) To remain in good standing and have a course(s) continuously listed in the Oklahoma Online Course Catalog through the entirety of the approval period, Course Providers agree to:
- 12) Maintain their vendor status.
- 13) Notify Horizon of any additions, deletions or changes to certified courses by completing the online form located on the OSOCP website.
- 14) Serve all enrolled students, regardless of number enrolled in a section so that Receiver Districts have reliable course options for students.
- 15) Provide online instructors who are 1) certified in Oklahoma or another state to teach in the content area of the course offered; or 2) a faculty member at an accredited institution of higher education, possessing the specific content expertise necessary to teach the course. Additionally, the Course Provider shall supply certification or applicable credentialing documentation to Horizon as part of the course review process and within ten (10) working days upon the hire of any new instructors for any certified course. The Course Provider shall be responsible for such obligation regardless of whether instructors are employees of the Course Provider, independent contractors, or employees of a third-party course vendor. Course Providers shall take all steps necessary to verify the qualifications of non-employee instructors.
- 16) Notify SVCSB in writing within ten (10) working days if for any reason an online instructor no longer meets the requirements to teach a course offered. The name and credentials of the replacement instructor must also be provided at that time.
- 17) Refer only to courses currently certified and listed in the Oklahoma Online Course Catalog as “Statewide Virtual Charter School Board approved.”
- 18) Own, secure, and/or maintain licensure and copyright for all courses offered in the Oklahoma Online Course Catalog.
- 19) Course Providers of Advanced Placement (AP) courses must provide evidence annually of AP Authorization Renewal.
- 20) Refrain from significantly modifying or changing courses without prior notice and approval from Horizon. Course Providers shall provide written notice of any planned modification in sufficient detail for SVCSB Course Reviewers to determine whether the course continues to satisfy all requirements. Failure to obtain written approval may result in removal of the course from the approved catalog.
- 21) Ensure that each certified course is maintained throughout the duration that the course is offered and continues to meet the current academic standards approved by the State of Oklahoma; national standards for quality in online course design; and Oklahoma’s Information Technology Accessibility Standards.
- 22) Employ the appropriate course title and subject code as established by the Oklahoma State Department of Education’s approved Subject Codes for the appropriate academic year for the purpose of data collection.
- 23) Report aggregate student success data to the SVSCB in the requested format and by the timeline set. Horizon does not collect individual student information. By August 1 of each

year, the Course Provider will report the following aggregate student success data to Horizon:

- (1) Total number of unique Oklahoma students;
 - (2) Total number of courses taken by Oklahoma students;
 - (3) Number of students in each course (both overall number and Oklahoma students);
and
 - (4) Successful completion rate (number and percent) of each course (i.e. X#/60% of students enrolled in X successfully completed the course). Include both overall rates and Oklahoma-specific rates.
- 24) Course providers will be notified if a course(s) is found to be noncompliant and will have fifteen (15) business days after notification to bring the course(s) into compliance. If the course(s) is still noncompliant at the end of this period, the course certification will be revoked and the course will be removed from the Oklahoma Online Course Catalog.
 - 25) Process for course certification renewal
 - 26) Courses that remain in good standing are certified for a period of five years. Course Providers may apply for renewal of their course certification six months prior to the completion of the course approval period.
 - 27) Course Providers will notify Horizon of their intent to apply for renewal by submitting all documents listed in the Course Review Requirements. Course Providers who have maintained their "good standing" status throughout the course approval period will have their courses reviewed and considered for certification following a similar procedure as their initial Course Review and Certification Process. Aggregate student success data will be considered in renewal decisions. Additionally, Horizon may survey districts to collect satisfaction data and those data may also be considered in renewal decisions.
 - 28) Course Providers who have not maintained a "good standing" status must provide documentation explaining the lapse in "good standing" status and the protocols that are in place to prevent such a lapse in the future.

Exhibit #1

Requirements

1. Mandatory Requirements for Digital Tool Providers

- a. At the time of RFP submission, digital tool vendors must submit a list of digital resources they wish to include in the Horizon Consortium toolkit. The list should include:
 - i. The product name
 - ii. How the product interfaces with other technologies, including minimum operational requirements
 - iii. The product price. Each product offered through the Horizon Consortium must be offered at a price that does not exceed the lowest price at which the product is offered for use or sale to any state, public school, or school district in the United States. The price of any item or service must automatically be reduced to the extent that, and at the same time as, the price is reduced or offered for a lesser fee elsewhere in the United States.

2. Mandatory Requirements for Online Course Providers

- a. Courses for Submission
 - i. At the time of RFP submission, course providers must submit a list of courses they wish to include in the Oklahoma Online Course Catalog. The list should include:
 - a) The course title
 - b) Whether the course delivery format is content-only, instructor-embedded, or both
 - c) The course price). Each course offered through the Oklahoma Online Course Catalog must be offered at a price that does not exceed the lowest price at which the course is offered for use or sale to any state, public school, or school district in the United States. The price of any course or item or service for the course must automatically be reduced to the extent that, and at the same time as, the price is reduced or offered for a lesser fee elsewhere in the United States. A course or item or service for the course must be provided free of charge or at a price discount to the same extent that it is provided to any state, public school, or school district anywhere in the United States.
- b. Hosted Solution Security
 - i. Course Providers acknowledge and agree to the following with their bid submission; all prospective vendors must answer the following questions in their responses:
 - a. Does the vendor or supplier have an information security policy in place? If so, please provide a copy
 - b. Does the vendor or supplier provide information security awareness training? If so, please describe the information covered and the frequency at which the training is required.

- c. Does the vendor or supplier separate physical access between their suppliers, vendors from the access that employees have?
- d. Is an inventory or register maintained with the assets associated with each information system? If so, please describe.
- e. Are the security roles and responsibilities outlined in the Organizations Information Security Policy documented? If so, please tell us what section in the document provided above.
- f. Were verification checks performed on permanent staff at the time of job applications? If so, please describe the verifications completed.
- g. Did these pre-employment checks include character reference, confirmation of academic and professional qualifications, and independent identity checks?
- h. Were employees required to sign a Confidentially or Non-disclosure Agreements as part of their initial terms and conditions of employment? Is so, please provide a copy of a blank agreement.
- i. Is there a procedure in place to report security incidents through management channels as quickly as possible? If so, please describe.
- j. What physical border security facilities (such as card control entry gates, walls, or manned reception areas) have been implemented to protect the information processing service?
- k. Have controls been adopted to minimize risk from potential threats such as theft, fire, explosives, smoke, water, dust, vibration, chemical effects, electrical supply interfaces electromagnetic radiation flood, etc.? If so, please describe.
- l. Are there policies and procedures such as back-up, equipment maintenance etc. in place? If so, please describe.
- m. Are audit logs maintained for any changes made to the productions programs?
- n. Is there a managed process in place for developing a maintained business continuity throughout the organizations? This might include organizational wide business plan, regular testing and updating of the plan, formulating documenting a business continuity strategy, etc. If so, please describe.
- o. Have all relevant statutory, regulatory, and contractual requirements been explicitly defined and documented for each information system? If so, please describe.
- p. Does the organization undergo regular risk assessments for security threats and risks as well as compliance to security and regulatory policies? If so, please describe.

c. Additional Documentation to be provided as applicable

- i. Any bid shall include, as applicable, hosting provisions, Service Level Agreements (SLA's), Billing Information, Documentation, Training Account Team/Support Provision, Escalation Process and Pricing for each service. Such provisions, SLA's and other information are subject to negotiations and

additional provisions related to hosting services and SLA's may be required prior to any award being issued.

- a. A Service Level Agreement (SLA) outlines the minimum service that a customer may expect for services, warranties, and support.
- b. Billing Information outlines what information is provided in billing and how it is delivered.
- c. Documentation outlines how detailed documents of services that are provided to entities on an on-going basis to include services by location and account information can be obtained.
- d. Training outlines the general requirements for providing training for implementing and using the solution at the End-User level and at Administrative/Operational Personnel levels.
- e. Account Team and Support Provisions outline the Suppliers capabilities of providing world class support and account service.
- f. Escalation Process outlines the predetermined levels of escalation in the event of an emergency.

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

This State of Oklahoma General Terms (“General Terms”) is a Contract Document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract Document, Supplier and State agree to the following General Terms:

1 Scope and Contract Renewal

- 1.1** Supplier may not add products or services to its offerings under the Contract without the State’s prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier’s performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract Documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Addendum. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4** The State may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the State exercises such option to extend ninety (90) days, the State shall notify the

Supplier in writing prior to Contract end date. The State, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

- 1.5 Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

2 Contract Effectiveness and Order of Priority

- 2.1 Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until the Contract is effective.

- 2.2 Contract Documents shall be read to be consistent and complementary. Any conflict among the Contract Documents shall be resolved by giving priority to Contract Documents in the following order of precedence:

- A. any Addendum;
- B. any applicable Solicitation;
- C. any Contract-specific terms contained in a Contract Document including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
- D. the terms contained in this Contract Document;
- E. any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation or applicable law;
- F. any statement of work, work order, or other similar ordering document as applicable; and
- G. other mutually agreed Contract Documents.

- 2.3 If there is a conflict between the terms contained in this Contract Document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms provided by Supplier shall not take priority over this Contract Document or

Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Addendum.

2.4 Any Contract Document shall be legibly written in ink or typed. All Contract transactions, and any Contract Document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

3 **Modification of Contract Terms and Contract Documents**

3.1 The Contract may only be modified, amended, or expanded by an Addendum. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.

3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.

4 **Definitions**

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

4.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.

4.2 **Addendum** means a mutually executed, written modification to a Contract Document.

4.3 **Amendment** means a written change, addition, correction or revision to the Solicitation.

4.4 **Bid** means an offer a Bidder submits in response to the Solicitation.

- 4.5 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.6 **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract Documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 4.7 **Contract Document** means this document; any master or enterprise agreement terms entered into between the parties that are mutually agreed to be applicable to the Contract; any Solicitation; any Contract-specific terms; any Supplier's Bid as may be negotiated; any statement of work, work order, or other similar mutually executed ordering document; other mutually executed documents and any Addendum.
- 4.8 **Customer** means the entity receiving goods or services contemplated by the Contract.
- 4.9 **Debarment** means action taken by a debaring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 4.10 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.
- 4.11 **Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 4.12 **Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.13 **Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 4.14 **OAC** means the Oklahoma Administrative Code.
- 4.15 **OMES** means the Office of Management and Enterprise Services.

- 4.16 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.17 State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 4.18 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 4.19 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 4.20 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 4.21 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract Document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created,

prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5 Pricing

- 5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 5.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

6 Ordering, Inspection, and Acceptance

- 6.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.
- 6.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-5, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 6.3** Supplier shall deliver products and services on or before the required date specified in a Contract Document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract Document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.
- 6.4** Product warranty and return policies and terms provided under any Contract Document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

7 Invoices and Payment

7.1 Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.
- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F.** Supplier shall have no right of setoff.
- G.** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.
- H.** The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.

8 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

8.1 As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set

forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a thirty (30) day notice of cancellation and name the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$5,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$5,000,000 combined single limit each accident;
- D.** Directors and Officers Insurance which shall include Employment Practices Liability as well as Consultant's Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than \$5,000,000 per occurrence;
- E.** Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and
- F.** Additional coverage required in writing in connection with a particular Acquisition.

- 8.2** Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.
- 8.3** Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

9 Compliance with Applicable Laws

- 9.1** As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:
- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
 - B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
 - C.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;
 - D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
 - E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;

- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
 - G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
 - H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify;
 - I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
 - J.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- 9.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at <https://oklahoma.gov/omes/services/information-services/policy-standards-publications.html>. Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 9.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.4** In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory

contract provisions required in connection with the receipt of federal funds or other funding source.

- 9.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 9.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.
- 9.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 9.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.
- 9.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 9.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format

usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

10 Audits and Records Clause

- 10.1** As used in this clause and pursuant to 67 O.S. §203, “record” includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 10.2** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
- 10.3** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

11 Confidentiality

- 11.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer’s prior express written

permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.

- 11.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 11.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll free telephone call center services.
- 11.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 11.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents,

representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.

11.6 The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

11.7 Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) résumé, pricing or marketing materials provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

12 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is

related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

13 Assignment and Permitted Subcontractors

13.1 Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.

13.2 Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

13.3 If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to

the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

13.4 All payments under the Contract shall be made directly to the Supplier, except as provided in subsection A above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.

13.5 Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

14 Background Checks and Criminal History Investigations

Prior to the commencement of any services, background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to the State in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or services.

15 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property,

copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

16 Indemnification

16.1 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.

- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

16.2 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

16.3 Notice and Cooperation

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

16.4 Coordination of Defense

In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally

participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

16.5 Limitation of Liability

- A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.
- B.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- C.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

17 Termination for Funding Insufficiency

- 17.1** Notwithstanding anything to the contrary in any Contract Document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

17.2 Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.

17.3 The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

18 Termination for Cause

18.1 Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.

18.2 The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.

18.3 Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence

of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

18.4 The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-9 is an example.

19 Termination for Convenience

19.1 The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.

19.2 Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but

there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

20 Suspension of Supplier

20.1 Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.

20.2 Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

20.3 Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract.

A determination that Supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

22 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

23 Force Majeure

23.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

23.2 Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

23.3 Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay

or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

24 Security of Property and Personnel

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

25 Notices

All notices, approvals or requests allowed or required by the terms of any Contract Document shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the physical address set forth below. Notice information may be updated in writing to the other party as necessary. Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall not be delivered solely via e-mail.

If sent to the State:

State Purchasing Director
2401 N. Lincoln Blvd., Suite 116
Oklahoma City, Oklahoma 73105

With a copy, which shall not constitute notice, to:

Purchasing Division Deputy General Counsel
2401 N. Lincoln Blvd., Suite 116
Oklahoma City, Oklahoma 73105

26 Miscellaneous

26.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract Documents, in the singular or in the aggregate, shall be governed by the laws of the State without regard to application of choice of law principles. Pursuant to 74 O.S. §85.14, where federal granted funds are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents, shall be in Oklahoma County, Oklahoma.

26.2 No Guarantee of Products or Services Required

The State shall not guarantee any minimum or maximum amount of Supplier products or services required under the Contract.

26.3 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

26.4 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

26.5 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

26.6 Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 *et seq.* Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required.

26.7 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

26.8 Mutual Responsibilities

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

26.9 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or

condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

26.10 Severability

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

26.11 Section Headings

The headings used in any Contract Document are for convenience only and do not constitute terms of the Contract.

26.12 Sovereign Immunity

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State.

26.13 Survival

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract Documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

26.14 Entire Agreement

The Contract Documents taken together as a whole constitute the entire agreement between the parties. No statement, promise, condition,

understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract Document shall be binding or valid. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

26.15 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent, or another representative violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

26.16 Import/Export Controls

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

ATTACHMENT C

OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

- 1.1** The Contract is a non-mandatory statewide contract for use by State agencies. Additionally, the Contract may be used by any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department or other entity designated to act on behalf of the political subdivision; a state, county or local governmental entity in its state of origin; and entities authorized to utilize contracts by the State via a multistate or multigovernmental contract.
- 1.2** The Contract is a firm, fixed price contract for indefinite delivery and quantity for the Acquisitions available under the Contract.

2. Orders and Addendums

- 2.1** Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations may be required.
- 2.2** Any ordering document shall be effective between Supplier and the Customer only and shall not be an Addendum to the Contract in its entirety or apply to any Acquisition by another Customer.
- 2.3** Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Addendum to the Contract shall be signed by the State Purchasing Director or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.

3. Termination for Funding Insufficiency

In addition to Contract terms relating to termination due to insufficient funding, a Customer may terminate any purchase order or other payment mechanism if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. The determination by the Customer of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

4. Termination for Cause

In addition to Contract terms relating to termination for cause, a customer may terminate its obligations, in whole or in part, to Supplier if it has provided Supplier with written notice of material breach and Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. The Customer may also terminate a purchase order or other payment mechanism or Supplier's activities under the Contract immediately without a thirty (30) day written notice to Supplier, if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements if such non-compliance relates or may relate to Supplier provision of products or services to the Customer or if Supplier's material breach is reasonably determined (i) to be an impediment to the function of the Customer and detrimental to the Customer, or (ii) when conditions preclude the thirty (30) day notice.

5. Termination for Convenience

In addition to any termination for convenience provisions in the Contract, a Customer may terminate a purchase order or other payment mechanism for convenience if it is determined that termination is in the Customer's best interest. Supplier will be provided at least thirty (30) days' written notice of termination.

6. Contract Management Fee and Usage Report

6.1 Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the

right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

6.2 While Supplier is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

6.3 All Contract Usage Reports shall meet the following criteria:

- i.** Electronic submission in Microsoft Excel format to strategic.sourcing@omes.ok.gov;
- ii.** Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;
- iii.** Submission no later than forty-five (45) days following the end of each calendar quarter;
- iv.** Contract quarterly reporting periods shall be as follows:
 - a.** January 01 through March 31;
 - b.** April 01 through June 30;
 - c.** July 01 through September 30; and
 - d.** October 01 through December 31.
- v.** Reports must include the following information:
 - a.** Procuring entity;
 - b.** Order date;

- c. Purchase Order number or note that the transaction was paid by Purchase Card;
- d. City in which products or services were received or specific office or subdivision title;
- e. Product manufacturer or type of service;
- f. Manufacturer item number, if applicable;
- g. Product description;
- h. General product category, if applicable;
- i. Quantity;
- j. Unit list price or MSRP, as applicable;
- k. Unit price charged to the purchasing entity; and
- l. Other Contract usage information requested by the State.

6.4 Payment of the contract management fee shall be delivered to the following address within forty-five (45) calendar days after the end of each quarterly reporting period:

State of Oklahoma
Office of Management and Enterprise Services, Central Purchasing
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

To ensure payment is properly accounted for, Supplier shall provide the following information with payment: (i) reference to the applicable Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s) and the amount of the contract management fee being paid for each contract number.

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act (“The Act” or “Act”), OMES- Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

1 DEFINITIONS

- 1.1 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier. Customer Data includes both Non-Public Data and Personal Data.
- 1.2 **Data Breach** means the unauthorized access or the reasonable suspicion of unauthorized access, by an unauthorized person that results in the use, destruction, loss, alteration, disclosure, or theft of Customer Data.
- 1.3 **Host** includes the terms Hosted or Hosting and means the accessing, processing or storing of Customer Data.
- 1.4 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.5 **Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.
- 1.6 **Personal Data** means Customer Data that contains 1) any combination of an individual’s name, social security numbers, driver’s license, state/federal identification number,

account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.

- 1.7 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, loss, theft, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.8 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State. A Supplier with whom the State enters into an awarded Contract shall also be known as a Contractor.
- 1.9 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 1.10 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.

2 TERMINATION OF MAINTENANCE AND SUPPORT SERVICES

Customer may terminate maintenance or support services without an adjustment charge, provided any of the following circumstances occur:

- 2.1** Customer removes the product for which the services are provided, from productive use; or,
- 2.2** The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).
- 2.3** If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 COMPLIANCE AND ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY

- 3.1** State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards (“Standards”) set forth at <https://oklahoma.gov/omes/services/information-services/is/policies-and-standards/accessibility-standards.html>. Supplier shall provide a Voluntary Product Accessibility Template (“VPAT”) describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.

4 MEDIA OWNERSHIP (Disk Drive and/or Memory Chip Ownership)

- 4.1** Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the sole and exclusive property of the Customer.
- 4.2** Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime (repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 OFFSHORE SERVICES

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State’s sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 COMPLIANCE WITH TECHNOLOGY POLICIES

- 6.1** The Supplier agrees to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>.

Supplier’s employees and subcontractors shall adhere to the applicable State IT

Standards, policies, procedures and architectures as set forth at <https://oklahoma.gov/omes/services/information-services.html> or as otherwise provided by the State.

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

7 EMERGING TECHNOLOGIES

The State reserves the right to enter into an Addendum to the Contract at any time to allow for emerging technologies not identified elsewhere in the Contract Documents if there are repeated requests for such emerging technology or the State determines it is warranted to add such technology.

8 EXTENSION RIGHT

In addition to extension rights of the State set forth in the Contract, the State Chief Information Officer reserves the right to extend any Contract at his or her sole option if the State Chief Information Officer determine such extension to be in the best interest of the State.

9 SOURCE CODE ESCROW

Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third-party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- 9.4** The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5** The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6** The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7** Supplier's ceasing of maintenance and support of the software; or

9.8 Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 COMMERCIAL OFF THE SHELF SOFTWARE OR SUPPLIER TERMS

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement, including via a hyperlink or uniform resource locator address to a site on the internet, that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail. Further, no such terms and conditions or clauses shall expand the State's or Customer's liability or reduce the rights of Customer or the State.

11 OWNERSHIP RIGHTS

Any software developed, modified, or customized by the Supplier in accordance with a mutually negotiated statement of work pursuant to this Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. The parties mutually agree the State as a licensee of the Supplier does not make a claim of ownership to the existing Intellectual Property of Supplier. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as "Work for Hire", Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State when made in accordance with a mutually negotiated statement of work pursuant to this Contract. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 INTELLECTUAL PROPERTY OWNERSHIP TO WORK PRODUCT

The following terms apply to ownership and rights related to Intellectual Property:

- 12.1** As to the Intellectual Property Rights to Work Product between Supplier and Customer, Customer shall be the exclusive owner and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is effectively transferred, granted, conveyed, assigned, and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third-Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.
- 12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier’s signature due to the dissolution of Supplier or Supplier’s failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier’s agent and Supplier’s attorney-in-fact to act for and in Supplier’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer’s sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work

Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

12.9 Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.

12.10 To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

12.11 If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 HOSTING SERVICES

A Supplier shall be responsible for the obligations set forth in in this Contract, including those obligations related to breach reporting and associated costs when a Supplier Hosting Customer Data or providing products or services pursuant to an Acquisition, contributes to, or directly causes a Data Breach or a Security Incident. Likewise, Supplier shall be responsible for the obligations set forth in in this Contract, including those obligations related to breach reporting and associated costs when a Supplier's affiliate or subcontractor contributes to, or directly causes a Data Breach or a Security Incident.

14 CHANGE MANAGEMENT

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon

renewal or if future bids submitted by Supplier are evaluated by the State.

15 SERVICE LEVEL DEFICIENCY

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

16 OWNERSHIP OF IT AND TELECOMMUNICATION ASSETS

Notwithstanding any other provision in the Contract and pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, all information technology and telecommunication assets and contracts on behalf of appropriated agencies of the State belong to OMES-IS. OMES-IS allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier.

17 CUSTOMER DATA

17.1 The parties agree to the following provisions in connection with any Customer Data accessed, processed transmitted, or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract.

17.2 Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of rights, title, and interest in Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).

17.3 Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

17.4 Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at

the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

18 DATA SECURITY

- 18.1** Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
- 18.2** All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data. All Personal Data and Non-Public Data shall be subject to controlled access. Any stipulation of responsibilities shall be included in a Statement of Work and will identify specific roles and responsibilities.
- 18.3** Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
- 18.4** At no time shall any Customer Data or processes – that either belong to or are intended for the use of the State - be copied, disclosed, or retained by Supplier or any party related to Supplier for subsequent use in any transaction that does not include the State unless otherwise agreed to by the State.
- 18.5** Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
- 18.6** Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.

- 18.7** Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
- 18.8** Any remedies provided are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

19 SECURITY ASSESSMENT

- 19.1** The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.
- 19.2** Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

20 SECURITY INCIDENT OR DATA BREACH NOTIFICATION

- 20.1** Supplier shall inform Customer of any Security Incident or Data Breach.
- 20.2** Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
- 20.3** Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice

period required by applicable law or regulation (i.e., HIPAA requires notice to be provided within 24 hours).

- 20.4** Supplier shall maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.
- 20.5** If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

21 DATA BREACH NOTIFICATION AND RESPONSIBILITIES

This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Supplier.

- 21.1** Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- 21.2** Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.
- 21.3** If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

22 SUPPLIER REPRESENTATIONS AND WARRANTIES

Supplier represents and warrants the following:

- 22.1** The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
- 22.2** Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect

its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.

22.3 The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.

22.4 Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any “copy-protected” devices, or any other harmful or disruptive program.

23 INDEMNITY

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys’ fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier’s breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party’s patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier’s expense and pay all related costs, damages, and attorney’s fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third-party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section, but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier’s opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

24 TERMINATION, EXPIRATION AND SUSPENSION OF SERVICE

24.1 During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.

24.2 In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

- a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;
- b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or
- c. a combination of the two immediately preceding options.

24.3 Supplier shall not take any action to intentionally erase any Customer Data for a period of:

- a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;
- b. 30 days after the effective date of termination, if the termination is for convenience; or
- c. 60 days after the effective date of termination if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

24.4 The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

24.5 Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

25 GENERAL INFORMATION SECURITY REQUIREMENTS

25.1 No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.

25.2 Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.

25.3 Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.

- 25.4 Contractor or its subcontractors agree to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

26 HIPAA REQUIREMENTS

26.1 Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).

26.2 If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor’s security compliance as it pertains to this contract.

26.3 Business Associate Terms Definitions:

- a. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that “PHI” and “ePHI” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business Associate’s workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.
- b. Business Associate. “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
- c. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 C.F.R. 160.103.
- d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
- e. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of

Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.

26.4 Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, “PHI”) solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:

- a. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
- b. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- c. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
- d. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
- e. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA’s compliance and the Secretary of the Department of Health and Human Services (HHS);
- f. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
- g. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;
- h. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- i. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- j. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without

unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;

- k. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
- l. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
- m. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
- n. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- o. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and

- p. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.

26.5 Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:

- a. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
- b. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
- c. disclose PHI to report violations of law to appropriate federal and state authorities; or
- d. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;
- e. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
- f. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § 164.514(d)(1)].

26.6 Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

- c. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
- d. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
- e. Covered Entity shall provide the minimum necessary PHI to Business Associate.

26.7 Term and Termination:

- a. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
 - i. retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
 - iii. continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - iv. not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under “Permitted Uses and Disclosures By Business Associate” that applied prior to termination; and
 - v. return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- b. All other applicable obligations of Business Associate under this Agreement shall survive termination.
- c. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such

time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D).

26.8 Miscellaneous Provisions:

- a. No Third-Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- b. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
- c. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
- d. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
- e. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
- f. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
- g. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

27 **42 C.F.R. PART 2 RELATED PROVISIONS**

27.1 Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure

compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:

- 27.2** Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
- 27.3** Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of any kind;
- 27.4** Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
- 27.5** Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).
- 27.6** Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
- 27.7** Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
- 27.8** Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
- 27.9** Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the

State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;

- 27.10** Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.

28 DATA SECURITY

The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.

- 28.1** Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.

- 28.2** Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.

- 28.3** Redislosure of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redislosure is permitted under applicable law.

29 FEDERAL TAX INFORMATION REQUIREMENTS IRS PUBLICATION 1075

- 29.1** PERFORMANCE: If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

- 29.2** All work will be performed under the supervision of the State of Oklahoma.

- 29.3** The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.

- 29.4** FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.

- 29.5** FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- 29.6** The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- 29.7** Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- 29.8** All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- 29.9** No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- 29.10** Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- 29.11** To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.
- 29.12** In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- 29.13** For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- 29.14** The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

30 CRIMINAL/CIVIL SANCTIONS

- 30.1** Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- 30.2** Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- 30.3** Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 30.4** Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 30.5** Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or

electronic signature, a confidentiality statement certifying their understanding of the security requirements.

31 INSPECTION

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

32 SSA REQUIREMENTS

- 32.1** PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
- 32.2** All work will be done under the supervision of the State of Oklahoma.
- 32.3** Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- 32.4** All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- 32.5** No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- 32.6** The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- 32.7** Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- 32.8** Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful access and/or disclosure.

- 32.9** Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.
- 32.10** The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- 32.11** Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- 32.12** SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- 32.13** SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.
- 32.14** If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
- 32.15** In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
- 32.16** The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.

33 CRIMINAL/CIVIL SANCTIONS

The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.

33.1 Civil Remedies

- a. In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of
- b. actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
- c. the costs of the action together with reasonable attorney fees as determined by the court.
- d. An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

33.2 Criminal Penalties

- a. Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).

- b. Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- c. Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

34 CHILD SUPPORT FPLS REQUIREMENTS

- 34.1** Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.
- 34.2** This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- 34.3** This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

35 FERPA REQUIREMENTS

35.1 If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

36 CJIS REQUIREMENTS

36.1 INTRODUCTION - This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

36.2 The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.

36.3 CJIS SECURITY POLICY REQUIREMENTS GENERALLY - The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information ("CJI"). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency ("CJA") and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. Per Appendix "A" to said Security Policy, "access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI."

36.4 DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI AND CERTIFICATION- The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

36.5 This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy plus all data

transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.

36.6 In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

- a. the Definitions and Acronyms in §3 & Appendices “A” & “B”;
- b. the general policies in §4;
- c. the Policies in §5;
- d. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
- e. the Supplemental Guidance in Appendices “J”.

36.7 This FBI Security Policy is located and may be downloaded at:

- a. https://le.fbi.gov/file-repository/cjis_security_policy_v5-9-2_20221207-5.pdf
- b. By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

37 NOTICES

37.1 In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

With a copy, which shall not constitute notice, to:

OMES Deputy General Counsel
3115 North Lincoln Blvd
Oklahoma City, Oklahoma 73105



TERMS AND CONDITIONS OF COMPANY SERVICES
between
IMAGINE LEARNING LLC & THE STATE OF OKLAHOMA
(by and through the Office of Management and Enterprise Services)

This "Agreement" (i.e., these Terms and Conditions and the Price Quote for Services into which these Terms and Conditions are incorporated) is made and entered into as of the date of last signature to the Contract (SW1023) ("Effective Date") between Imagine Learning LLC, its affiliates and subsidiaries ("Company") and the STATE OF OKLAHOMA, by and through the Office of Management and Enterprise Services ("Customer"). In consideration of the mutual promises contained herein, the parties hereby agree to the following:

To the extent any terms or conditions in this Agreement conflict with applicable terms in Attachments A through D and F, the terms in Attachments A through D and F shall control. The State does not agree to any additional duties, obligations, or liabilities, other than the negotiated exceptions outlined in Attachment F.

To the extent any terms or conditions in this document, including via a hyperlink or uniform resource locator, conflict with an applicable Oklahoma and/or United States laws, regulations, or rules, such term or condition is void and unenforceable. The State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.

1. DEFINITIONS

- 1.1** "**Access Protocols**" means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer to access the Services.
- 1.2** "**Authorized User**" means any third party who is authorized by Customer to access the Services pursuant to Customer's rights under this Agreement, including any instructors, administrators, other employees, contractors, students authorized by Customer, parents, family members, or other adults associated with a student or parents authorized by Customer.
- 1.3** "**Confidential Student Information**" means information that personally identifies a student who is enrolled or was previously enrolled at the Customer's institution. This term includes the student's name, the name of the student's parents or family members, the student's (or student's family's) address, telephone number, email address, date of birth, place of birth, mother's maiden name, grades, financial information, social security number (or other governmental identification number), biometric information, and other information that alone or in combination would reasonably allow a person or entity to identify the student with reasonable certainty. Confidential Student Information does not include any information regarding persons who do not enroll at the Customer's institution.
- 1.4** "**Customer**" means the school or district who is identified in the signature block below or the applicable Price Quote for Services.
- 1.5** "**Customer Content**" means any content and information submitted via or in connection with the Services by or on behalf of Customer, an Authorized User, or any other end user of the Services. Customer Content includes student information and records which remain the property of the Customer.
- 1.6** "**De-Identified Data**" means any data, including data derived from Confidential Information (and Confidential Student Information) that has had all direct and indirect personal identifiers removed. This includes the removal of any names, identification numbers, dates of birth, address, email address, and telephone number. De-Identified Data does not include any data that alone or in

Terms and Conditions of Company Services

combination would reasonably allow a person or entity to identify a student with reasonable certainty.

- 1.7 **“Documentation”** means the technical materials provided by Company to Customer in hard copy or electronic form describing the use and operation of the Services.
- 1.8 **“Instructional Services”** means services provided by Company, including student access to teachers and coaches, the development and implementation of policies and procedures for purposes of improving student outcomes, and other services as stated in the applicable Price Quote for Services. Instructional Services are also subject to the additional terms contained in the attached Addendum.
- 1.9 **“Price Quote for Services”** or **“Quote”** means the order form signed by Customer which references these Terms and Conditions and details the services to be provided to the Customer under this Agreement.
- 1.10 **“Products”** means durable, physical or consumable materials such as student or teacher workbooks, textbooks, physical kits or other items provided to correspond with Company courseware, audio, video and other content curriculum, and/or Documentation and software.
- 1.11 **“Professional Development”** or **“Professional Learning”** means the instructional training, consulting and coaching for all licensed products and services provided by the Company as described in the applicable Price Quote for Services. Professional Development/Professional Learning services are subject to the additional terms contained in the attached Addendum.
- 1.12 **“Services”** means the services ordered by Customer through the Price Quote for Services and includes the products and services which may include Company courseware, audio, video and other content curriculum, and/or Documentation and software including applets and animations. Services may include Professional Development and/or Instructional Services. Customers’ access to any Professional Development or Instructional Services will expire at the end of the Term set forth in the applicable Quote or if the Service is terminated for any reason.
- 1.13 **“Supported Environment”** means the minimum hardware, software, and connectivity configuration specified from time to time by Company as required for use of the Services. The current requirements (if any) are described in the technical requirements which may be found on Company’s website.

2. PROVISION OF PRODUCTS & SERVICES

- 2.1 **Access.** Subject to Customer’s payment of the fees outlined in the Price Quote for Services and compliance with the terms of this Agreement, Company will provide Customer with access to the Products and Services. Promptly following the Effective Date, Company shall provide to Customer the necessary security protocols and policies, network links or connections and Access Protocols to allow Customer and its Authorized Users to access the Services in accordance with the Price Quote for Services (or this Agreement).
- 2.2 **Intentionally Deleted.**
- 2.3 **Support Services.** Company will provide Customer with the support services described at <http://help.imaginelearning.com/hc/en-us>.
- 2.4 **Hosting.** Company shall, at its own expense, provide for the hosting of the Services, provided that nothing herein shall be construed to require Company to provide for, or bear any responsibility with respect to any telecommunications or computer network hardware required by Customer, any Authorized User or any other user to provide access from the Internet to the Services.

3. INTELLECTUAL PROPERTY

3.1 License Grant. Subject to the terms and conditions of this Agreement, Company grants to Customer a non-exclusive, non-sublicensable, non-transferable license during the Term, solely for Customer's internal educational and training purposes and in accordance with this Agreement. This Agreement permits only Customer and Customer's Authorized Users to access and use the Services detailed on the Price Quote for Services in accordance with the Documentation. Licenses are available to access Services throughout the Term by Authorized Users not to exceed specific quantities stated on Price Quote for Services. License and Service types are listed below. Only those License and Service types listed on the Price Quote for Services are applicable to this Agreement.

3.1.1 Concurrent License - provides access to Services throughout the Term by all Authorized Users based on the number of simultaneous licenses purchased. Total number of users accessing product simultaneously cannot exceed total quantity of licenses purchased.

3.1.2 Reusable License - provides access to Services throughout the Term by all Authorized Users based on the number of semester course enrollments purchased. Once a course enrollment is disabled or completed, the enrollment license can be reused for that student or another student throughout the contract period.

3.1.3 Single User - available to a single user identified by name and designated as the sole student user of the specific license throughout the Term. Licenses cannot be transferred to another user.

3.1.4 Site License - provides access to Services throughout the Term by all Authorized Users located at the specific physical site identified on the Price Quote. Must be a traditional brick and mortar educational institution that provides educational services to students at a common physical location. Not available for virtual schools.

3.1.5 Virtual School - Customer that is (a) a private school where students do not regularly meet physically for learning but where there is a teacher of record available to students enrolled at the institution and much of the learning takes place over the internet with regular assistance or guidance from the teacher of record or (b) a private tutoring provider that makes available personal attention to each student enrolled in a program by faculty or tutoring provider and such services are the primary purpose of enrollment by students; or (c) a public program implemented by a school district where students do not regularly meet physically for learning but where there is a teacher of record available to students enrolled at the institution and much of the learning takes place over the Internet with regular assistance or guidance from the teacher of record; and (d) with respect to (a), (b), and (c), a Virtual School is not a school that sells licenses or access to educational software on a standalone basis or sells licenses or access to educational software to students not actively enrolled in and participating in learning services provided by the private school or tutoring provider.

3.2 Restrictions. Customer agrees that it will not, nor will Customer cause or permit any Authorized User or other party to: (a) allow any third party to access the Services or Documentation, except as expressly allowed herein; (b) modify, adapt, alter or translate the Services or Documentation; (c) sublicense, lease, rent, sell, resell, loan, distribute, transfer or otherwise allow the use of the Services or Documentation for the benefit of any third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Services, except as permitted by law; (e) create derivative works based on the Services or Documentation; (f) use the Services to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (g)

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interfere with or disrupt the integrity or performance of the Services; or (g) access the Services to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

3.3 Ownership. Except for the licenses granted by Company under this Agreement, as between Company and Customer, Company owns all right, title and interest (including, but not limited to, all copyright, patent, trademark and trade secret rights) in and to the Services and Documentation.

3.4 Open-Source Software. Certain items of software used in the Services are subject to “open source” or “free software” licenses (“Open-Source Software”). Some of the Open-Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Sections 3.1, 3.2, or 10. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open-Source Software. If and to the extent required by any license for particular Open-Source Software, Company makes such Open Source Software and Company modifications to that Open Source Software, available by written request at the notice address specified on the Price Quote for Services.

4. INTENTIONALLY DELETED.

5. INTENTIONALLY DELETED.

6. CUSTOMER CONTENT AND RESPONSIBILITIES

6.1 License; Ownership. Customer hereby grants Company a non-exclusive, royalty-free, fully paid and transferable license (a) to use the Customer Content as necessary solely or the purposes of providing the Services under this Agreement; and (b) to use Customer’s trademarks, service marks, and logos as required to provide the Services (but not for use with an audience beyond that of Authorized Users). As between the parties, Customer owns all right, title and interest in the Customer Content.

6.2 Customer Warranty. Customer represents and warrants that (a) prior to using the Services in connection with any Authorized User, Customer shall have obtained any necessary consent to contact such Authorized User via the Services in such form as required to comply with applicable law; (b) that its use of the Services will otherwise comply with all applicable laws; and (c) the Customer Content shall not (i) infringe any copyright, trademark, or patent right; (ii) misappropriate any trade secret; (iii) be deceptive, libelous, obscene, pornographic or unlawful; (iv) contain any viruses, worms or other malicious computer programming codes intended to damage Company’s system or data; or (v) otherwise violate any privacy or other right of any third party.

6.3 Authorized User Access. Customer may permit any Authorized Users to access and use the features and functions of the Services as contemplated by this Agreement. Each Authorized user must be granted a unique User ID. User IDs cannot be shared or used by more than one Authorized User at a time. Customer is solely responsible for maintaining the confidentiality of Access Protocols and Company will not be liable for any activities undertaken by anyone using Customer’s Access Protocols. Customer will immediately notify Company of any unauthorized use of its Access Protocols or any other breach of security relating to the Services known to Customer. Customer Responsibility for Access, Content and Security. Except to the extent expressly specified on the Price Quote for Services, Company is not obligated to back up any Customer Content; the Customer is solely responsible for creating backup copies of any Customer Content at Customer’s sole cost and expense. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Content. Customer must maintain the Supported Environment (if any) described in the Price Quote for Services.

7. WARRANTIES AND DISCLAIMERS

7.1 Limited Warranty. Company warrants that it will make commercially reasonable efforts to maintain the online availability of the Services. CUSTOMER'S EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR COMPANY TO REPAIR THE NON-CONFORMING SERVICE, OR IF COMPANY CANNOT MAKE SUCH REPAIR WITHIN A REASONABLE PERIOD OF TIME, THEN COMPANY MAY TERMINATE ACCESS TO THE SERVICES AND REFUND A PORTION OF THE FEE.

7.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, THE DOCUMENTATION, AND SERVICES ARE PROVIDED "AS IS," AND COMPANY MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

8. INTENTIONALLY DELETED.

9. PRIVACY. Company will comply with, and will cause each of its employees, agents, and contractors to comply with, all state, federal and municipal laws and regulations ("Applicable Laws") applicable to its performance under this Agreement, including without limitation the Family Educational Rights and Privacy Act and the Children's Online Privacy Protection Act. Company's Privacy Policy (as included at the end of this Attachment E1), which is incorporated by reference into these terms and conditions, contains additional terms regarding Company's use of Confidential Student Information. Customer is responsible for providing notice of its own privacy policy to parents of its students and is solely responsible for obtaining any necessary parental consents for students to use the Services.

10. INTENTIONALLY DELETED.

11. TERM. This Agreement shall be for the term (the "Initial Term") of any Services purchased pursuant to a Price Quote for Services.

12. INTENTIONALLY DELETED.

13. INTENTIONALLY DELETED.

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14. MISCELLANEOUS.

14.1 Intentionally Deleted.

14.2 **Independent Contractors.** The parties are independent contractors and nothing in this Agreement shall be deemed to create the relationship of partners, joint venturers, employer-employee, master-servant, or franchisor-franchisee between the parties. Neither party is, or will hold itself out to be, an agent of the other party. Neither party is authorized to enter into any contractual commitment on behalf of the other party.

14.3 **Export.** The use of the Services is subject to U.S. export control laws and may be subject to similar regulations in other countries. Customer agrees to comply with all such laws.

14.4 **Notice.** Any notice given under this Agreement shall be in writing and shall be sent via priority mail by a nationally recognized express delivery service addressed to the address and the signatory set forth in the Price Quote for Services set forth above. Such notice shall also be sent via email to the email address set forth in the Price Quote for Services set forth above.

14.5 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which shall be taken together and deemed one instrument.

Addendum for Instructional Services and Professional Development

1. **APPLICABILITY.** These additional terms and conditions apply if the Quote includes the purchase of Instructional Services or Professional Development Services from Imagine Learning LLC and its affiliates and subsidiaries (“Company”). In the event of a conflict between these additional terms and the Company’s Terms and Conditions of Company Services, these additional terms shall control, but solely with respect to the provision of Instructional and/or Professional Development Services. Capitalized terms used, but not defined, in this addendum have the meanings set forth in the Term and Conditions of Company Services.
2. **CUSTOMER LIAISON.** Customer will designate an individual to serve as its primary liaison to Company for all communications related to the provision of Instructional and Professional Development Services, setting up access for End Users, and use of the Services.
3. **HOURS OF AVAILABILITY.** Company Instructional and Professional Development Services will be available during the business hours specified by Company, or if Customer requires Instructional Services for certain times or additional hours, such requirements must be specified in the Quote prior to the beginning of the term of Customer’s purchase of Services. Requests for access to Instructional or Professional Development Services not already provided for in the Quote must be made or approved by the Customer Liaison, and may result in additional charges.
4. **NO GUARANTY OF OUTCOMES.** Company cannot make any guarantees, representations or warranties as to any student, teacher, or other End User outcomes or results from the Instructional or Professional Development Services.
5. **INSTRUCTIONAL SERVICES.** If specified in the Quote, Company will provide virtual access to teachers or coaches (or both) (“Company Instructors”) who are hired, trained, supervised, and paid by Company, and who will assist in the virtual delivery of the Licensed Material to students and their use of the Services (the “Virtual Programs”). Customer is responsible for (a) providing secure internet access for End Users to use the Virtual Programs; (b) all day-to-day management of the Virtual Programs, subject in all cases to compliance with Applicable Law and Customer policies; (c) obtaining all necessary consents for the provision of Instructional Services where they will involve direct contact between Company Instructors and students and parents; (d) determining appropriate student courses and verifying student schedules; (e) monitoring student attendance and ensuring compliance with applicable state requirements; and (f) assisting students not making adequate progress.
 - a. **Instructor Requirements.** Customer shall be responsible for advising Company of any special certification, training, background checks, insurance, fingerprinting or similar requirements for the Company Instructors as may be imposed by Applicable Law (“Instructor Requirements”). Company shall be solely responsible for all decisions regarding hiring, supervision, discipline, and dismissal of Company Instructors, and for ensuring that all Company Instructors meet and comply with Instructor Requirements.
 - b. **Exceptional Student Services.** If Customer is a public entity receiving federal funds, Customer is considered the “Local Educational Agency,” or LEA, as that term is defined by Applicable Law, and Customer is solely responsible for the provision of any special education services. Company’s services do not include (i) providing special education services; (ii) creating, implementing or providing Individualized Education Programs (“IEP”); (iii) providing reasonable accommodations or any services to insure compliance with the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, or any other Applicable Law. Notwithstanding the foregoing, Company will discuss, formulate and make reasonable adjustments and accommodations in furtherance of student IEPs or reasonable accommodations established by Customer, provided that Customer provides necessary IEPs and section 504 documentation to Company. Customer shall be solely responsible for the costs of any required adjustments or accommodations.

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- c. **State Testing.** Customer is responsible for providing appropriate accommodations for the administration of any state-mandated standardized testing by End Users. Customer is also responsible for receiving, distributing, administering, proctoring and returning all state mandated standardized tests under applicable state law, policies and procedures.
- d. **Reporting and Withdrawal of Students/End Users.** Where reporting of student results is required by Applicable Law, Customer shall be responsible for ensuring the accuracy and completeness of student information used, relied upon, or reported by Company in providing the Instructional Services, and shall promptly notify Company if any student information needs to be corrected or updated. Upon notice to Customer, Company reserves the right to withdraw End User access for students who fail to take required tests or maintain adequate progress.

6. **PROFESSIONAL DEVELOPMENT / PROFESSIONAL LEARNING SERVICES.** If included in the Quote, Company may also provide Professional Development / Professional Learning Services which may include training and instruction to Customer's instructors and administrators on the implementation and use of the Services, curriculum workshops, use of student information to monitor progress, and other related topics as may be specified in the Quote. Customer shall be solely responsible for providing necessary equipment and secure internet access to facilitate these Services, and for scheduling these Services at least two (2) weeks in advance.

- a. **Charges for Professional Development/Professional Learning Services.** Before delivering Professional Development/Professional Learning Services, Company must receive a signed Quote specifying the number of hours included and the cost of the services provided, and all necessary setup and implementation services required to demonstrate and use the Services must be completed. Professional Development/Professional Learning Services will be available for use by Customer only during the Term of the Subscription.
- b. **Use of Customer's Facilities.** If Company will be providing any Professional Development/Professional Learning Services at Customer's premises, Customer shall advise Company in advance of any Instructor Requirements for Company personnel, and Company will be responsible for insuring that all Professional Development/Professional Learning personnel meet and comply with all such requirements.
- c. **Forfeiture & Cancellation of PD Services.** Company reserves time exclusively for the Customer once Professional Development/Professional Learning Services have been scheduled. The Parties must document in writing and sign any and all grace periods or extension of time for delivery of Professional Development/Professional Learning Services.
- d. **Service Provision.** In some cases, Company may use subcontractors to provide Professional Learning services for core curriculum implementations. The Company shall give written notice to the Customer regarding use of any subcontractors and Company and subcontractor shall be subject to all terms and conditions of this Contract ("SW1023").

NO UNAUTHORIZED RECORDING OR REPRODUCTION. All content delivered by Company as part of Instructional or Professional Development/Professional Learning Services are the property of Company, and customer may not record, reproduce or copy such content without Company's express written authorization.

Imagine Learning's Privacy Policy

August 15, 2024

We know you care about how your personal information is used and shared, and we take your privacy and the privacy of students seriously. We've updated our privacy policy ("Privacy Policy") so that it more accurately describes our practices. Let us know if you have any questions. Imagine Learning LLC ("Imagine Learning", "we" or "us") is committed to protecting the privacy of



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students, parents, and educators, while providing students and schools with a dynamic learning and teaching environment made possible by the Internet. This Privacy Policy addresses the privacy practices of Imagine Learning. Imagine Learning's products and services are intended for ultimate use by parents, teachers and students, but only schools and school districts (together with similar purchase entities, "Local Educational Agencies" or "LEAs") may sign up for Imagine Learning. This Privacy Policy is applicable to all Imagine Learning products and services available online (the "Services").

If we intend to use or disclose members' Personal Information (as defined below) in a manner materially different from that stated at the time of collection we will send notification by email to those who have shared with us their email addresses.

What is This Policy?

WE FULLY DESCRIBE OUR PRIVACY PRACTICES BELOW IN THIS PRIVACY POLICY. THIS SUMMARY PROVIDES AN OVERVIEW OF SOME IMPORTANT INFORMATION REGARDING OUR USE AND SHARING OF YOUR INFORMATION, AND THIRD PARTIES WHO MAY SET COOKIES OR WEB BEACONS OR SIMILAR TRACKING TECHNOLOGIES WHEN YOU USE THE SERVICES. PLEASE READ THE ENTIRE PRIVACY POLICY VERY CAREFULLY. BY USING ANY SERVICE, YOU AGREE TO BE BOUND BY THIS PRIVACY POLICY IN ITS ENTIRETY.

Information Collection/How we use your information: We primarily use the information we collect when you use the Services in connection with your relationship with Imagine Learning, your use of the Services, and for sending you information from us.

Information Sharing: Remember that if you create an account or share Personal Information with other users on the Services, your information may be visible to others. However, student data will only be visible to their administrators, teachers and parents, and students cannot share data with other students. Note that we do not share your Personal Information with third parties for their marketing purposes; however, we may share your Personal Information under certain limited circumstances.

Third party analytics providers: We work with analytics service providers and other vendors to provide us with information regarding traffic on our websites or through our service (collectively referred to as "Sites"), including the pages viewed and the actions users take when visiting the Sites and to provide us with information regarding the use of the Sites.

How Are Accounts Created?

Users must create an Imagine Learning account to access certain portions of our site. The use of the Imagine Learning website is contingent on our processing of your Personal Information as set forth in this Privacy Policy. By creating an account and/or using the website, you are consenting to such practices. If you do not consent to our processing of your Personal Information as set forth in this Privacy Policy, you should not use our website.

When LEAs purchase licenses, Imagine Learning creates an organization in the product and grants administrative access to that organization through a primary account. The LEA then enrolls students and teachers/administrators into schools and classrooms and creates accounts on their behalf. When the LEA creates student accounts, they are acting on behalf of parents to give Imagine Learning permission to collect the information described in this Privacy Policy, and Imagine Learning is acting as a service provider to the LEA.

When the primary account belongs to a LEA, student accounts will be populated in coordination with that LEA. Students will then be provided login information in a manner specific to that district and in accordance with LEA policy, which may in some cases be through a LEA-wide "single sign-

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on” or by communicating an initial login and password to the student.

Some Services may also allow a LEA to create a parent account tied to a student account if so desired.

Consent by LEAs, Teachers, and Parents

If you are a student of any age, you must get permission from your LEA or LEA-authorized representative to use the Services.

Imagine Learning Services are not offered directly to students on any basis, and LEAs must first sign up for primary accounts, and then invite students, teachers, and parents to use Imagine Learning through the accounts they create. LEAs that have obtained licenses must provide consent on behalf of students for Imagine Learning to collect and use student data described in this Privacy Policy and opt to allow for student account creation.

What Information Does Imagine Learning Collect About Students, Teachers, and Parents?

Information shared with us: We may collect “Personal Information” (which is information that can reasonably be used, alone or in combination with other reasonably available information, to identify or contact a specific individual). Personal Information includes, but is not limited to, student data, metadata, and user content. The information that we collect from logged-in users includes information that you voluntarily provide to us when you use your account and information that is automatically collected when you are logged into the Imagine Learning platform. The information collected depends on whether you are a teacher, LEA, parent, or student and may vary slightly from product to product. Below is a list of information collected across all our Services.

Student Account:

- Required student information
 - Student first and last name
 - Grade level
 - Language
 - Student number
 - Student username and password for our Services
 - LEA name
 - Information collected through use of our Services:
- Assessment results and scores including academic performance and placement, psychographic information, and screening results
- Curriculum progress
- Student-generated content (e.g., responses to writing prompts and math journals, audio and video recordings, slide presentations, etc.)
- Communications (such as chat text logs between students and certified teachers, grade commentary, etc.)
- Certificates of achievement and curriculum completion

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- Optional student information (Note that we will never condition a student's participation in an activity on the student's disclosure of more Personal Information than is necessary to participate in the activity)
 - Single sign-on ID (for schools that use a single sign-on functionality)
 - Demographic information (such as date of birth, gender, ethnicity/race, language)
 - Special indicators (such as Individual Education Plan (IEP) status, English-Language Learner (ELL) status, living situations (foster care/homeless), low-income status etc.)
 - Organization number (e.g., school or district identifier, state identification, or other number)
 - Photo of student
 - Student contact information such as email, phone number, and address

Teacher/Administrator Account:

- Teacher/Administrator first and last name
- Teacher/Administrator title
- Email address
- LEA name
- State
- Teacher/Administrator username and password for our Services
- Single sign-on ID (for schools that use a single sign-on functionality)
- Certificates of completion for online training

Parent Account (optional):

- Parent first and last name
- Parent contact information such as email, phone number, and address
- Parent username and password for our Services

Information collected from our marketing website: Independent of our Services used by students and teachers, we have websites limited to those browsing our marketing content. Our marketing websites collect some data, such as name and contact information, via online forms and some data via cookies and other social media trackers used on marketing pages. When you provide us with your telephone number, such as in a web form to request additional information, you consent to be contacted by SMS text message. No phone information will be shared with third parties or affiliates for marketing or promotional purposes.

Information received from third parties: Third parties may provide us with information about you. For example, if you are on a third-party website, and opt-in to receive information from us, that third party will forward information to us so that we may contact you as requested. Any personal information received from these third parties will be handled in accordance with this Privacy Policy and our agreements with these parties. We sometimes combine information we receive from third parties with the personal information we collect through the Services. Any such combined information will be treated as Personal Information in accordance with this Privacy Policy.

Information we collect automatically: In every case we also log certain detailed technical information about all users' interactions with our Services that could be linked with users (including students). This includes the IP addresses that we get when users connect to our Services, information that is sent by web browsers automatically when they connect to our Services (such as the type of web browser, the operating system used and the time zone set on

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the user's computer), and the timing and frequency of how users interact with different content and different areas of our Sites.

We use following methods and tools to collect and track the automatically collected information described above:

- **Cookies:** Like many other websites and apps, we set cookies so that we may recognize when someone connecting to our Sites is currently logged in or has visited before. A cookie is a data file sent to a browser from a web server and stored on the user's computer's hard drive that allows us to recognize that browser when the user returns to our Sites. To learn more about browser cookies, including how to manage or delete them, look in the Tools, Help or similar section of your browser, or visit <http://www.allaboutcookies.org>.
- **How we respond to Do Not Track signals:** Please note that your browser setting may allow you to automatically transmit a "Do Not Track" (DNT) signal to websites and online service you visit. DNT is a privacy preference users can set in certain web browsers to inform websites and services that they do not want certain information about their

webpage visits collected over time and across websites or online services. However, we do not recognize or respond to browser-initiated DNT signals, as the internet industry is still working to determine what DNT means, how to comply with DNT, and how to create a common approach to responding to DNT. To find out more about "Do Not Track", please visit <http://www.allaboutdnt.com>.

Like most online services, when you use the Services, we automatically collect and store details of how you used our service, such as your activity on the Services, and the frequency and duration of your visits.

By using our Services you agree to our use of these information collection technologies.

De-identified and Aggregate Data

We frequently aggregate information in a way that is designed to make it impracticable to use that data to identify a particular person. We also sometimes maintain individual data records with personal identifiers removed in a manner that is impracticable to relink it to any specific individual. In this Privacy Policy, we refer to such data as "De-Identified Data" and do not consider it to be Personal Information. We do not attempt to re-identify information that has been de-identified.

What Student Information Can Other Users See?

When the primary account belongs to a LEA, the account administrator designated by the LEA can access all information we collect about students that we make available through our websites and online services. LEA-designated administrators can delegate the right to view student information in accordance with LEA policy. Each teacher within that LEA can see only information relating to students' participation in classes taught by that teacher (unless granted additional access by the LEA account administrator).

Some Services may allow a LEA to create a parent account tied to a student account if so desired. Parents may view student information only for the student accounts to which they've been linked.

What Does Imagine Learning Do With Personal Information?

We will not share Personal Information we collect in any way not described by this Privacy Policy. Except as noted below, we do not share any Personal Information with third parties for advertising, marketing, or other purposes. There is no third-party advertising on Imagine Learning. We do not amass student profiles except in the furtherance of school purposes. We do not ask or require students to provide information beyond that which is reasonably necessary to provide the Services. Except in limited instances to provide support services under an agreement, we do not share any student login information with any third party, and we do not automatically collect Personal Information from student accounts. Information collected from students is never used or disclosed for any third-party advertising or any kind of behaviorally targeted advertising. We do not market to or survey students; however, students may choose to provide ratings and other feedback about their experience with learning activities. LEA staff may be invited to provide feedback about their experiences, but participation is never required. Students are occasionally asked to provide feedback on their enjoyment level of various aspects of the Services. We do collect website usage information through third-party analytics services and anonymized data to help us improve our experiences for students, but such information does not contain Personal Information. We also collect website usage information through third-party analytics services for non-student users to support product support and development. We use Personal Information and any other information collected through the website for the following reasons:

- to administer the Services;
- to improve the quality and types of services that we deliver;
- to analyze usage of the Services and the popularity and performance of our Sites;
- to communicate with parents, teachers and LEAs by responding to your requests, comments and questions;
- to track and assess student development and progress;
- to generate reports that allow parents, teachers, and other authorized persons to evaluate student progress, identify students who need intervention, and discover students who can be taught together as a group;
- to diagnose technical problems;
- to email parents, teachers, and other authorized persons regarding service, technical and other administrative matters. These communications may also include information regarding changes in services, new service offerings and important service-related notices, such as security and fraud notices. Such communications will only be delivered to parents, teachers and LEAs and will never be delivered to student users;
- to send users alerts to notify them about pertinent activity on our Services, such as messages from colleagues or upcoming assignments (“Notification Alerts”). These Notification Alerts may be sent to all users of our Services, including students;
- to provide useful analyses to users and primary account owners;
- to conduct research and analytics to improve our Services and value to you, and to perform research for authorized persons;
- to protect Imagine Learning and our users, such as conducting audits or notifying LEAs of inappropriate or potentially harmful behavior;
- to assist students who request online help from our state-certified, security-cleared teachers who are employed by Imagine Learning to provide individualized instruction;

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- to monitor students over audio or video during an assessment (i.e., online proctoring), when authorized by the LEA;
- For safety and security reasons against malicious or illegal activities;
- for other educational purposes requested and sanctioned by an authorized representative of the LEA;
- for billing, account management, and other administrative matters; • to comply with a judicial order, subpoena or other legal request; or
- as required by applicable law or regulation.

Third Parties

How We Share Information

We use third-party service providers to provide a variety of services, such as assisting us with providing customer support, hosting our Services, providing us with analytics about how people use our Services, assisting us with marketing our Services to LEA administrators and teachers, sending and tracking responses to email, providing a framework for the delivery of assessment tools and analytics, storing data, providing single sign-on services (where applicable), and helping us identify and track bugs and errors in our Services. Student analytics data are anonymous, but teacher analytics data include teacher name and email address. Third parties we work with are contractually prohibited from using any Personal Information for any purpose other than providing the services we request from them.

We will not sell Personal Information to anyone for monetary compensation. However, we do share Personal Information that could be considered a 'sale' under the California Consumer Privacy Act such as in connection with the sale of Imagine Learning's equity or assets or a merger of Imagine Learning with another company. Any sale or merger would be conditioned so that such information will continue to be covered by the then-applicable Privacy Policy or a policy at least as robust as such Privacy Policy.

When a LEA is the primary account holder, we share information with third parties at the direction of the LEA, and it is the LEA's responsibility to make such requests in a manner that is consistent with their internal policies and the law. We may also share information that we collect in the following (or comparable) circumstances:

- if we believe in good faith that it is necessary to disclose the information under any applicable law or regulation (for example, in response to a court order or a subpoena);
- if we believe in good faith that it is necessary to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person;
- to investigate and act upon potential violations of the law or of our terms of service;
- to provide information to a claimed owner of intellectual property who claims that content you have provided infringes on their rights;
- in response to bankruptcy proceedings;
- with teachers (and parents where necessary) so they can see information about their students or children, such as the student's or child's name, school affiliation and activity on assignments (including time of activity and any responses to questions, extending to grades for those assignments);
- when any user logs into Imagine Learning with a third-party account (such as a ClassLink, Clever, Google or other Learning Management System account), that third party will learn that that user has visited Imagine Learning, and that information will be subject to that third party's privacy policy and practices;
- with third-party products specifically configured by LEAs to interoperate with Imagine Learning;

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- if the information is De-Identified Data;
- with our corporate affiliates, parents, and/or subsidiaries; or
- in other circumstances that you expressly consent to.

When logged into our Services, users may choose to interact with Google APIs to submit assignments to our learning management system. For example, users may log into their Google Drive account to select files they wish to upload to the Services as work products. As another example, LEAs may choose to integrate our Services with Google Classroom, linking students from our Services to their corresponding account in Google Classroom. If configured by the LEA, this can make it easier for students to login to the Services (i.e., Single Sign-On) without entering another username and password. This may also allow scores and grades from our Services to be automatically passed back to Google Classroom, making it easier for teachers to create and assign work, manage scores, and streamline reporting. Imagine Learning' use and transfer to any other app of information received from Google APIs will adhere to [Google API Services User Data Policy](#), including the **Limited Use** requirements.

If there are changes to this Privacy Policy in the future, LEAs, teachers, and parents may agree to those changes through continued use of the Services or choose to stop using Imagine Learning and we will delete their information and the information about their students.

Artificial Intelligence

Imagine Learning is committed to responsible use of Artificial Intelligence ("AI") within our Services. We take the following steps to protect Personal Information with regards to AI:

- **De-Identification:** Where appropriate, Personal Information is de-identified before it is shared with AI services;
- **Data Minimization:** When Personal Information cannot be de-identified, only the minimum amount of data is shared and only for uses described in this policy;
- **Authorized Third Party Service Providers:** Personal Information is only shared with authorized third-party service providers with data protection agreements that contain strong privacy and security requirements;
- **AI Training:** We don't use your Personal Information to train AI, however we may use aggregated or de-identified data to improve AI services.

Examples of how AI may be used in our Services include:

- Assisting an educator with developing instructional content personalized for specific classroom needs
- Analyzing student writing for common mistakes to assist and provide customized feedback to teachers and/or students
- Summarizing and identifying trends in student performance and growth indicators to help educators know where to focus their instruction
- Identifying potential academic integrity issues and alerting an educator
- Providing tutor-like chat support for a student struggling with a concept
- Chat bot customer support for teachers using our Services

Third Party Content, Links to Other Sites, and Imagine Learning Content Found Outside the Site

Certain content provided through the Services may be hosted and served by third parties. In addition, our Services includes some links to third party sites or content over which Imagine Learning has no control and which are governed by the privacy policies and business practices of those third parties. We are not responsible for the data collection practices on those other sites. We advise you to carefully review those sites' privacy policies before submitting Personal

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Information there.

Please also note that Imagine Learning content may be included on web pages and websites that are not associated with us and over which we have no control. These third parties may independently collect data. Imagine Learning is not responsible or liable for the privacy practices or business practices of any third party.

Access through a Mobile Device

If you use our Services through a mobile device or one of our mobile applications, you agree that Imagine Learning may store and use that information for security purposes (for example, for user verification or authentication and to ensure that our APIs are being used appropriately.)

Students may have the option to log in with a QR code from their teacher. Scanning the QR code requires use of camera. All the processing happens through the LEA. No video is transmitted or stored on our servers. Students may be able to record themselves use the device's microphone during certain educational activities. These recordings are processed and stored on our servers. Permission is obtained prior to access to the device's camera or microphone.

Children's Information

Protecting the privacy of young children is especially important to Imagine Learning. For that reason, we created certain features designed to help protect Personal Information relating to children who are less than 13 years of age (or higher age if required by applicable law) ("Child Users").

The Children's Online Privacy Protection Act ("COPPA") requires that all online service providers, including Imagine Learning, obtain parental consent before knowingly collecting personally identifiable information from children under the age of 13. Imagine Learning does not knowingly collect or solicit any personally identifiable information from children under the age of 13, and instead relies upon information provided to Imagine Learning by the account holder. Children under the age of 13 are prohibited from using the Services or creating an account unless they are doing so with parental consent or with the consent of an account holder who is providing such consent in compliance with COPPA. If we learn that we have collected personal information from a person under the age of 13 that does not comply with COPPA, we will delete that information in a reasonably prudent amount of time. If you believe that a child under the age of 13 has provided personally identifiable information to us without appropriate consent, please contact us at privacy@imaginelearning.com.

How does a child register and use the Services?

Child Users cannot obtain a user account without it being created by a teacher or other LEA authorized representative.

What children's information is visible to others?

No student's profile is made available or visible to the public through Imagine Learning. If a teacher utilizes certain features on a device in the classroom, other students may be able to view information that is displayed by the teacher in the classroom, but students can't view each other's individual student profiles.

Parents: To review your child's user data you must request the information from your child's teacher. Some Services may allow a LEA to create a parent account tied to their respective students. In such cases, a parent may access their child's information through the parent account.

Our Security Practices

We strive to protect the confidentiality, security, and integrity of the Personal Information we collect



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from children and adults. We have put in place physical, electronic, and administrative procedures designed to safeguard and to help prevent unauthorized access to and maintain the security of personally identifiable information collected through our Services.

All accounts are protected by passwords. Please keep these passwords secret to prevent unauthorized access to these accounts. If you think someone has gained unauthorized access to an account please change your password and contact us immediately.

We take customary and reasonable measures designed to protect the confidentiality, security, and integrity of Personal Information collected on our Services, both during transmission and within our systems. Such protections include, but are not limited to:

- **Data encryption and storage:** Data is encrypted in transit (SSL/TLS) and at rest. Personal Information is stored and processed within the continental United States.
- **Access:** Access to Personal Information is restricted to a limited number of Imagine Learning employees who need such access to perform their job.
- **Data Systems Monitoring:** We employ several third-party services that continuously monitor and scan our Services for vulnerabilities. Employees dedicated to operating the Services monitor these reports and receive automated alerts when performance falls outside of prescribed norms.
- **Incident Response Plan:** Imagine Learning maintains an incident response plan.
- **Firewalls:** Anti-virus software and firewalls are installed and configured to prevent malicious or unauthorized traffic.
- **Security audits:** Imagine Learning conducts security audits and code reviews, both by external and internal providers.
- **Employee training:** Imagine Learning has designated privacy and data security officials to oversee employee security training and compliance.

Data Breach or Security Incident

While we have taken customary and reasonable steps to protect the Personal Information we collect, no system is 100% fail-proof and secure.

In the event that Imagine Learning becomes aware of a data breach impacting your Personal Information, we will provide notification in compliance with all applicable laws and our contracts with LEAs. For example, we may post a notice on our landing page or elsewhere on our Services and may send an email to you at the email address you have provided to us. Depending on where you live, you may have a legal right to receive notice of a security breach in writing.

Imagine Learning has procedures in place that are designed to stop threats that may expose Personal Information, restore the Sites to full functionality, and document and take proactive steps to ensure the incident cannot be repeated. Imagine Learning will also preserve necessary evidence for investigation by security professionals and law enforcement as appropriate. In the unlikely event of an unauthorized disclosure of records, Imagine Learning will follow its internal procedures, that articulate how to report the problem to internal and external stakeholders. The notification process includes any information that can identify which customers and students may have been impacted, the data that may have been accessed, Imagine Learning's process to inform affected customers, and steps to prevent the incident from happening again as appropriate. In the unlikely event of an unauthorized disclosure of Data, Imagine Learning has implemented a process for responding to incidents and notifying affected individuals and, if applicable, law enforcement personnel.

If you have any questions about security on our Services, you can email us by clicking [here](#) or emailing privacy@imaginelearning.com directly.

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Your Choices Related to Your Privacy

In order to process your information, we rely on your consent or our legitimate interests to process your data. You may withdraw your consent or object to the use of our information at any time, but you may no longer be able to access our Services.

Communications from Imagine Learning

Imagine Learning may send you information by email or may post notices on the Imagine Learning homepage (<https://imaginelearning.com>).

You may choose to stop receiving certain emails from Imagine Learning by using the unsubscribe button at the bottom of the Imagine Learning email. You may still receive transactional emails from us related to forgotten passwords, account expiration, or other necessary communication.

However, we reserve the right to send you information on our behalf and on behalf of third parties in connection with providing our Services. If you no longer want to receive information from us, you will need to close your account.

How You Can Delete or Correct Student Information or an Account

When LEAs create accounts for students, teachers, and parents, the LEA remains the sole owner of the educational data. All requests to review, delete or correct student or teacher information should be directed to the LEA. If we receive a request to delete or correct a user's data from a student, parent, or guardian, we will route such request to the LEA and will assist the LEA as needed to respond to authorized requests within a reasonable time frame and in compliance with applicable laws and regulations.

If a LEA requests deletion of data under the control of the LEA, we will promptly delete it, subject to any legal requirement to retain or transfer that data. Note that even following such deletion requests we may store secure backups until they are deleted in accordance with our document retention policy. We may also preserve information as part of an investigation into violations of the law or our terms of use.

Please note that any information you share with others on the website or content other users may have copied is not a part of your account and may not be deleted when you delete your account. If we share your data with one of our service providers, we will use our best efforts to cause such third party to delete such data when you delete your account.

How We Retain and Delete Your Data

Upon termination of your account, Imagine Learning will take commercially reasonable steps to delete any Personal Information from its live databases in a reasonable amount of time. We will retain Personal Information collected in connection with an account only for as long as is necessary to provide the services to the account holder, as required by applicable laws or regulations or otherwise per the terms or a contract with a LEA.

Data may be returned to the LEA as directed by the agreement with the LEA. If no specific instructions are included in the agreement, the data will be returned or destroyed upon one of the following (i) after termination of our relationship with a LEA or LEA-authorized person, (ii) when it is no longer needed for the purpose for which it was provided, (iii) when advised to do so by the LEA, or (iv) as directed by agreement with the LEA. Data are returned in a digital, machine-readable format via a secure means of transmission.

We may further retain information for business practices based on our legitimate interest or legal purposes, such as secure electronic archives that are not readily accessible to users or maintained for disaster recovery and/or information technology backups. We may also maintain De-Identified Data, including usage data, for any purpose that is consistent with laws, regulations, and contractual obligations.

Even if your account is closed, information may remain in backup or archive records and we may retain certain data relevant to preventing fraud or future abuse or for legitimate business purposes, such as analysis of aggregated, non-personally-identifiable or De-Identified Data, account recovery, or if required by law. All retained data will continue to be subject to the applicable privacy

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policy for the Service.

Users in California & Other U.S. States

Under some U.S. state laws, including the California Privacy Act of 2018 (as amended by the California Privacy Rights Act) (“CCPA”) residents may have certain privacy rights.

Your Privacy Rights

In certain circumstances, you have the following data protection rights:

- **Information:** You can request the following information about how we have collected and used your or your child’s Personal Information during the past 12 months:
 - The categories of Personal Information that we have collected.
 - The categories of sources from which we collected Personal Information.
 - The business or commercial purpose for collecting and/or sharing Personal Information.
 - The categories of third parties with whom we share Personal Information.
 - Whether we have disclosed your Personal Information for a business purpose, and if so, the categories of Personal Information received by each category of third-party recipient.
 - Whether we’ve sold your Personal Information, and if so, the categories of Personal Information received by each category of third-party recipient.
- **Access:** You can request a copy of the Personal Information that we have collected about you during the past 12 months.
- **Correct:** You can request we correct any inaccurate Personal Information we have collected about you, taking into account the nature of and the purpose for processing the Personal Information.
- **Deletion:** You can ask us to delete the Personal Information that we have collected from you. We will take reasonable measures to comply with a verifiable request, except when use of the Personal Information is necessary to comply with a legal obligation or for a legitimate business need permitted under applicable law.
- **Opt-out of sales:** We do not sell Personal Information. If we plan to sell Personal Information, you will be notified and you can opt-out.
- **Out-out of sharing:** You have the right to opt-out of sharing of your Personal Information for cross-context behavioral advertising.
- **Nondiscrimination:** You are entitled to exercise the rights described above free from discrimination in the form of legally prohibited increases in the price or decreases in the quality of our Services.
- **Appeal:** Some states provide additional rights to their residents. If we decline to process your request, you may have the right to appeal our decision.

How to Exercise Your Rights

You may exercise your privacy rights described above as follows:

- Emailing privacy@imaginelearning.com
- Mailing Imagine Learning’s Privacy Office at 100 S. Mill Ave. #1700, Tempe, AZ 85281.

Users Outside the United States

Consent to Transfer

The Services are operated in the United States. If you are located outside of the United States, please be aware that information we collect will be transferred to and processed in the United States. By using the Services, or providing us with any information, you fully understand and unambiguously consent to this transfer, processing, and storage of your information in the United States, a jurisdiction in which the privacy laws may not be as comprehensive as those in the

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country where you reside and/or are a citizen.

Important Information for Users in the European Economic Area

The following information only applies to users in the European Economic Area (EEA), provided that we are the controller of your Personal Information as described below.

Controller

If you use the Services through your employer, school, or another organization, that organization is the controller of your Personal Information. All questions or requests regarding your rights under European data protection legislation (including the rights described under Your rights below) or the processing of your Personal Information should be directed to the organization. Imagine Learning is the organization's processor and uses your Personal Information only as instructed by the organization and to the extent necessary to comply with applicable law.

If you do not use the Services through an organization, Imagine Learning is the controller of your Personal Information and can be reached using the contact details in "For More Information" section below.

Legal bases for processing

We process your Personal Information on the following legal bases:

Processing purpose	Legal basis
<i>To provide the Services.</i>	Processing is necessary to perform the contract governing our provision of the Services or to take steps that you request prior to requesting the Services.
<i>To operate the websites. To send marketing communications. To create anonymous data for analytics. For compliance, fraud prevention, and safety.</i>	These processing activities constitute our legitimate interests. We consider and balance the potential impact on our rights before we process your Personal Information for our legitimate interests. We do not use your Personal Information for activities where your data protection interests override these legitimate interests (unless we have your
	consent or are otherwise required or permitted to by law).
<i>To comply with law.</i>	Processing is necessary to comply with our legal obligations.
<i>With your consent.</i>	Processing is based on your consent. Where we rely on your consent you have the right to withdraw it anytime in the manner indicated at the time consent is requested.

Cross-border data transfer

Whenever we transfer your Personal Information out of the European Economic Area ("EEA") to countries not deemed by the European Commission to provide an adequate level of personal information protection, the transfer will be based on safeguards that allow us to conduct the transfer in accordance with the EEA's data protection laws. Such safeguards may include applying

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the European Commission model contracts for the transfer of Personal Information to third countries described [here](#). Please contact us for further information about any such transfers or the specific safeguards applied.

Your rights

You may ask us to take the following actions in relation to your Personal Information that we hold:

- **Access:** Provide you with information about our processing of your Personal Information and give you access to your Personal Information.
- **Correct:** Update or correct inaccuracies in your Personal Information.
- **Delete:** Delete your Personal Information.
- **Transfer.** Transfer a machine-readable copy of your Personal Information to you or a third party of your choice.
- **Restrict:** Restrict the processing of your Personal Information.
- **Object:** Object to our reliance on our legitimate interests as the legal basis of our processing your Personal Information, where that processing adversely impacts your legal rights.

You may send us these requests by contacting us at privacy@imaginelearning.com. We may request information from you to help us confirm your identity and process your request. Applicable law may require or permit us to reject part or all of your request. If we reject your request, we will tell you why, subject to legal restrictions. If you would like to submit a complaint about our use of your Personal Information or response to your requests regarding your Personal Information, you may contact us or submit a complaint to the data protection regulator in your jurisdiction. You can find your data protection regulator [here](#).

Retention

We will only retain your Personal Information for as long as necessary to fulfil the purposes we collected it for, including to continue providing our Services to LEAs you sent information to and for the purposes of archiving and satisfying any legal, accounting, or reporting requirements. To determine the appropriate retention period for personal information we consider the amount, nature, and sensitivity of the personal information, the potential risk of harm from unauthorized use or disclosure of your Personal Information, the purposes for which we process your Personal Information and whether we can achieve those purposes through other means, and the applicable legal requirements. In some circumstances we may anonymize your Personal Information (so that it can no longer be associated with you) in which case we may use this information indefinitely without further notice to you.

Notice of Changes to This Policy

We may occasionally update this Privacy Policy. You can see when it was last updated by looking at the new effective date at the top of this page.

If we make any significant changes, we'll post them prominently on our website 30 days prior to their effective date. Your continued use of the Services after a revision to the Privacy Policy indicates your acceptance and agreement to the current Privacy Policy. We recommend that you periodically review the Privacy Policy to make sure you understand and are up to date on how we are keeping your information safe.

Our Privacy Policy was last updated and is effective as of August 15, 2024.

For More Information

If you have any questions or comments regarding our Privacy Policy or our practices, please contact us at privacy@imaginelearning.com.



ATTACHMENT E2

MASTER TERMS

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ATTACHMENT E3 PRICING

Oklahoma SW1023 Online Curriculum K-12

SW1023 Price Template

State of Oklahoma - Cisco Products and Services

Course Code Number	Course Title	Unit of Measure	Rate
See Course List within the Technical Response for a complete list of courses with applicable code numbers.	<p>Imagine Edgenuity 6-12 Comprehensive Bundle: Content-only (for use with local teachers). To provide maximum value, Imagine Learning is offering a comprehensive bundle when licensing courses for use with district-provided educators. This bundle provides access to comprehensive 6-12 course content in core subject areas, EdgeEx, general electives, world languages, Advanced Placement, and test preparation. Also includes on-demand tutoring and Academic Integrity bundle. Additional discounts are available for volume.</p>	per concurrent, simultaneous user	\$800.00 ea.
See Course List within the Technical Response for a complete list of courses with applicable code numbers.	<p>Imagine Edgenuity CTE Bundle Add-On: Content-only (for use with local teachers). This item can be added onto the Imagine Edgenuity 6-12 Comprehensive bundle and provides access to comprehensive Career and Technical Education courses along with the Academic Integrity bundle. Quantities purchased must match quantities purchased of the Imagine Edgenuity 6-12 Comprehensive bundle.</p>	per concurrent, simultaneous user	\$160.00 ea.
See Course List within the Technical Response for a complete list of courses with applicable code numbers.	<p>Imagine Edgenuity SEL Bundle Add-On: Content-only (for use with local teachers). This item can be added onto the Imagine Edgenuity 6-12 Comprehensive Bundle and provides access to Social and Emotional Learning courses along with the Academic Integrity bundle. Quantities purchased must match quantities purchased of the Imagine Edgenuity 6-12 Comprehensive bundle.</p>	per concurrent, simultaneous user	\$225.00 ea.

See Course List within the Technical Response for a complete list of courses with applicable code numbers.	Imagine Edgenuity Exceptional Students Add-On: Content-only (for use with local teachers). This item can be added onto the Imagine Edgenuity 6-12 Comprehensive Bundle and provides access for one (1) student to the Exceptional Students course suite along with the Academic Integrity bundle.	per student	\$250.00 ea.
See Course List within the Technical Response for a complete list of courses with applicable code numbers.	Subscription/High-Interest Electives: Content-only (for use with local teachers). Access to additional, high-interest elective courses offered on a subscription basis. Each enrollment provides access for one (1) student to one (1) semester-length course. Additional discounts are available for volume.	per semester enrollment	\$99.00 ea.
See Course List within the Technical Response for a complete list of courses with applicable code numbers.	Imagine Instructional Services: Instructor-embedded (vendor-provided teaching services). Access to course content plus vendor-provided teaching services and on-demand tutoring. Each enrollment provides access for one (1) student to one (1) semester-length course for grades 6-12. Standard drop/add is 14 days.	per student, per semester enrollment	\$275.00 ea.
N/A	Imagine Intelli-Sync: Includes synchronous live instruction by a dedicated, certified teacher for grades 7-12 working with no more than 150 students within the same school. Students will also have access to credit-bearing core courses for asynchronous learning. Also includes on-demand tutoring and support for special education accommodations and modifications. One (1) onsite training day is also included.	per academic year	\$95,000 ea.
N/A	Small Group Targeted Instruction services: Includes access for a group of seven (7) students to small group tutoring conducted three (3) times per week for an 18-week duration. Group size, duration, and number of sessions per week can be customized and pricing will be adjusted.	per group	\$5,100 ea.
N/A	Speech Teletherapy services: Provides access to a licensed Speech Language Pathologist to deliver services via teletherapy. A minimum purchase of 1000 hours is required. Additional discounts may apply for volume.	per hour	\$100.00 ea.

N/A	Imagine MyPath: Access to the Imagine MyPath reading and math solution. Each enrollment provides access for one (1) student. The enrollment is reusable throughout the contract term.	per reusable enrollment	\$75.00 ea.
N/A	Professional Development - Onsite: Onsite training session. Approximately 6 hours, up to 40 participants. Bundles may be available for discounts.	per day	\$3,500.00 ea.
N/A	Professional Development - Web: Virtual training session. Approximately 2 hours, up to 40 participants.	per session	\$750.00 ea.

add rows as necessary

ATTACHMENT E4

VALUE ADD

Imagine Learning's courses and programs include the following value-added features at no additional cost:

- Unlimited customer and technical support
- Applicable upgrades and updates
- Vendor-hosted learning system with no hosting fees
- Unlimited access to student tools and resources — to include read-aloud, translation, guided notetaking templates, and more (as applicable)
- Unlimited access to online educator resources
- Unlimited access to parent and family resources to support digital learning
- Access to Imagine Learning's Research Department for efficacy and longitudinal studies
- Detailed reports for teachers, administrators, students, and parents
- Diagnostic testing functionality to accelerate students through content they have already mastered (as appropriate)
- Collaboration and discussion opportunities for students and teachers (as applicable)
- Embedded writing tools to scaffold the writing process — from prewriting to final draft — for all secondary students
- NCAA-approved curriculum (9-12)
- Quality Matters-approved courses (6-12)
- Learning List-reviewed courses (6-12)
- Cogna accreditation

Furthermore, the flexibility of Imagine Learning's content and learning solutions allows for a wide range of implementations and student needs to be met with one provider, delivering a seamless experience for our partners who opt to implement multiple programs.

ATTACHMENT E5
THIRD PARTY VENDOR TERMS

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ATTACHMENT E6

SERVICE LEVEL AGREEMENT TERMS

Imagine Learning Service Level Agreement

v1.3

Last updated: November 2021

This Service Level Agreement (“SLA”) between Imagine Learning (“IL”, “us”) and the user of our cloud services (“Services”). This agreement sets forth service level terms and conditions. This SLA may be updated at IL’s discretion and will be effective by the date indicated as “Last updated”.

Service Commitment

IL will use commercially reasonable efforts to make Services available with a Quarterly Uptime Percentage (defined below) of at least 99.5%.

Definitions

- “*Quarterly Uptime Percentage*” is calculated by subtracting from 100% the percentage of minutes during the previous 90 days from a selected time in which Services was in a state of “Unavailable”. Quarterly Uptime Percentage measurements exclude downtime resulting from Scheduled Maintenance and directly or indirectly any SLA Exclusion (defined below).
- “*Scheduled Maintenance*” are planned outages, either suspending service in full or in part, which IL will endeavor to announce 3 days in advance, which will not exceed a reasonable period of time for the maintenance required and which, where possible, shall take place during Maintenance Hours.
- “*Maintenance Hours*” are Monday to Friday from 10:00pm – 5:00am Mountain Time, all day Saturday and Sunday.
- “*Unavailable*” means when access to Services has no connectivity, rounded to the nearest minute.

SLA Exclusions

This Service Commitment does not apply to any unavailability due to issues caused by factors outside of our reasonable control, including issues: (i) such as any force majeure event or Internet access or related problems beyond the demarcation point of Services, (ii) that result from any actions or inactions of you or any third party, (iii) that result from your equipment, software or other technology and/or third party equipment, software or other technology you use that is used by or required to be functioning for our Services, (iv) that result from any maintenance, software upgrade or update provided by IL to you that you didn’t deploy, a misconfiguring of our software or not using our software in ways we suggest or dictate.

ATTACHMENT F

**STATE OF OKLAHOMA CONTRACT WITH IMAGINE LEARNING, LLC.
RESULTING FROM SOLICITATION NO. EV00000425**

Negotiated Exceptions to the Contract

The Contract is hereby amended to include the terms as set forth below and supersedes all prior terms and exceptions submitted by Imagine Learning, LLC. or discussed by the parties. For clarity, this Attachment F serves as an Addendum to the Contract Documents to which the exceptions below are made.

Requested Exceptions not addressed below are declined by the State of Oklahoma.

Term & Section	Language
STATE OF OKLAHOMA GENERAL TERMS (Section 8, Pages 8-9)	<p><i>Section 8.1 shall be modified as follows:</i></p> <p>As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.</p> <p>Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a thirty (30) day notice of cancellation and name the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:</p> <p>A. Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;</p> <p>B. Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$5,000,000 \$1,000,000 per occurrence;</p> <p>C. Automobile Liability Insurance with limits of liability of not less than \$5,000,000 \$1,000,000 combined single limit each accident;</p>

	<p>D. Directors and Officers Insurance which shall include Employment Practices Liability as well as Consultant’s Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than \$5,000,000 per occurrence;</p> <p>E. Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier’s computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and</p> <p>F. Additional coverage required in writing in connection with a particular Acquisition.</p>
<p>STATE OF OKLAHOMA GENERAL TERMS (Section 11.5, Pages 14-15)</p>	<p>Insert the word “seek” as follows: Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to seek injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.</p>
<p>STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS (Section 9, Pages 4-5)</p>	<p>Amend Section 9 by inserting the following: “State and Supplier agree that Supplier is not planning to provide Customer customized computer software developed or modified exclusively for a state agency or the State. Should Supplier and State explicitly agree, in writing, to the acquisition of customized computer software developed or modified exclusively, then the following terms will apply:”</p>
<p>STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS (Section 12, Pages 6-8)</p>	<p>Amend Section 12 by inserting the following: “State and Supplier agree that Supplier is not planning to provide Customer customized computer software developed or modified exclusively for a state agency or the State. Should Supplier and State explicitly agree, in writing, to the acquisition of customized computer software developed or modified exclusively, then the following terms will apply:”</p>