



STATE OF OKLAHOMA STATEWIDE CONTRACT WITH Florida Virtual School

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 Florida Virtual School (“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 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, as more particularly described in certain Contract Documents. Supplier submitted a proposal containing exceptions to the Solicitation and Supplier submitted additional terms. 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 No. EV00000425, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Statewide Contract Terms, Attachment C;
 - 2.4. Information Technology Terms, Attachment D;
 - 2.5. Pricing, Attachment E-1;
 - 2.6. Additional Terms, Attachment E-2; and
 - 2.7. Negotiated Exceptions to Contract, Attachment F.
3. The parties additionally agree:

- 3.1. except for 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.

Attachments referenced in this section are attached hereto and incorporated herein.

- 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**

FLORIDA VIRTUAL SCHOOL

By: Dan Cronin
Dan Cronin (Jan 24, 2025 15:56 CST)

By: Louis Algaze Digitally signed by Louis Algaze
Date: 2025.01.24 14:02:12 -05'00'

Name: Dan Cronin

Name: Louis J. Algaze, Ph.D.

Title: Chief Information Officer

Title: President and CEO

Date: 01/24/2025

Date: 1/24/2025

Approved as to form: Karen M. Chastain Digitally signed by Karen M. Chastain
Date: 2025.01.24 13:21:05 -05'00'
Office of FLVS General Counsel

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 debarring 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

Oklahoma SW1023 Online Curriculum K-12

SW1023 Price Template

State of Oklahoma

Course Code	Course Title	Units of Measure
8004	Agriscience Foundations I	1
4411	Algebra I (Credit Recovery)	1
4411	Algebra I (Honors)	1
4411	Algebra I (Regular)	1
4412	Algebra II	1
4412	Algebra II (Honors)	1
4550	Algebra II for Credit Recovery	1
3171	American Sign Language 1 (Regular)	1
3172	American Sign Language 2 (Regular)	1
5333	Anatomy and Physiology	1
5333	Anatomy and Physiology (Honors)	1
2816	AP Art History	1
5035	AP Biology	1
4615	AP Calculus AB	1
4616	AP Calculus BC	1
2535	AP Computer Science A	1
4057	AP English Language & Composition	1
4010	AP English Literature & Composition	1
5121	AP Environmental Science	1
5790	AP Human Geography	1
5525	AP Macroeconomics	1
5526	AP Microeconomics	1
5645	AP Psychology	1
4760	AP Statistics	1
5546	AP U.S. Government & Politics	1
5415	AP U.S. History	1
2818	Art History (Honors)	1
5031	Biology I	1
5031	Biology I (Credit Recovery)	1
5031	Biology I (Honors)	1
4612	Calculus (Honors)	1
5051	Chemistry (Credit Recovery)	1
5051	Chemistry (Honors)	1
5051	Chemistry I	1
3185	Chinese I	1
3186	Chinese II	1
3187	Chinese III (Honors)	1
N/A	College & Career Readiness	0.5
5410	Comprehensive American History	1
N/A	Computer and Network Security Fundamentals/Level 1 3 (Honors)	

4620	Consumer Mathematics (Regular)	1
2755	Critical Thinking and Study Skills (Regular)	0.5
8256	Cybersecurity Essentials (Honors)	1
8191	Digital Art Imaging I	1
8169	Digital Information Technology	1
5061	Earth Space Science	1
5061	Earth Space Science (Honors)	1
5521	Economics (Honors)	0.5
5521	Economics (Regular)	0.5
N/A	Economics with Financial Literacy (Honors)	0.5
5521	Economics with Financial Literacy (Regular)	0.5
5521	Economics with Financial Literacy for Credit Recovery	0.5
1173	Elementary Art Grade 1	1
1173	Elementary Art Grade 2	1
1173	Elementary Art Grade 3	1
1173	Elementary Art Grade 4	1
1173	Elementary Art Grade 5	1
1173	Elementary Art Grade K	1
1114	Elementary Language Arts Grade 1	1
1114	Elementary Language Arts Grade 2	1
1114	Elementary Language Arts Grade 3	1
1114	Elementary Language Arts Grade 4	1
1114	Elementary Language Arts Grade 5	1
1114	Elementary Language Arts Grade K	1
2204	Elementary Math Grade 1	1
2204	Elementary Math Grade 2	1
2204	Elementary Math Grade 3	1
2204	Elementary Math Grade 4	1
2204	Elementary Math Grade 5	1
2204	Elementary Math Grade K	1
1363	Elementary Physical Education Grade 1	1
1363	Elementary Physical Education Grade 2	1
1363	Elementary Physical Education Grade 3	1
1363	Elementary Physical Education Grade 4	1
1363	Elementary Physical Education Grade 5	1
1363	Elementary Physical Education Grade K	1
2254	Elementary Science Grade 1	1
2254	Elementary Science Grade 2	1
2254	Elementary Science Grade 3	1
2254	Elementary Science Grade 4	1
2254	Elementary Science Grade 5	1
2254	Elementary Science Grade K	1
2305	Elementary Social Studies Grade 1	1
2305	Elementary Social Studies Grade 2	1
2305	Elementary Social Studies Grade 3	1

2305	Elementary Social Studies Grade 4	1
2305	Elementary Social Studies Grade 5	1
2305	Elementary Social Studies Grade K	1
2132	Elementary Spanish Introductory Level	1
2132	Elementary Spanish Level 1	1
2132	Elementary Spanish Level 2	1
2132	Elementary Spanish Level 3	1
2132	Elementary Spanish Level 4	1
2132	Elementary Spanish Level 5	1
1321	Elementary Technology Grade 1	1
1321	Elementary Technology Grade 2	1
1323	Elementary Technology Grade 3	1
1323	Elementary Technology Grade 4	1
1323	Elementary Technology Grade 5	1
1321	Elementary Technology Grade K	1
4045	English I	1
4045	English I (Credit Recovery)	1
4045	English I (Honors)	1
4048	English II	1
4048	English II (Credit Recovery)	1
4048	English II (Honors)	1
4051	English III	1
4051	English III (Credit Recovery)	1
4051	English III (Honors)	1
4054	English IV	1
4054	English IV (College Prep)	1
4054	English IV (Credit Recovery)	1
4054	English IV (Honors)	1
5120	Environmental Science (Regular)	1
N/A	Fitness Lifestyle Design (Regular)	0.5
5334	Forensic Science 1 (Regular)	1
9550	Foundations of Programming	1
3111	French I	1
3112	French II	1
4520	Geometry	1
4520	Geometry (Credit Recovery)	1
4520	Geometry (Honors)	1
N/A	Guitar 1 (Regular)	1
N/A	Health Opportunities through Physical Education (HO)	1
N/A	Hebrew I	1
N/A	Integrated Mathematics I (Honors)	1
N/A	Integrated Mathematics I (Regular)	1
N/A	Integrated Mathematics II (Honors)	1
N/A	Integrated Mathematics II (Regular)	1
N/A	Integrated Mathematics III (Honors)	1
N/A	Integrated Mathematics III (Regular)	1

4302	Intensive Reading: A Universe of Reading	1
4058	Intensive Reading: Fields of Reading	1
N/A	Introduction to Hospitality & Tourism (Regular)	1
N/A	Introduction to the Teaching Profession	1
4111	Journalism I	1
3131	Latin I	1
3132	Latin II	1
3133	Latin III (Honors)	1
N/A	Leadership Skills Development	1
3310	Life Management Skills	0.5
N/A	Marine Science	1
N/A	Marine Science Honors	1
4550	Mathematics for College Readiness Regular	1
4063	Mawi - ELL Success	0.5
2132	Middle School Beginning Spanish	1
1335	Middle School Business Keyboarding	0.5
1354	Middle School Career Research & Decision Making	0.5
2303	Middle School Civics	1
2303	Middle School Civics (Honors)	1
N/A	Middle School Coding Fundamentals (Regular)	0.5
1363	Middle School Comprehensive Physical Education Gra	0.5
1363	Middle School Comprehensive Physical Education Gra	0.5
1056	Middle School Comprehensive Science I	1
1056	Middle School Comprehensive Science I (honors)	1
1057	Middle School Comprehensive Science II (honors)	1
2266	Middle School Comprehensive Science II (Regular)	1
2276	Middle School Comprehensive Science III (Honors)	1
2286	Middle School Comprehensive Science III (Regular)	1
1326 and 1328	Middle School Computer Science Discoveries	0.5
N/A	Middle School Critical Thinking, Problem Solving & Le	0.5
2204	Middle School Fitness - Grade 6	0.5
1056	Middle School Grade 6 Mathematics	1
1056	Middle School Grade 6 Mathematics (Honors)	1
1057	Middle School Grade 7 Mathematics	1
1057	Middle School Grade 7 Mathematics (Honors)	1
2217	Middle School Grade 8 Pre-Algebra	1
1114	Middle School Language Arts I	1
1114	Middle School Language Arts I (Honors)	1
1114	Middle School Language Arts II	1
1114	Middle School Language Arts II (Honors)	1
1114	Middle School Language Arts III	1
1114	Middle School Language Arts III (Honors)	1
N/A	Middle School M/J Guitar 1	1
2132	Middle School Spanish Intermediate	1
2325	Middle School United States History (Honors)	1
2325	Middle School United States History (Regular)	1

1173	Middle School Visual Art I	0.5
1173	Middle School Visual Art II	0.5
2315	Middle School World History	1
2315	Middle School World History (Honors)	1
N/A	Music of the World	1
N/A	Parenting Skills	0.5
1451	Personal Financial Literacy (Honors)	0.5
1451	Personal Financial Literacy (Regular)	0.5
3320	Personal Fitness	0.5
5160	Physical Science	1
5160	Physical Science (Honors)	1
5211	Physics I	1
5211	Physics I (Honors)	1
4611	Pre-Calculus (Honors)	1
4740	Probability and Statistics Honors	1
5641	Psychology 1 Regular	0.5
N/A	Social Media	0.5
3161	Spanish I	1
3162	Spanish II	1
3163	Spanish III (Honors)	1
3164	Spanish IV (Honors)	1
5541	U.S. Government	0.5
5541	U.S. Government (Credit Recovery)	0.5
5541	U.S. Government (Honors)	0.5
5541	U.S. History (Credit Recovery)	0.5
5410	U.S. History (Honors)	1
5410	U.S. History (Regular)	1
5131	World History	1
5131	World History (Credit Recovery)	1
5131	World History (Honors)	1
N/A	Agricultural Communications II	1
N/A	Agricultural Communications III	1
4432	Algebra IA	0.5
N/A	Allied Health Assisting III	1
5213	AP Physics I	1
N/A	Art History and Criticism I (Honors)	1
N/A	Artificial Intelligence in the World	0.5
5020	Astronomy Solar Galactic	1
N/A	Computer and Network Security Fundamentals	1
N/A	Criminal Justice Operations I	1
N/A	Foundations of Curriculum and Instruction	1
N/A	Health Science Foundations	1
N/A	Hebrew II	1
N/A	Holocaust Studies	0.5
N/A	Hospitality & Tourism Marketing Management	1
N/A	Law Studies	0.5

N/A	Middle School Computer Science Discoveries II	0.5
N/A	Middle School Digital Art & Design	1
N/A	Middle School Exploring Music	1
N/A	Theatre, Film, and Cinema Productions	1
N/A	Principles of Entrepreneurship	1
N/A	Middle School Peer Counseling I	1
N/A	Leadership Skills Development II	0.5
4811	Liberal Arts Mathematics I	1
4812	Liberal Arts Mathematics II	1
3113	French III (Honors)	1
N/A	Human Growth & Development	1
5133	Integrated Biology	1



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**TERMS AND CONDITIONS
FOR USE OF FLORIDA VIRTUAL SCHOOL
LICENSED PRODUCT(S)**

IMPORTANT: DO NOT ALLOW LICENSED PRODUCT (AS DEFINED BELOW) TO BE USED WITHOUT READING THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE NOT WILLING TO ACCEPT THESE TERMS AND CONDITIONS, PLEASE DO NOT USE THE LICENSED PRODUCT, AND NOTIFY FLORIDA VIRTUAL SCHOOL WITHIN TEN (10) DAYS OF RECEIPT OF THIS AGREEMENT. BY USING THE LICENSED PRODUCT AS PERMITTED BY THIS AGREEMENT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

This document contains terms and conditions applicable to the FLVS product line. The FLVS product line consists of a variety of virtual learning product offerings. Article A (Licensed Product Terms and Conditions) contains license terms that are applicable to all product offerings within the FLVS product line. Article B (Supplemental License Terms and Conditions) contains additional terms that are applicable to specific product offerings within this product line. Although Article B contains terms governing multiple offerings within the FLVS product line, Customer/Licensee will receive licenses only to those offerings that Customer/Licensee has actually ordered. Article C (Support and Services Policies) contains additional terms relating to FLVS' provision of support and services associated with the product offerings covered by this Agreement. Article D (Marketing Terms and Conditions) of this document sets forth FLVS' marketing and branding terms and conditions, along with additional terms for the use of the FLVS name and trade dress in connection with Customer/Licensee's use of the Licensed Product. Finally, Article E (Demo Access – Mutual Nondisclosure Agreement) sets forth the terms and conditions for Customer/Licensee's use of any of FLVS' demo products or courses.

FLVS is not subject to certain data privacy laws, including E.U. General Data Protection Regulation ("GDPR") and the California Consumer Privacy Act ("CCPA"). Despite this, FLVS endeavors to provide a reasonably equivalent level of protection for the personal information of users of its products as part of its commitment to protecting the privacy of its users. FLVS may use, collect, and process your personal information through your use of its products. Your use of any and all product offerings within the FLVS product line constitutes consent to our privacy practices regarding your personal information as detailed in FLVS's Privacy Policy which is incorporated herein by reference. Your continued use of the product affirms your agreement to this Privacy Policy and any modifications or amendments thereto. If you do not wish to be bound by these provisions, do not use the product and uninstall any downloads and applications. If there is any conflict between FLVS's Privacy Policy and these Terms and Conditions, these Terms and Conditions shall control unless specified otherwise herein.

ARTICLE A: LICENSED PRODUCT AGREEMENT

1. DEFINITIONS. This Agreement is between Florida Virtual School (“FLVS” or “Florida Virtual School”) and the school, school district or other entity licensing Licensed Product from Florida Virtual School (“Customer/Licensee”). In addition, the following definitions shall apply:

1.1 “Affiliate” shall mean, with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control of such person. “Control” as used herein means the legal, beneficial, or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting interest in such entity.

1.2 “Agreement” shall mean, collectively, the Order Documentation, this Agreement, and all other Contract Documents identified in the Order Documentation.

1.3 “Authorized Sites” shall mean the schools, school districts or other entities named in the Order Documentation as being licensed to provide access to the Licensed Product to their Authorized Users.

1.4 “Authorized Third Party.” For certain Licensed Products, Customer/Licensee may purchase a license from FLVS for a Licensed Product that will be deployed in a learning management system (“LMS”) not hosted by FLVS or FLVS’s designee. Rather, the Customer/Licensee may license an LMS from a third party and have such third party host the LMS or have the LMS locally deployed in the Customer/Licensee’s own networking environment. In either instance, the third party licensing the LMS to Customer/Licensee is referred to herein as an “Authorized Third Party.” The FLVS Approved LMS providers are subject to change and the list can be made available upon request.

1.5 “Authorized Users” shall mean (a) students enrolled at the Authorized Sites, and (b) teachers, administrative personnel or other instructional staff employed by the Authorized Sites or by a central administrative office responsible for the Authorized Sites.

1.6 “Confidential Information” shall mean, subject to Federal and State laws, rules, and regulations including but limited to the Oklahoma and Florida Open Records act, any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including, without limitation, documents, prototypes, samples, plans, and equipment), which is designated as “Confidential,” “Proprietary,” or some similar designation. Information communicated orally shall be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information shall not, however, include any information which: (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party’s files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party’s obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information, as shown by documents and other competent evidence in the receiving party’s possession; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

1.7 “Documentation” shall mean all standard written user information, whether in electronic, printed or other format, delivered to Customer/Licensee by FLVS with respect to the Licensed Product, now or in the future, including, but not limited to, instructions, manuals, training materials, and other publications provided by FLVS that contain,

describe, explain or otherwise relate to the Licensed Product.

1.8 “Licensed Product” shall mean the applicable virtual learning product offering(s) described in the Supplement and licensed to Customer/Licensee pursuant to this Agreement, as specified in the Order Documentation. Licensed Product shall be deemed to include all course content, LMS software (if applicable), hosting services (if applicable), assessments and other materials provided or made available by FLVS to Customer/Licensee in connection with the virtual learning product offerings licensed by Customer/Licensee hereunder, including all Documentation supplied by FLVS in connection with any such offerings.

1.9 “Global School Course” shall mean a half or full credit course enrollment taken for initial credit in the Global School licensing model.

1.10 “Global School-Credit Recovery Course” shall mean a half or full credit course enrollment taken for credit recovery in the Global School licensing model.

1.11 “Order Documentation” shall mean a price quotation, invoice or other documentation provided by FLVS specifying the Licensed Product and associated support and/or services being offered to Customer/Licensee, which has been accepted by Customer/Licensee as evidenced by Customer/Licensee’s submission to FLVS of a purchase order or other written acknowledgment of Customer/Licensee’s order for Licensed Product or by Customer/Licensee’s payment of applicable fees.

1.12 “Intellectual Property Rights” include all worldwide intellectual and industrial property rights including all rights in each country to copyrights, trademarks, service marks, patents, inventions, industrial designs, trade secrets, trade dress, and all other proprietary rights.

2. LICENSE GRANT.

2.1 Basic Terms. Subject to the terms and conditions of this Agreement, FLVS grants to Customer/Licensee a restricted, non-exclusive, non-transferable license to use the Licensed Product for the applicable license term for which Customer/Licensee has paid FLVS’s applicable license fees. The Supplement contains additional licensing restrictions that are applicable to the various Licensed Products available to Customer/Licensee under this Agreement, and Customer/Licensee agrees to abide by such restrictions. Regardless of the specific Licensed Product being licensed by FLVS to Customer/Licensee, Customer/Licensee acknowledges and agrees that the Licensed Product may only be used by Authorized Users for educational purposes. **Under no circumstances may Customer/Licensee or Authorized Third Party utilize the Licensed Product(s) for or to any school, business, person, or entity other than Customer/Licensee’s delivery of direct instruction to Customer/Licensee’s students by Customer/Licensee’s employees.** In no event will Customer/Licensee use the Licensed Product, including assessments, whether on a non-profit or for-profit basis, in a manner that services students of any schools or school districts that are not operated by Customer/Licensee, or for any schools or school districts that are operated by Customer/Licensee but for which Customer/Licensee has not paid FLVS’s applicable license fees for the applicable Licensed Product, without the prior written consent of FLVS. Customer/Licensee will not permit anyone to use or access the Licensed Product, other than (a) Authorized Users, and (b) if applicable, Authorized Third Parties, solely to the extent necessary to permit the use of the Licensed Product in conjunction with any LMS licensed by such Authorized Third Parties to Customer/Licensee.

2.2 Software. To the extent that the Licensed Product provided by FLVS to Customer/Licensee includes access to any LMS or other software hosted by FLVS or FLVS’s designee, such software may be used in executable code form only. Source code to such software is not licensed to Customer/Licensee hereunder and will not be provided.

2.3 Copies. Customer/Licensee shall not make copies of or otherwise

reproduce any Licensed Product, including assessments and Documentation, without the express written permission of FLVS, except that (a) Customer/Licensee's Authorized Users may print, for Customer/Licensee's internal use only, copies of any Documentation that is provided electronically, in order to support Authorized Users' use of the Licensed Product; (b) Customer/Licensee's Authorized Users may print copies of any instructional content that is provided electronically, for educational use only and only for the benefit of Customer/Licensee students receiving direct instruction by Customer/Licensee employees utilizing the Licensed Product(s) (e.g., course content may not be printed by teachers for use with students not enrolled in a Licensed Product); and (c) if Customer/Licensee is purchasing a Client Hosted Course (as described in Section 3 of the Supplement), then Customer/Licensee may permit the applicable Authorized Third Party to make a backup copy of the Client Hosted Course solely for use as part of Customer/Licensee's disaster recovery plan. Customer/Licensee (and, if applicable, any Authorized Third Party) shall retain and include all of FLVS's and its licensors' copyright and other proprietary rights notices on any copies of Licensed Product made pursuant to this Section 2.3 or otherwise made with the written permission of FLVS.

Customer/Licensee acknowledges that print items are intended for use only for the duration of Customer/Licensee's active license.

2.4 License Term. The Order Documentation shall specify the length of Customer/Licensee's license to the Licensed Product, which could be a specified term or perpetual. In all cases, Customer/Licensee's license to the Licensed Product is subject to termination in accordance with Section 12.3 of this Agreement.

3. RESTRICTIONS ON USE OF LICENSED PRODUCT.

3.1 Intellectual Property Rights. Customer/Licensee acknowledges and agrees that all courses, content, software, graphics, pictures, documents, licenses, designs, and materials, and any and all derivatives thereof (collectively, "Works") made available to Customer/Licensee pursuant to this Agreement are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws, and FLVS (or its Affiliates or licensors) owns all right, title, and interest in and to the Works.

Customer/Licensee acknowledges and agrees that it has no intellectual property interest or claims in the Works and has no rights to make any use of such Works except as expressly granted herein. Except as expressly authorized in writing by an officer of FLVS, Customer/Licensee agrees not to sell, license, sublicense, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works from any of the Works. Customer/Licensee will not act or permit any action that would impair any of FLVS' (or its Affiliates' or licensors') rights in the Works.

Customer/Licensee agrees not to: (a) disassemble, reverse compile, reverse engineer, or otherwise attempt to discover the source code of or trade secrets embodied in the Works (or any portion thereof); (b) distribute, lend, rent, sell, transfer, or grant sublicenses to, or otherwise make available the Works (or any portion thereof) to third parties, including, but not limited to, making such Works available (i) through resellers, OEMs, or other distributors, or (ii) as an application service provider, service bureau, or rental source, unless expressly permitted in writing; (c) embed or incorporate in any manner the Works (or any element thereof) into other applications of Customer/Licensee or third parties; (d) use or transmit the Works in violation of any applicable law, rule, or regulation, including any export/import laws; (e) in any way access, use, or copy any portion of the Works (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell, or support any product or service that is competitive with the Works; (f) remove, obscure, or alter any copyright notices or any name, logo, tagline, or other designation of FLVS or its Affiliates displayed on any portion of the Works. Customer/Licensee shall not

permit any third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions.

Upon termination of this Agreement, all Intellectual Property Rights shall remain with FLVS.

3.2 Confidentiality of Licensed Product. Customer/Licensee shall use reasonable efforts to ensure that (i) Licensed Product is not disclosed to or used by anyone other than Authorized Users and, if applicable, Authorized Third Parties, and (ii) all usage of Licensed Product is consistent with this Agreement and any limitations on the scope of Customer/Licensee's license. Customer/Licensee shall ensure that, to the extent it provides any copies of or access to any Licensed Product to any Authorized Third Party, such Authorized Third Party is made aware and acknowledges in writing that such Licensed Product (a) is proprietary to FLVS and its licensors, (b) may be used by such Authorized Third Party solely in connection with such Authorized Third Party's provision of LMS services to Customer/Licensee in support of Customer/Licensee's use of the Licensed Product, and (c) may not be disclosed to any party other than Customer/Licensee, or used in any manner by the Authorized Third Party for its own benefit or for the benefit of any party other than Customer/Licensee. Customer/Licensee shall not transfer, assign, provide or otherwise make Licensed Product or any component thereof available, in any form or via any medium, to any other party without the prior written consent of FLVS. Any attempted sublicense, assignment or transfer by Customer/Licensee of any rights, duties or obligations hereunder without FLVS's consent shall be void. Upon request, Customer/Licensee shall provide FLVS with access to Customer/Licensee's applicable records and computer systems to enable FLVS to audit Customer/Licensee's compliance with the provisions of this Agreement. Customer/Licensee shall provide notice to FLVS immediately, in writing, of any unauthorized use or distribution of Licensed Product of which Customer/Licensee becomes aware and shall take all steps necessary to ensure that such unauthorized use or distribution is terminated. To the extent that any Licensed Product uses passwords, codes or other user identifications to access such Licensed Product, Customer/Licensee shall advise all users that such passwords, codes or user identifications must be maintained in confidence and not transmitted or shared. FLVS is not responsible for any failure of users to maintain the confidentiality of such information.

3.3 "Answer Key" Course. FLVS shall provide Customer/Licensee with access to answer keys by delivering an answer key course to Customer/Licensee LMS or by giving Customer/Licensee access to the course in the FLVS Hosted model. Access to this course shall ONLY be given to teachers and administrative personnel and students shall NOT be enrolled in or have access to this course.

4. SUPPORT AND SERVICES. FLVS will supply support (whether included with Customer/Licensee's license of Licensed Product or purchased separately by Customer/Licensee) pursuant to the terms of FLVS's Article C Support and Services Policies, a copy of which is attached hereto and incorporated herein by reference.

5. MATERIALS. Customer/Licensee's license to the applicable Licensed Product includes access to the virtual course content and such other course materials as are typically provided by FLVS with the applicable Licensed Product, which may vary depending on the Licensed Product selected. Information regarding required materials for each course, including whether they are provided by FLVS or whether they are Customer/Licensee's responsibility to provide, is available upon request. FLVS may provide a storefront through which Customer/Licensee may choose to purchase required materials not provided by FLVS. The purchase of storefront materials is limited to program administrative and support staff. Storefront materials are not available for purchase by Customer/Licensee's teachers, students, or student parents or guardians. All Course Materials purchases are final. Refunds and exchanges are not available for any Course Materials purchases. Customer/Licensee has one (1) year from FLVS's receipt of payment to use a Course Materials credit. At the end of one (1) year, any remaining Course Materials credit will be deemed expired.

6. CONFIDENTIALITY; NON-DISCLOSURE.

6.1 Non-Use and Non-Disclosure. Each party agrees not to use any Confidential Information of the other party for any purpose except as provided in this Agreement or to carry out its respective duties and obligations hereunder. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees, except to those employees of the receiving party who are required to have the information in order to perform their obligations under this Agreement. 8.2 Neither party shall reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the other party's Confidential Information and that are provided to the party hereunder.

6.2 Maintenance of Confidentiality. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions of this Section, prior to disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

6.3 Return of Materials. All documents and other tangible objects containing or representing Confidential Information that have been disclosed by either party to the other party, and all copies thereof which are in the possession of the other party, shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party (i) immediately upon termination of this Agreement or (ii) at any time upon the disclosing party's written request.

7. PROTECTED DATA AND INFORMATION.

7.1 Data Protection. FLVS will ensure all reasonable measures are taken to protect Customer/Licensee's Data while in use at the FLVS site. Reasonable measures include, but are not limited to, the Data being stored on a secure server in a secured building behind an internet firewall with role-based level password protection for all access to such Data. FLVS shall provide copies of Customer/Licensee Data to Customer/Licensee within seven (7) Business Days of a written request for such Data.

7.2 Personal Identifying Information. To the extent that Customer/Licensee provides any personally identifying information (e.g., student or teacher data) to FLVS in the course of FLVS' performance of this Agreement, FLVS shall exercise commercially reasonable care to use such information only for the purposes of providing services to Customer/Licensee as described herein and not to disclose or permit access to any such information to any third party, other than service providers with whom FLVS may contract to provide support or hosting services in connection with the Licensed Product, in which event FLVS shall require such third parties to maintain such information as confidential in accordance with this provision. Notwithstanding the foregoing, FLVS may disclose personally identifying information to third parties in the following situations: (a) in response to a subpoena, court order, or legal process, to the extent permitted and required by law; (b) to protect user security or the security of other persons, consistent with applicable laws; (c) in connection with a sale, merger, joint venture, or other transfer involving some or all of FLVS or the applicable assets of FLVS; or (d) as required by Federal or Florida Laws. In addition, FLVS may use and disclose aggregated, non-personally identifying information about the use of any Licensed Product for its business purposes (e.g., as part of a statistical analysis or study of the performance of students using the Licensed Product).

8. CHARGES AND PAYMENTS.

8.1 Fees and Taxes. Customer/Licensee agrees to pay FLVS the applicable fees charged for any Licensed Product and associated support and services ordered by Customer/Licensee, together with all applicable sales, use or

other taxes, however designated, except for taxes based on FLVS's net income. If Customer/Licensee claims tax exempt status, Customer/Licensee agrees to provide FLVS with evidence of such tax exemption upon FLVS's request. To the extent that such tax exemption cannot be properly claimed or does not extend to certain taxes or transactions, Customer/Licensee shall be responsible for any and all taxes that arise from this Agreement (except for taxes based upon FLVS's net income). All pricings set forth in any Order Documentation supplied by FLVS is in United States dollars, unless otherwise specified. This is a nonrefundable, nontransferable license. Licenses that have been accepted by the Customer will be activated by the Supplier and shall be deemed used and non-refundable.

Overages. Customer/Licensee is financially responsible for overages. An overage is any unit used in excess of the number of units licensed by Customer/Licensee at the beginning of or during the life of the license. FLVS reserves the right to audit, or request an audit from Customer/Licensee, of Customer/Licensee's usage and invoice Customer/Licensee for any overages that occur at any time during Customer/Licensee's use of the product. Customer/Licensee is financially responsible for all overages regardless of whether the overage is the result of enrollment by Customer/Licensee administrative staff, support staff, teachers, students, student parents or guardians; or any other party without the knowledge or consent of individuals responsible for the Customer/Licensee's program. Customer/Licensee is required to provide all information within ten (10) business days of FLVS's request for course usage information. If Customer fails to provide the information requested within ten (10) business days, FLVS may suspend access to course content until such information is received. Please note that suspension may result in permanent loss of student data.

8.3 Payment Terms. All fees for Licensed Product and associated support and services shall be due and payable according to FLVS's invoice terms unless otherwise provided by law. Customer/Licensee shall pay a monthly charge of 1.5% (18% annually) on all amounts not paid when due, or if a lower maximum rate is established by law, then such lower maximum rate.

9. FLVS WARRANTY; DISCLAIMER; LIMITATION OF LIABILITY.

9.1 Limited Warranty. FLVS cannot assure that the performance of Licensed Product will be uninterrupted or error-free, or that all Licensed Product problems will be corrected, despite FLVS's reasonable efforts to do so. FLVS does, however, warrant for the applicable Warranty Period (as defined in Section 9.2 below) that the Licensed Product will substantially conform to the applicable description and specifications contained in the Documentation delivered with such Licensed Product. The foregoing warranty shall not apply to Licensed Product that has been modified by Customer/Licensee or used in a manner that is inconsistent with this Agreement or that does not conform to the instructions and specifications contained in the Documentation for such Licensed Product. In the event that Licensed Product does not meet the requirements of this warranty, Customer/Licensee shall be responsible to so notify FLVS in writing during the Warranty Period and to provide FLVS with sufficient detail to allow FLVS to identify the problem. After receiving such notification, FLVS will undertake to correct the problem, either itself or through its licensors, by programming or content corrections, reasonable "work-around" solutions and/or Documentation corrections. If FLVS is unable to correct the problem after a reasonable opportunity, FLVS will refund the license fees paid for such Licensed Product during Customer/Licensee's current license term, and Customer/Licensee's license to use such Licensed Product will terminate. Any liability of FLVS under this warranty shall apply only to license fees paid by Customer/Licensee during Customer/Licensee's then-current license term, and not to any previous license terms during which Customer/Licensee used the Licensed Product. **The foregoing states the complete and entire remedies that Customer/Licensee has under this warranty.** FLVS shall have no responsibility for any warranty claims made outside of the applicable Warranty Period.

9.2 Warranty Period. For Licensed Product that is licensed to Customer/Licensee for a specified term (i.e., not perpetually licensed), the Warranty Period shall be the first ninety (90) days of each license term (whether an initial license term or a renewal license term). For Licensed Product that is licensed to Customer/Licensee on a perpetual license basis, the Warranty Period shall be the first one hundred twenty (120) days after Customer/Licensee is initially provided access to the applicable Licensed Product by FLVS. The Warranty Period for Licensed Product that is

perpetually licensed to Customer/Licensee does not restart when an update to a course or new course version is provided pursuant to any support plan, nor do such updates come with a separate warranty.

9.3 DISCLAIMER OF OTHER WARRANTIES AND CONDITIONS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS IN RELATION TO THE LICENSED PRODUCT, SUPPORT OR SERVICES THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES OR CONDITIONS ARISING BY LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. THE LIMITED WARRANTIES SET FORTH ABOVE GIVE CUSTOMER/LICENSEE SPECIFIC LEGAL RIGHTS. CUSTOMER/LICENSEE MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION.

9.4 LIMITATION OF LIABILITY. NEITHER FLVS NOR ITS LICENSORS OR SERVICE PROVIDERS SHALL BE LIABLE TO CUSTOMER/LICENSEE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR FOR CLAIMS OF A THIRD PARTY, ARISING OUT OF THIS AGREEMENT, LICENSED PRODUCT, SUPPORT, SERVICES, OR OTHER ITEMS PROVIDED HEREUNDER, EVEN IF FLVS OR ITS LICENSORS OR SERVICE PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND, OR ACTION ARISING OUT OF THIS AGREEMENT, CUSTOMER/LICENSEE SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY CUSTOMER/LICENSEE TO FLVS HEREUNDER FOR THE APPLICABLE LICENSED PRODUCT OR OTHER ITEM OR SERVICE ON WHICH THE CLAIM IS BASED DURING CUSTOMER/LICENSEE'S CURRENT LICENSE TERM FOR THE APPLICABLE LICENSED PRODUCT.

9.5 Guarantee Against Infringement. FLVS guarantees that all components of the Licensed Product shall be free from claims of patent, copyright, and trademark infringement. Notwithstanding any other provision of this Agreement, FLVS shall to the extent permitted by law indemnify, hold harmless, and defend Customer/Licensee, its officers, directors, employees, agents, assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of the Licensed Product under this Agreement.

If a component of the Licensed Product becomes or is likely to become the subject of an infringement claim, FLVS may, at its option and expense, either: (a) procure for Customer/Licensee the right to continue using such component; (b) replace or modify the affected component so it becomes non-infringing and remains functionally equivalent; or (c) require the return of the affected component, allow Customer/Licensee to return other components intended to operate with the affected component, and refund to Customer/Licensee the portion of the license fees attributable to the returned product, prorated in accordance with the unused portion of the term.

10. RESERVED.

11. AUDIT; REVIEW. Audit Rights. FLVS may audit course enrollment and Customer/Licensee's use of the Licensed Product at any time during the term of this Agreement.

12. TERM AND TERMINATION.

12.1 Term. The term of Customer/Licensee's access to a given Licensed Product may be perpetual, or for a specified term, depending on the *FlexPoint Education October 19, 2021, v15*

Licensed Product and the deployment model. For Licensed Products for which the license term is perpetual, the license shall begin when FLVS has provided access to the Licensed Product and shall continue in effect unless terminated pursuant to Section 12.3. For Licensed Products for which the license term is a specified period, the license term shall begin on the date that FLVS has made the Licensed Product available for Customer/Licensee's use and shall continue for a period consistent with the Order Documentation.

12.2 Renewals. For Licensed Products for which the term is a specified period (i.e., not perpetual), the license terminates at the end of the then-current license term. If, however, the parties agree to renew the license for an additional term (whether for the same or different quantities of students, courses, or other applicable licensing parameters), the then current terms and conditions of this Agreement shall apply and remain in effect for any such renewal term, unless FLVS updates these terms and conditions to Customer/Licensee in connection with such renewal term, either in writing or via the FLVS website in which case such updated terms and conditions shall apply. Any renewal of a license to a Licensed Product shall be at FLVS's then-current rates as specified in the renewal Order Documentation.

12.3 Suspension or Termination for Breach. FLVS shall have the right to suspend performance and access to the Licensed Product under this Agreement in the event that Customer/Licensee is in breach of any of its obligations under this Agreement. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period, provided that FLVS shall have the right to terminate this Agreement immediately upon written notice in the event that Customer/Licensee breaches any of its obligations under Sections 2 or 3 hereof. If this Agreement is terminated due to non-payment by Customer/Licensee, and then FLVS subsequently reinstates Customer/Licensee's access to the applicable Licensed Product upon later receiving payment, any such reinstated access shall remain subject to the terms and conditions of this Agreement (unless FLVS provides new terms and conditions to Customer/Licensee at the time of such reinstated access, in which case such new terms and conditions shall apply).

12.4 Effects of Termination. In the event of termination of all or any portion of this Agreement, Customer/Licensee shall remain responsible to pay any fees or charges that have accrued prior to the date of termination. In addition, the provisions of Sections 3, 9.3, 9.4, 12.4, 12.5, and 14 of this Agreement, and Sections 3.3(b) and 3.3(c) of the Supplement, shall survive termination of this Agreement. If partially terminated with respect to a particular product or service, this Agreement will remain in effect for all other products and services that have been provided hereunder to Customer/Licensee.

12.5 Use of Licensed Product. Immediately upon termination of a license of any Licensed Product, Customer/Licensee shall cease using, and shall promptly destroy any paper or other hard copies, and delete from its computer systems any electronic copies, of any components of any Licensed Product, which includes any and all assessments and derivative works of Licensed Product in Customer/Licensee's possession or control. In addition, Customer/Licensee shall require any Authorized Third Parties to cease using and to delete and destroy any such copies of any Licensed Product. Customer/Licensee access and use of Licensed Product after termination shall be limited to downloading gradebook and any student produced materials. If state law or other requirement exists that require Customer/Licensee to access assessments beyond gradebook, an additional license must be purchased to continue access. Upon request, Customer/Licensee shall (a) forward written certification to FLVS that it has complied with the requirements of this Section 12.5, and (b) provide FLVS with access to Customer/Licensee's applicable records and computer systems including any Authorized Third Party(s) to enable FLVS to audit Customer/Licensee's compliance with the provisions of this Section 12.5.

13. FLVS HOSTED PRODUCTS AND SERVICES. For certain Licensed Products, FLVS provides hosting services and/or access to an LMS through which Customer/Licensee manages the use of the Licensed Product. To the extent that Customer/Licensee licenses a Licensed Product pursuant to which FLVS provides such hosting services and/or LMS access, the following terms shall apply.

13.1 Availability. FLVS will attempt to schedule any planned maintenance or upgrades within its hosting environment at times when usage is typically low (e.g., nights and weekends), and will attempt to communicate any outages associated with planned maintenance or upgrades to Customer/Licensee in advance. Customer/Licensee acknowledges that as the FLVS hosted deployment models are dependent on the Internet, information is transmitted over local exchange and Internet carrier lines, as well as through routers, switches and other devices owned, maintained and serviced by third parties, all of which are beyond the control of FLVS and which can be impaired or disrupted through no fault of FLVS. Customer/Licensee further acknowledges and agrees that the FLVS hosted Licensed Products or services may be inaccessible or inoperable from time to time due to unscheduled maintenance or causes beyond the control of FLVS or not reasonably foreseeable by FLVS, including, but not limited to: the interruption or failure of telecommunication or digital transmission links; hostile network attacks; network congestion; or other failures (collectively, “Downtime”). FLVS will use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the FLVS hosted Licensed Products or services, but FLVS shall have no liability should Downtime occur despite such commercially reasonable efforts, nor shall it be a breach of the terms and conditions, purchase order, or Order Documentation.

13.2 Service Providers. For Licensed Products where FLVS agrees to provide Customer/Licensee with LMS access and/or hosting services, FLVS may use in-house services or a third-party service provider to provide such services.

13.3 Compatibility. Customer/Licensee shall be responsible to provide, or to ensure that Authorized Users have, a computing environment compatible with FLVS’s standard specifications for the Licensed Product being licensed by Customer/Licensee. Copies of such specifications are available at <https://www.flvsglobal.net/technical-requirements/>. Such specifications are subject to change over time based on changes in technology or Licensed Product delivery methods. FLVS does not supply computers or Internet access as part of any Licensed Product.

14. COMPLIANCE WITH LAWS

14.1 In General. Each party agrees to fully comply with the requirements of all applicable federal, state, and local laws, codes, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

14.2 Children’s Online Privacy Protection Act (“COPPA”). Customer/Licensee shall be responsible for ensuring full compliance with COPPA and all rules promulgated thereunder.

14.3 Confidential Student Information. For the purposes of this Agreement, FLVS is hereby designated a school official for the purposes of receiving confidential student information. FLVS acknowledges and agrees that it will not disclose the confidential student information to any other person or entity and will only use the confidential student information for the purposes of this Agreement and for no other purpose. Upon the termination or expiration of this Agreement, FLVS shall maintain the confidential student information for the time period required by Florida law, and shall thereafter delete and/or destroy all originals and any copies of confidential student information and shall not retain any confidential student information. As FLVS may receive student information that is otherwise confidential, FLVS shall fully comply with the requirements of §1002.22 and §1002.221, Florida Statutes, the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. §1232g, and the federal regulations issued pursuant thereto (34 CFR Part 99); and any other law or regulation, either federal or State of Florida, regarding confidentiality of student information and records. Further, to the extent permitted by law, FLVS for itself, and its officers, employees, agents, representatives, contractors, and subcontractors, shall fully indemnify and hold the Customer/Licensee and its officers and employees harmless for any violation of this provision, including, but not limited to defending the Customer/Licensee and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon the Customer/Licensee, or payment of any and all costs, damages, judgments, or losses incurred by or imposed upon the Customer/Licensee arising out of the breach of this

provision by FLVS, or its officers, employees, agents, representatives, contractors, and subcontractors, to the extent that FLVS shall either intentionally or negligently violate this provision, or §1002.22 or §1002.221, Florida Statutes. This provision shall survive the termination of or completion of all obligations under this Agreement and shall be fully binding upon FLVS until such time as any proceeding which may be brought on account of this provision is barred by any applicable statute of limitations.

14.4 Accommodations. Customer/Licensee acknowledges that virtual learning programs are not appropriate for all students, and it is Customer/Licensee’s responsibility to ensure that a given Licensed Product is an appropriate placement for a particular student. For Licensed Products with FLVS-provided teacher instruction, if Customer/Licensee provides access to such Licensed Products to students requiring accommodations, Customer/Licensee will allow the FLVS-supplied teacher (or other individuals designated by FLVS as appropriate) to participate in planning meetings to ensure that the particular Licensed Product is an appropriate placement for such students. Notwithstanding the foregoing, FLVS will not be responsible for making any modifications to a Licensed Product’s technology or content, or any other accommodations in connection with a Licensed Product or any associated instructional services, or third-party sites or materials associated with a course, if the standard Licensed Product is not appropriate for, or is not readily usable by, a given student.

a) **Students with Disabilities.** To the extent required by law, Customer/Licensee is responsible for complying with all applicable federal IDEA requirements and any other federal, state, or local laws or regulations in connection with the use and implementation of any Licensed Product.

b) **English Language Learner Students.** To the extent required by law, Customer/Licensee is responsible for providing appropriate equal access and ensuring compliance with any federal, state, or local laws or regulations in connection with the use and implementation of any Licensed Product.

c) **Individual Education Plans.** To the extent required by law, Customer/Licensee is responsible for providing any required services to support a student consistent with the legal requirements for serving students with special needs in a virtual school.

14.5 Data/Security Breach. The parties acknowledge and agree to comply with the requirements of Attachment D of SW1023. Additionally, each shall fully cooperate with the other regarding the statutory notification requirements.

14.6 Background Screening. As a public school, FLVS complies with all statutes regarding background screening of employees, in accordance with Florida law and the SW1023 terms, specifically including, but not limited to, the requirements of §1012.465, Florida Statutes (the Jessica Lunsford Act) and §1012.32, Florida Statutes.

15. GENERAL

15.1 Governing Law. Intentionally Omitted.

15.2 Dispute Resolution. The parties agree that they will use their best efforts to settle any and all disputes arising out of, under or in connection with this Agreement, including without limitation the validity, interpretation, performance, and breach hereof, prior to initiating any legal proceeding, whether judicial or administrative in nature. The efforts shall be primarily between the President of FLVS and the Superintendent, Principal, President, or similar chief executive of the Customer/Licensee, or their respective designees.

15.3 Force Majeure. Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strikes or labor disputes; extraordinary breakdown of or damage to FLVS’ servers or computer systems; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; inability to procure or obtain delivery of parts, supplies, power, equipment, or software; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty (60) days, either party may terminate this Agreement.

15.4 Sovereign Immunity. FLVS intends to avail itself of the benefits of §768.28, Florida Statutes and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Agreement shall be construed as a waiver of FLVS' right to sovereign immunity under §768.28, Florida Statutes, or other limitations imposed on FLVS' potential liability under state or federal law. Customer/Licensee agrees that FLVS shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, FLVS shall not be liable for any claim or judgment, or portion thereof, to any one person for over two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds three hundred thousand dollars (\$300,000.00). Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Agreement.

15.5 Non-Discrimination. The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities, and obligations under this Agreement because of race, age, political or religious beliefs, color, gender, gender identity or expression, national origin, marital status, disability, or sexual orientation.

15.6 Public Records. FLVS is a public agency subject to Chapter 119, Florida Statutes.

15.7 Severability. In the event any portion or part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts of this Agreement shall otherwise remain fully intact.

15.8 Assignment. Customer/Licensee may not assign this Agreement, in whole or in part, to any other party without the prior written consent of FLVS.

15.9 Right to Equitable Relief. Customer/Licensee acknowledges that in the event it breaches any of the provisions of Sections 2, 3, or 6, FLVS' interests will be irreparably injured, the full extent of FLVS' damages may be impossible to ascertain, and monetary damages will not be an adequate remedy. Customer/Licensee agrees that FLVS will be entitled to enforce this Agreement by an injunction or other legal or equitable relief in any court of its choice without the necessity of posting bond or security, in addition to its right to seek monetary damages or any other remedy.

15.10 Notices. Notices to FLVS shall be sent to Florida Virtual School, Attn: President, 5422 Carrier Drive, Suite 201, Orlando, FL 32819. Notices to Customer/Licensee shall be sent to Customer/Licensee's address of record as set forth in the Order Documentation. Either party may change its notice address by notifying the other in like manner. Any notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; if delivered by overnight courier service, on the Business Day immediately following delivery to such service; and if mailed, on the third Business Day after mailing.

15.11 Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than FLVS and Customer/Licensee.

15.12 Headings. Article, section, and paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

15.13 Waiver. Waiver by either party of any terms, conditions, or provisions of this Agreement shall not be considered a waiver of that term, condition, or provision in the future. No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

15.14 Third Party Requirements. To the extent that Customer/Licensee uses any Licensed Product, Customer/Licensee is responsible for ensuring that the courses meet the requirements of any third-party organization that Customer/Licensee or its students desire to satisfy. For example, the

National Collegiate Athletic Association ("NCAA") has specific guidelines regarding the acceptance of distance learning or credit recovery courses for student athletes. Customer/Licensee accepts responsibility for these criteria to the extent that Customer/Licensee uses any Licensed Product for students who desire to meet NCAA eligibility criteria. Similarly, Customer/Licensee is responsible for completing any College Board audit procedures required with respect to any Advanced Placement ("AP") courses if Customer/Licensee intends to offer any Licensed Product courses as AP courses.

15.15 Authority to Piggyback: If mutually agreed between Florida Virtual School and the Customer, agreement to these Terms and Conditions constitutes a proposal made under the same conditions, for the same price, and for the same effective period as this contract, to any other governmental entities.

15.16 Relationship of the Parties. At all times during the term of this Agreement, the parties shall be considered independent contractors and not employees of each other, and nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties. Neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate anything other than an independent contractor relationship with the other.

15.17 Entire Agreement. The Statewide No. 1023 master agreement and this Agreement, including the Supplement and the Policies attached hereto and the Order Documentation, constitutes the complete and entire agreement between the parties with respect to its subject matter and supersedes all prior discussions, understandings, arrangements, proposals, negotiations and agreements with respect to same. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any purchase order or other documentation submitted by Customer/Licensee. Notwithstanding the foregoing, to the extent of any conflict between this Agreement and the Order Documentation signed by both parties, the Order Documentation shall prevail. Except as otherwise expressly provided herein, this Agreement shall not be modified or amended in whole or in part without the written agreement of both parties.

ARTICLE B: SUPPLEMENTAL LICENSE TERMS AND CONDITIONS

These Supplemental License Terms and Conditions (“Supplement”) supplement the terms of the Licensed Product Agreement between FLVS and Customer/Licensee to which they are attached. Capitalized terms not defined in this Supplement shall have the same meanings ascribed to them elsewhere in the Agreement. Note that in addition to the terms set forth below for particular Licensed Products, minimum quantities may apply to purchase a license to certain Licensed Products.

To the extent that Customer/Licensee is granted a license under the Agreement to any of the Licensed Products named or described below, the following provisions set forth additional terms and conditions specific to such Licensed Products.

1. GLOBAL SCHOOL COURSES AND GLOBAL SCHOOL- CREDIT RECOVERY COURSES (FLVS HOSTED COURSES WITH TEACHER INSTRUCTION). FLVS offers a license to certain Licensed Products in which Customer/Licensee is granted access to course content in a FLVS hosted LMS environment accompanied with teacher instruction provided by Florida Virtual School (“FLVS”), the provider of the course content used in the FLVS product line. Licensed Products licensed in this fashion are referred to herein as “Global School Courses” or “Global School- Credit Recovery Courses.” The following terms apply to the licensure by Customer/Licensee of Global School Courses and Global School- Credit Recovery Courses (in addition to the terms of the Agreement to which this Supplement is attached):

1.1 Pricing. A license to a Global School Course or Global School- Credit Recovery Course is priced on a per-student, per- course basis. Customer/Licensee will pay FLVS’s applicable fees for each student enrolled in a Global School Course or Global School- Credit Recovery Course. The license fee may vary based on whether the Course is a full- credit or half-credit course, as well as whether the student resides within or outside the continental United States of America.

1.2 License/Payment Terms. Unless otherwise stated in the Order Documentation, for each Global School Course or Global School- Credit Recovery Course License Customer/Licensee agrees to:

- (a) pay the then current list price according to the quotation or Order Documentation; and
- (b) be invoiced after a student has been enrolled in a Global School Course or Global School- Credit Recovery Course for fourteen (14) consecutive days after the date the student was initially enrolled or upon completion of fifteen (15) percent of the half credit course segment, whichever occurs first. Once enrolled in a Global School Course, the student will have twenty-seven (27) weeks to complete each half credit. Once enrolled in a Global School- Credit Recovery Course, the student will have 10 weeks to complete each half credit. Should the student require more than twenty-seven (27) weeks in a Global School Course or more than 10 weeks in a Global School- Credit Recovery Course, Customer/Licensee may request and pay for a twenty-eight (28) day extension at the then current enrollment extension list price. Unless otherwise stated in the Order Documentation, payment is due as of the due date noted on the invoice, and payment is considered late fifteen (15) days after the invoice due date. FLVS retains the right to suspend Customer/Licensee service and student access to a Global School Course or Global School- Credit Recovery Course without notice if payment is overdue. FLVS retains the right to decline a Customer/Licensee request for an Official Transcript relating to a student account for which payment is overdue. If Customer/Licensee pays for Global School Licenses in advance of enrollment, then Customer/Licensee will have (1) year from the date the order is placed to enroll students in licensed Global School Courses or Global School- Credit Recovery Courses. If not activated within 1 year, the Global School Course or Global School- Credit Recovery license will be deemed expired. If a Global School Course or Global School- Credit Recovery Course is offered as part of a specific term offering with

specified dates, for example Summer School, then Customer/Licensee must fully utilize the licenses, meaning students must have completed the course(s) in which they were enrolled, by the last day of the specified term, otherwise the licenses will be deemed expired, and Customer/Licensee will not be eligible for a refund. In order for Customer/Licensee to enroll a student in a Global School- Credit Recovery Course, the student must have previously taken the equivalent course prior to enrolling.

1.3 Withdrawals. Unless otherwise stated in the Order Documentation, during the first fourteen (14) consecutive days after enrolling a student or prior to a student’s completion of fifteen (15) percent, whichever occurs first, in a Global School Course or Global School- Credit Recovery Course, Customer/Licensee may withdraw the student at no charge. A withdrawal request must be received from Customer/Licensee in writing to FLVS by email before the end of the fourteen (14) consecutive day period or prior to the student’s completion of fifteen (15) percent, whichever occurs first, for a Global School Course or Global School- Credit Recovery Course. After the fourteen (14) consecutive day period or upon the student’s completion of fifteen (14) percent of the half credit course segment, whichever occurs first, Customer/Licensee will be invoiced as per the terms outlined in section “1.3 License/Payment Terms.” If payment is made in advance, Customer may withdraw the student and enroll another student at no additional charge during the first fourteen (14) consecutive day period or prior to the student’s completion of fifteen (15) percent of the half credit course segment, whichever occurs first, for a Global School Course or Global School- Credit Recovery Course. After the fourteen (14) day period or upon student’s completion of fifteen (15) percent or more of the half credit course segment, whichever occurs first, there is no credit or refund for not completing a course.

1.4 Training. FLVS may provide, at its discretion, online training via asynchronous videos for Customer/Licensee personnel (e.g., Facilitators, as defined in Section 1.5 below, guidance counselors, or others) who will be supporting Customer/Licensee’s students taking a Global School Course or Global School- Credit Recovery Course.

1.5 Course Maintenance; Administrative and Teacher Support. Upon enrollment in a Global School Course or Global School- Credit Recovery Course, students will have access to the most current version of that course. A FLVS administrator will be designated as Customer/Licensee’s point of contact for administrative and support issues, and the FLVS teachers assigned to Customer/Licensee’s students will assess and evaluate student progress and provide monthly progress reports that will be made available to Customer/Licensee.

1.6 Facilitator. Customer/Licensee must designate one or more Customer/Licensee personnel to act as a “Facilitator.” The Facilitator will be the primary contact between Customer/Licensee and FLVS with respect to the students taking Global School Courses or Global School- Credit Recovery Courses. The Facilitator will generally perform the following functions: (a) reviewing progress reports for each student at least once a month; (b) overseeing students to ensure participation in coursework and completion of assignments; (c) acting as a liaison between students or parents and FLVS teachers as needed; (d) assisting students in registering for AP exam reviews and exams, if applicable; (e) proctoring exams as necessary; (f) providing data

and responses to surveys and other inquiries about students taking the Global School Courses or Global School-Credit Recovery Courses as may be reasonably requested by FLVS; and (g) communicating with the designated FLVS school administrator if questions or problems arise.

1.7 Grading; Credit. Upon completion of a Global School Course or Global School-Credit Recovery Course, the teacher will issue a grade to the student. Although FLVS has obtained accreditation as a provider of virtual courses, by one or more recognized accreditation organizations, certain Global School Courses may not fall under FLVS' accreditation. Regardless of whether a Global School Course or Global School-Credit Recovery Course falls under FLVS' accreditation, however, FLVS may not grant credit to Customer/Licensee's students. It is ultimately Customer/Licensee's decision whether to issue credit for successful completion of a Global School Course or Global School-Credit Recovery Course as part of Customer/Licensee's official records for such student. Additional information regarding FLVS's accreditation is available upon request.

1.8 NCAA Restrictions. The National Collegiate Athletic Association (NCAA) has specific guidelines regarding the acceptance of distance learning or credit recovery courses for student athletes. **Global School- Credit Recovery Courses do not meet the current NCAA eligibility criteria. To ensure time for comprehension and mastery, FLVS requires students to work in a course segment for fourteen (14) days at minimum; twenty-eight (28) days of work is required, at minimum for a two (2) segment course.** Pursuant to section 15.14 of the FLVS Licensed Product Agreement, Customer/Licensee is responsible for ensuring any Global School Course satisfies the National Collegiate Athletic Association's (NCAA) eligibility criteria.

1.9 Individualized Education Programs (IEP) To the extent required by law, Customer/Licensee is responsible for providing any required services to support a student, such as the student's IEP and Section 504 plan. For all students for whom Customer/Licensee submits a Global School enrollment request, Customer/Licensee must provide FLVS with an electronic copy of any IEPs and Section 504 plans within 2 weeks of request submission. All IEP and 504 plans shall be submitted to FLVS by email at globalschool@FlexPointEducation.com. Any new IEP's or updated IEPs obtained after enrollment must be submitted within two (2) weeks of receipt.

1.10 Disciplinary History. With regard to any student who desires to enroll in a Global School Course or Global School-Credit Recovery Course, Customer/Licensee will, upon request, disclose the students' disciplinary background to FLVS. Customer/Licensee shall notify FLVS of any student that Customer/Licensee is seeking to enroll who has been expelled or is being considered for expulsion from one of Customer/Licensee's schools. FLVS shall have the sole authority and discretion to accept or deny a student's participation therein. Further, any student enrolled in a Global School Course or Global School-Credit Recovery Course shall have the obligation while so enrolled to self-report any arrest and/or convictions for criminal activity.

2. FLVS HOSTED COURSEWARE PACKAGES (FLVS HOSTED COURSES WITHOUT TEACHER INSTRUCTION). FLVS offers a license to certain Licensed Products in which Customer/Licensee is granted access to a specific bundle of courses hosted by FLVS or its designee, but for which Customer/Licensee is responsible to provide its own teachers. Licensed Products licensed in this fashion are referred to herein as "FLVS Hosted Courseware Packages," and each course within a FLVS Hosted Courseware Package is referred to as a "FLVS Hosted Course." A FLVS Hosted Courseware Package may be limited to a particular set of courses (e.g., middle school courses; electives; or AP courses) or may include the entire catalog of available courses. For FLVS Hosted Courseware

Packages, the following terms shall apply (in addition to the terms of the Agreement to which this Supplement is attached):

2.1 Access. FLVS will provide Customer/Licensee with access for the loading of students and teachers into the applicable LMS that is used to host the FLVS Hosted Courseware Package via the use of student and teacher codes, unless otherwise provided with additional administrative access that may be made available at an additional cost. Customer/Licensee's Authorized Users will be provided a unique identity for access to FLVS hosted systems, for which Customer/Licensee must implement reasonable security measures to protect access to the FLVS hosted system.

2.2 License Model and Term. FLVS Hosted Courseware Packages are available in a variety of licensing models. The Order Documentation will include specific information on the type of license Customer/Licensee is purchasing for the FLVS Hosted Courseware Package, any license use restrictions, as well as the length of the license term.

2.3 Content Modifications. For each FLVS Hosted Courseware Package, the LMS functionality permits Customer/Licensee personnel to add new pages of content to the FLVS Hosted Courses or hide content that Customer/Licensee chooses to skip. However, other than adding new content or hiding content in this manner, modification or editing of a FLVS Hosted Course is prohibited. Customer/Licensee is prohibited from adding course content that is derived from FLVS or its Licensors course content in appearance, wording, style, or framework.

Data associated with any Customer/Licensee content additions may not exceed fifty (50) percent of the original master course size.

2.4 Training. Upon initial license, for each FLVS Hosted Courseware Package, FLVS will provide a product orientation session which includes basic training on the use of the third party LMS platform that is used by FLVS to facilitate the hosting of the applicable FLVS Hosted Courseware Package. Additional teacher training options are available at an additional cost.

2.5 Support. Customer/Licensee's license to a FLVS Hosted Courseware Package includes access to FLVS's Support Plan (as described in the Support and Services Policies) for the duration of Customer/Licensee's license.

2.6 Record Retention. As each state has specific guidelines regarding the retention of student educational records, the Customer/Licensee is responsible for retaining its own student records for permanent retrieval in accordance with their State and District requirements. The FLVS Hosted Courseware Package permanently retains all student data; however, the FLVS Hosted Courseware Package should not be considered the system of record for Customer/Licensee student data. FLVS is not responsible for records deleted by clients that prove to be irretrievable through reasonable efforts.

2.7 OneRoster. Customer/Licensees using OneRoster assumes responsibility for Customer/Licensee's data integration and management of Customer/Licensee student data. FLVS will assist with troubleshooting in collaboration with the applicable LMS but is not liable for data lost as a result of a OneRoster sync error.

3. CLIENT HOSTED COURSES (CUSTOMER/LICENSEE HOSTED COURSES WITHOUT TEACHER INSTRUCTION). FLVS offers a license to certain Licensed Products in which Customer/Licensee is provided the Licensed Product for use within an LMS that Customer/Licensee has licensed separately from a third party. Licensed Products licensed in this fashion are referred to herein as "Non- Hosted Courses" or "Client Hosted Courses." For a Client Hosted Course, FLVS provides no LMS services. For Client Hosted Courses, FLVS's default deployment method includes delivery of LTI links to FLVS-Hosted

lesson content as well as delivery of assessments, assignments, and discussion prompts to a Customer/Licensee's FLVS-approved LMS. If Customer/Licensee wishes to have the Client Hosted Courses deployed via any other method, then additional fees may apply. Except for the lesson content components for which FLVS may provide hosting, managing the Client Hosted Course within Customer/Licensee's LMS is Customer/Licensee's responsibility. In addition, FLVS does not provide teacher instruction with Client Hosted Courses. For Client Hosted Courses, the following terms shall apply (in addition to the terms of the Agreement to which this Supplement is attached):

3.1 Approved LMS Providers. For quality assurance purposes, FLVS requires that Customer/Licensee procure and maintain a licensing relationship with a FLVS-approved LMS provider as well as utilize a specified LMS version where applicable in order to license a Client Hosted Course, unless FLVS has agreed in writing to the use of an unapproved LMS provider in a particular instance. Use of an approved LMS provider and version will allow FLVS to deploy Client Hosted Courses into Customer/Licensee's LMS. The FLVS approved LMS providers are subject to change and can be made available upon request. Ultimately, however, Customer/Licensee (and not FLVS) is responsible for any issues related to the functionality or use of Customer/Licensee's chosen LMS. If FLVS agrees to permit Customer/Licensee to license a Client Hosted Course for use with an unapproved LMS provider, then FLVS will not be responsible for importing the Client Hosted Course into Customer/Licensee's LMS, unless FLVS agrees to do so, nor shall it be responsible for the performance of Licensed Product as it relates to issues caused or created by any unapproved LMS. "Customer/Licensee is strictly prohibited from transferring, conveying, or migrating FLVS courses, course content, and/or assessments to a location other than the original agreed upon location of delivery. If Customer/Licensee desires to change Customer/Licensee's LMS or LMS version, Customer/Licensee shall be responsible for notifying FLVS in writing (120) days prior to the change so as to provide FLVS with sufficient time to determine if Licensed Product can be supported in the new LMS or LMS version and provide Customer/Licensee with a price quotation to move Licensed Product to the new LMS. If FLVS determines additional work is required beyond what is included in the support plan to make Licensed Product operational in the Customer/Licensee systems, this work will be priced and quoted by FLVS at its then applicable rates. In addition, FLVS reserves the right to remove an LMS or LMS version from its approved list at its sole discretion, in which case FLVS will provide notice to Customer/Licensee of such removal. FLVS will provide support of the now unapproved LMS or LMS Version to Customer/Licensee for 90 days following notification.

3.2 Security. Customer/Licensee must implement reasonable security measures to protect courses within Customer/Licensee's LMS environment. Such measures include, but are not limited to, the LMS environment being hosted on a Secure Sockets Layer (SSL) secure server with forced HTTPS (server converts any http:// to https://) in a secure facility, behind an Internet firewall, with role-based password protection (student, teacher, administrator) for access to the Client Hosted Course.

3.3 Content Modifications. Customer/Licensee is permitted to make revisions to the course content included in a Client Hosted Course and also may be allowed to combine other content with a FLVS Hosted or Client Hosted Course (collectively, "Revisions"). Customer/Licensee may develop Revisions itself or may request that FLVS assist Customer/Licensee in developing Revisions, in which case, if FLVS agrees to develop such Revisions, additional fees will apply.

(a) Customer/Licensee is prohibited from making Revisions to any master FLVS Course copy. Customer/Licensee may make Revisions to any copy other than Customer/Licensee master FLVS

Course copy. If Customer/Licensee makes Revisions to Customer/Licensee master FLVS Course copy, Support for the modified course shall be void. Florida Virtual School will have no obligation to Support, alter, or retrofit any such modifications.

(b) If Customer/Licensee creates Revisions, then any such Revisions are Customer/Licensee's sole responsibility. Neither FLVS nor its licensors will have any responsibility or liability for any reason with respect to Customer/Licensee Revisions. Customer/Licensee represents and warrants that any Revisions will not infringe any patent, copyright, trade secret, or other proprietary right of any other party, and that such Customer/Licensee shall, to the extent permitted by law, indemnify and defend FLVS and its licensors, their parents, affiliates and subsidiaries, and their respective officers, directors, employees, contractors, and agents and their successors and assigns from any and all claims, actions, damages, expenses, obligations, losses, liabilities, and liens imposed on, incurred from, or asserted regarding the Revisions. Customer/Licensee shall be prohibited from distributing any course or any Revisions based on or derived from a licensed course to any third parties, and shall use such materials strictly for internal purposes within the authorized sites during the license term. Customer/Licensee will not provide any such Revisions to a third party (other than an Authorized Third Party, solely in connection with such Authorized Third Party's support of Customer/Licensee's use of the Client Hosted Course). If FLVS makes subsequent modifications to any course that are incompatible with Customer/Licensee-created Revisions, FLVS will have no obligation to alter or retrofit any such modifications to make them compatible with such Customer/Licensee-created Revisions.

In an effort to minimize the infrastructure impact of custom course development changes, data associated with any Customer/Licensee content additions or Revisions may not exceed fifty (50) percent of the original master course size or exceed twenty-five (25) percent of files in the course. Failure to adhere to this limit may result in additional fees being assessed. Customer/Licensee is responsible for ensuring that Customer/Licensee staff responsible for making revisions to the FLVS-hosted content has reviewed the FLVS training for such revisions.

In addition to the terms of this section, any course designated as an "eDynamic Learning Course (EDL)," which is defined as a course developed by a FLVS licensor, whereby FLVS is authorized to distribute such courses to its customers, the following additional terms apply; (i) All course content included, or incorporated into any Revisions by Customer/Licensee into any eDynamic Learning Course (EDL) and all rights, rights of authorship, copyrights, trademarks and all other intellectual property rights arising therefrom or otherwise associated therewith shall remain exclusively with eDynamic Learning Inc. (ii) Upon termination of the Customer/Licensee license, Customer/Licensee shall cease using the courses, including any courses containing Revisions, and any Revisions based on or derived from any eDynamic Learning (EDL) Course content.

(c) If Customer/Licensee requests, and FLVS agrees to, assist in creating Revisions to a Client Hosted Course, then other than content specifically provided by Customer/Licensee to FLVS for inclusion in any Revisions, FLVS retains all copyrights and other intellectual property rights in and to all content and materials included in any Revisions, and all ideas, processes, procedures and know-how embodied or used in any Revisions. Accordingly, FLVS shall have the right to use any Revisions it develops at Customer/Licensee's request for any purpose whatsoever, including, but not limited to, providing all or any portion of such Revisions to other Customer/Licensees and/or reusing all or any portion of such Revisions in other products. Notwithstanding the foregoing, FLVS shall not, without Customer/Licensee's written permission, use any Confidential Information provided by Customer/Licensee in any

materials that it licenses to other Customer/Licensees or includes in other products; provided, however, that Customer/Licensee's permission shall not be required in the case of FLVS's reuse of such Customer/Licensee-provided content if such content is freely available for FLVS to use (e.g., public domain content), or if FLVS has obtained the right to use such content independently from a source other than Customer/Licensee. If FLVS develops Revisions for Customer/Licensee as described herein, then after those Revisions have been developed and made available to Customer/Licensee for use within the Client Hosted Course, FLVS shall have no obligation to update or modify such Revisions. If FLVS makes subsequent modifications to any course for its user base generally that are incompatible with Revisions previously developed by FLVS for Customer/Licensee, FLVS will have no obligation to alter or retrofit any such modifications to make them compatible with such Revisions previously created for Customer/Licensee.

(d) For any content that Customer/Licensee includes in any Customer/Licensee-created Revisions or provides to FLVS for inclusion in any Revisions that Customer/Licensee engages FLVS to create, Customer/Licensee represents and warrants that it has sufficient right, title and interest in and to such content to allow FLVS, its licensors and service providers, to reproduce such content within the Revisions. Customer/Licensee further represents and warrants that the inclusion of such content in the Revisions will not infringe any patent, copyright, trade secret or other proprietary right of any other party. FLVS may suspend access in any FLVS or Customer/Licensee system to any Revisions and/or remove any such Customer/Licensee-provided content from any Revisions upon FLVS's determination, in its sole discretion, that such content is or may be infringing upon or misappropriating the intellectual property rights of a third party. Customer/Licensee will provide FLVS access to any Authorized Third-Party system in order to execute the terms of this section.

3.4 Course Access and Other Fees. Customer/Licensee may be required to pay a course access fee for each Client Hosted Course being deployed into Customer/Licensee's LMS in addition to the applicable license fees for the Client Hosted Course. The Order Documentation will contain specific information on the type of license the Customer/Licensee is purchasing to include course access fees if applicable. Upon initial license, FLVS will provide a product orientation session at no charge; additional teacher training options are available at an additional cost.

3.5 License Model and Term. Client Hosted Courses are available in a variety of licensing models. The Order Documentation will include specific information on the type of license Customer/Licensee is purchasing for the Client Hosted Courses, any license use restrictions, as well as the length of the license term. For any model whereby pricing is determined based on the population of the Authorized Sites, as described in the Order Documentation, pricing of the license fee is based on the population at the time of the license, or its renewal. The scope of the license is limited to the Authorized Sites that were in place at the time of the license purchase. Therefore, if the population of the Authorized Sites grows or additional sites are annexed, the Customer/Licensee may be required to pay additional license fees. For example, if Customer/Licensee purchased a license for its school district, and the district annexes a neighboring school district, the license will not encompass the schools and population added by the annexation; additional license fees must be paid to expand the license to cover this additional population. Customer/Licensee may be audited by FLVS at any time and may be required to report population or enrollment/seat numbers either quarterly, semi-annually, or annually at FLVS's discretion.

3.6 Support. For Client Hosted Courses, access to a Support Plan (as described in the Support and Services Policies) may be included with the license fees or may be available at an additional cost as stated in the Order Documentation.

3.7 FLVS Maintenance for Inactive Courses. If Customer/Licensee has an active license for a Client Hosted course but is no longer utilizing the course or has not had enrollments in the course for a period of (twelve) 12 months, Customer/Licensee shall immediately notify FLVS. Customer/Licensee agrees to FLVS's shut down of said course.

ARTICLE C: SUPPORT AND SERVICE POLICIES

These Support and Services Policies (“Policies”) supplement the terms of the Licensed Product Agreement between Florida Virtual School and Customer/Licensee to which they are attached. Capitalized terms not defined in these Policies shall have the same meanings ascribed to them elsewhere in the Agreement.

1. DEFINITIONS. For purposes of these Policies, the following additional definitions shall apply:

1.1 “Error” shall mean a reproducible failure of Licensed Product to operate in accordance with its standard Documentation, despite the proper installation and use of Licensed Product in a proper operating environment and on hardware and system software sufficient to meet FLVS’s minimum requirements, which are subject to change from time to time as Updates are released. User mistakes are not Errors as defined herein. Errors may be due to problems with the Licensed Product, the Documentation, or both.

1.2 “Update” shall mean a modification to a Licensed Product that FLVS, at its discretion, deems ready for distribution and makes generally available to Customer/Licensees who are currently maintaining a subscription to a Support Plan described below. Updates may include product fixes to any software hosted by FLVS to remedy Errors in the software, and updates to course content to fix Errors or to provide additional or enhanced material. Updates do not include New Courses or New Versions of an existing course.

2. SUPPORT PLAN. For FLVS Hosted Courseware Packages, as described in Section 2 of the Supplement, access to FLVS’s Support Plan is included in the price of the Licensed Product. For Client Hosted Courses, as described in Section 3 of the Supplement, FLVS offers two kinds of product models with regard to support: those models for which support is included with the annual licensing fee and those models that require a support plan at an additional cost. The Order Documentation will include specific information on the license model and whether support is included with the license fee or is available at an additional cost. The Support Plan may be renewed annually at FLVS’s then-current rates for as long as FLVS continues to offer the plan. Plan prices and terms may vary depending on the Customer/Licensee’s chosen deployment method. Support Plan includes call center support and Updates, as described below. The plan is also subject to the exclusions and Customer/Licensee responsibilities described below.

2.1 Call Center Support. Call center support services are limited to Monday through Friday, during FLVS’s normal business hours, exclusive of FLVS holidays. Call center support services include a variety of methods of contact, including telephone, and online help ticket submission. Call center support services for Licensed Product are limited to program administrative and technical staff. Call center support is not available to Customer/Licensee’s teachers, students, or student parents or guardians except for Global School Courses. Call center support is limited to support for technical issues that Customer/Licensee experiences in use of a Licensed Product. Call center support is not a substitute for training, nor is it intended to provide curriculum or other instructional support (e.g., suggestions for how best to teach a topic in a virtual environment). Customer/Licensee personnel with such questions should contact FLVS regarding potential professional development options.

2.2 Updates. For as long as Customer/Licensee maintains an active subscription to a Support Plan, whether it is included as part of the Customer/Licensee annual license fees, or is licensed at an additional cost, Customer/Licensee will be entitled to receive notifications of all Updates to the Licensed Products licensed by Customer/Licensee. If required by Customer/Licensee’s chosen method of course deployment

and as specified in the Order Documentation, Customer/Licensee will provide FLVS continuous access to Customer/Licensee Master Course Copies to apply updates. Loss or removal of access will result in

discontinuation of support and course updates. If Customer/Licensee reinstates access, courses may require redeployment for Customer/Licensee to receive missed updates. Customer/Licensee will be required to pay course access fees for the redeployed courses. Updates will not be made to Customer/Licensee teacher copies or any other copy other than Customer/Licensee master FLVS Course copy. Updates do not include New Courses or New Versions of an existing course (as described in the next sentence). If FLVS or its licensors have built a new version of an existing course, or have significantly redesigned an existing course by adding significant new features and content, FLVS reserves the right at its discretion to designate such course as a “New Course” or “New Course Version” rather than an “Update,” in which case, depending on the Customer/Licensee’s designated support plan, additional license fees may apply if Customer/Licensee desires to license such New Course or New Course Version. FLVS will only provide a support plan to Customer/Licensees using the most current course version and one version prior. Customer/Licensees using one course version prior to the most current course version and who have a current support plan will only receive support for a period of 12 months from the most current course version release date, unless FLVS at its discretion deems there are circumstances beyond its control or unless FLVS deems that the prior course version no longer meets industry education standards (i.e. Advanced Placement) or is no longer in the best interest of Customer/Licensee students, which would require FLVS to discontinue support for a course before the 12 month period. In this circumstance, FLVS will notify Customer/Licensee of the support end date and provide Customer/Licensee options.

2.3 Course Retirement. During its normal course of business or as New Courses or New Course Versions are released, and at its sole discretion, FLVS may find it necessary to retire course versions or entire courses titles and may cease to make the courses, updates, and support for these courses available to Customer/Licensee. Upon retiring of a course, and if Customer/Licensee has a current support plan, FLVS may provide Customer/Licensee with support for the retired course for a maximum of 12 months from the retire date, unless FLVS at its discretion deems there are circumstances beyond its control or unless FLVS deems that the retired course no longer meets industry education standards (i.e. Advanced Placement) or is no longer in the best interest of Customer/Licensee students, which would require FLVS to discontinue support for a course before the 12 month period. In this circumstance, FLVS will notify Customer/Licensee of the support end date and provide Customer/Licensee options.

2.4 Exclusions. FLVS shall not be required to provide any support in connection with (i) any Revisions made to any Licensed Product by Customer/Licensee pursuant to Section 3.3 of the Supplement; (ii) any failure of any Revisions created by Customer/Licensee, or by FLVS or its designee for Customer/Licensee, pursuant to Section 3.3 of the Supplement to be compatible with future releases of the applicable Licensed Product; or (iii) any problems or issues that Customer/Licensee encounters with any LMS or other system not licensed to Customer/Licensee by FLVS as part of the applicable Licensed Product.

2.5 Customer/Licensee Responsibilities. In order to receive support services under a Support Plan, Customer/Licensee shall:

(a) supply FLVS with sufficient information and data to reproduce any Error or problem that is the subject of a support request; and

(b) procure, install, operate and maintain computer systems and operating systems that are compatible with and meet the minimum requirements for the version of Licensed Product to be supported; and

(c) maintain an operating environment free of any programming that might interfere with the functioning of Licensed Product as supplied by FLVS; and

(d) notify FLVS in writing (120) days prior to migrating to a new LMS or LMS version so as to provide FLVS with sufficient time to determine if Licensed Product can be supported in the new LMS or LMS version. If FLVS determines additional work is required beyond what is included in the support plan to make Licensed Product operational in the Customer/Licensee systems, this work will be priced and quoted by FLVS at its then applicable rates.

3. RENEWALS OF THE SUPPORT PLAN. For Client Hosted Courses, access to a Support Plan may be available at an additional charge depending on the license model and must be renewed annually for continued access to the plan. With respect to such renewals, the following terms shall apply:

3.1 Terms and Conditions. If FLVS offers to renew the Support Plan for subsequent periods, then the components of the plan will continue to be as described in these Policies, unless FLVS provides new terms and conditions to Customer/Licensee at the time of renewal, in which case such new terms and conditions shall apply.

3.2 Rates. All renewals of the Support Plan shall be at FLVS's then-current rates.

4. PROVISION OF PROFESSIONAL SERVICES.

4.1 Professional Services. In addition to those services that comprise a Support Plan, FLVS will provide such other training, consulting or other professional services that are specified in the Order Documentation, or subsequently requested by Customer/Licensee and agreed to be performed by FLVS, provided that FLVS may, at its option, arrange for any such services to be performed by another entity on behalf of FLVS. Customer/Licensee agrees to pay for such services at the rates and charges specified in the Order Documentation. FLVS reserves the right to require a purchase order or equivalent documentation from Customer/Licensee prior to performing any services, or to require prepayment of certain services. Unless otherwise specified, all rates quoted are for services to be performed during FLVS's normal business hours; additional charges may apply for evenings, weekends or holidays. The rates and charges specified in the Order Documentation shall apply to those services originally ordered; however, FLVS reserves the right to change service rates or other terms as a condition of entering into any subsequent service engagement. FLVS reserves the right to limit the number of participants in any service engagement, whether delivered on-site or remotely, as FLVS deems appropriate in order to deliver the service effectively. All services ordered must be scheduled and delivered within twelve (12) months of purchase; any portion of amounts prepaid for such services that have not actually been rendered within this twelve (12) month period shall be forfeited.

4.2 On-Site Services. For any professional services to be delivered at Customer/Licensee's location (or in person at such other Customer/Licensee-selected location as the parties may agree), Customer/Licensee agrees to the following:

(a) Customer/Licensee agrees to provide, at Customer/Licensee's expense, utilities, workspace and other on-site

accommodations reasonably necessary to enable FLVS to perform such services, and shall provide unencumbered access to all servers, workstations and other equipment with respect to which any work is to be performed.

(b) **Reserved.**

4.3 Remotely Delivered Services. FLVS may deliver certain services remotely (e.g., via webinar), in which case Customer/Licensee is responsible for providing its participants with appropriate access to the necessary technology to participate.

4.4 Service Packages. FLVS offers a variety of service packages in connection with the Licensed Products. Specific descriptions for the available services packages are available upon request. Additional terms and/or restrictions may apply to certain packages. For example, with certain training packages, Customer/Licensee may be required to schedule consecutive training days; for other packages, Customer/Licensee may be allowed to schedule training days consecutively or separately, subject to a cap on the total number of trips by FLVS to deliver the total number of days of training.

4.5 Cancellation. Once scheduled, any on-site service days may be cancelled only with the written consent of FLVS, and only upon payment of reasonable cancellation charges that take into account expenses already incurred and commitments made by FLVS.

5. CONFIDENTIALITY. To the extent that, in performing any support or services pursuant to these Policies, FLVS has access to any Customer/Licensee confidential information, FLVS agrees to use commercially reasonable efforts to maintain the confidentiality of such Customer/Licensee confidential information, and to use such information solely for purposes of performing services hereunder. FLVS shall require its employees, agents and subcontractors performing work hereunder to do likewise. For purposes of this Section, "Customer/Licensee confidential information" shall mean any of Customer/Licensee's student or personnel data or records, and any other Customer/Licensee information or data labeled or identified as confidential at the time of disclosure; provided, however, that this definition and the obligations of this Section shall not extend to any information that: (a) is or becomes publicly known through no fault or negligence of FLVS, its employees, agents or subcontractors; (b) is or becomes lawfully available from a third party without restriction; (c) is independently developed by FLVS, its employees, agents or subcontractors at any time; or (d) is disclosed without restriction by Customer/Licensee to any third party at any time; (e) or is required to be disclosed by law.

6. Public Records. FLVS is a public agency subject to Chapter 119, Florida Statutes.

ARTICLE D: MARKETING TERMS AND CONDITIONS

1. MANAGEMENT RESPONSIBILITY. FLVS will provide to Customer/Licensee certain tools, methods and resources that are intended to help Customer/Licensee grow and build its business. However, Customer/Licensee is fully and exclusively responsible for its own business performance and Customer/Licensee satisfaction. In addition, Customer/Licensee has full and exclusive responsibility for understanding and ensuring compliance with any regulatory, legal or contractual obligations related to Customer/Licensee's business, including, without limitation, data held by Customer/Licensee and its clients, information provided by Customer/Licensee to its clients and/or other third parties and any safeguarding and security measures that may be required. Customer/Licensee is solely responsible for the final outcomes, actions taken, and results produced by use of the products delivered by FLVS.

2. INTELLECTUAL PROPERTY. All content produced by FLVS within the scope of Services rendered, including software and web code, contents, graphics and design, or material developed or licensed by FLVS for Customer/Licensee as part of the Services, is copyrighted by FLVS and remains the exclusive property of FLVS. Upon termination of this Agreement, all copyrights and other intellectual property rights shall remain with FLVS. This use will be restricted to the Customer/Licensee use only, and Customer/Licensee does not have any rights to resell, license or otherwise allow third party use of the content.

All Content included on the FLVS Website is the property of FLVS, our affiliates, or other relevant third parties. By continuing to use the Website, Users acknowledge that such Content is protected by copyright, trademarks, database rights and other intellectual property rights. Nothing on the site shall be construed as granting, expressly or by implication, estoppel, or otherwise, any license or right to use any trademark, logo or service mark displayed on the site without the owner's prior written permission.

Customer/Licensees are expressly forbidden to download, store, reproduce, transmit, display (including without limitation via an intranet or extranet site), copy, sell, publish, distribute or provide access to Content for any purposes other than as set out herein or to sub-license, rent, lease, transfer or assign any rights in Content, to any other person or to commercially exploit Content or to use Content for any unlawful purpose.

The Customer/Licensee shall include the registered trademark ® symbol after the first mention of Florida Virtual School or FLVS on all marketing pieces and include the following trademark statement: "Florida Virtual School and FLVS are registered trademarks of Florida Virtual School, a public school district of the State of Florida." The Customer/Licensee should also link to the FLVS website (www.flvs.net) in digital marketing and promotional activities.

Any specific use of FLVS trademarks or trade names in any advertising copy, Web copy, marketing materials, literature, and promotional material or on Customer/Licensee letterhead shall be submitted in advance to the Customer/Licensee's FLVS Account Manager for written approval.

ARTICLE E: DEMO ACCESS – MUTUAL NONDISCLOSURE AGREEMENT

Florida Virtual School (“FLVS”) and the Company agree as follows:

1. **Purpose.** The parties wish to explore a business opportunity of mutual interest and in connection with this opportunity, each party may disclose to the other certain confidential technical and business information that the disclosing party desires the receiving party to treat as confidential.
2. **"Confidential Information"** means, subject to Federal and State laws, rules, and regulations including but not limited to the Oklahoma and Florida Open Records Act, any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, prototypes, samples, plant and equipment), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally shall be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information shall not, however, include any information which: (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure. For the avoidance of doubt, the term 'Confidential Information' specifically includes, but is not limited to, any and all demo products and/or courses to which Customer/Licensee is granted access at any time during the term of this Agreement, including all components, course content, software, and other materials.
3. **Non-use and Non-disclosure.** Each party agrees not to use any Confidential Information of the other party for any purpose except to evaluate and engage in discussions concerning a potential business relationship between the parties. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees, except to those employees of the receiving party who are required to have the information in order to evaluate or engage in discussions concerning the contemplated business relationship. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information, and which are provided to the party hereunder. Nothing in this section shall be construed as permitting access for purposes of demonstration or evaluation to student or parents.
4. **Maintenance of Confidentiality.** Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.
5. **No Obligation.** Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.
6. **No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.
7. **Return of Materials.** All documents and other tangible objects containing or representing Confidential Information which have been disclosed by either party to the other party, and all copies thereof which are in the possession of the other party, shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party upon the disclosing party's written request.
8. **No License.** Nothing in this Agreement is intended to grant any rights to either party under any patent, mask work right or copyright of the other party, nor shall this Agreement grant any party any rights in or to the Confidential Information of the other party except as expressly set forth herein.
9. **Term.** The obligations of each receiving party hereunder shall survive until such time as all Confidential Information of the other party disclosed hereunder becomes publicly known and made generally available through no action or inaction of the receiving party.
10. **Remedies.** Each party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the other party, entitling the other party to seek injunctive relief in addition to all legal remedies.
11. **Miscellaneous.** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one instrument. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This document contains the entire agreement between the parties with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party except as set forth herein. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto.

**Attachment F to
STATE OF OKLAHOMA CONTRACT WITH Florida Virtual School
Flexpoint Education
RESULTING FROM SOLICITATION NO. EV00000425**

Negotiated Exceptions to the Solicitation

The Solicitation is hereby amended as set forth below and supersedes all prior Exceptions submitted by **Florida Virtual School Flexpoint Education** or discussed by the parties.

**ANY REQUESTED EXCEPTIONS NOT APPEARING BELOW HAVE BEEN
DECLINED BY THE STATE**

RFP Section	Exception
Attachment B - General Terms, Section 1, Scope and Contract Renewal	Section 1.3 is hereby modified to add the following to the end of the paragraph: For each Contract Renewal, the Supplier shall have the option to not renew.
Attachment B - General Terms, Section 1, Scope and Contract Renewal	Section 1.4 is hereby modified to add the following to the end of the paragraph: This Section 1.4 is for the term of the awarded contract only and does not apply to annual licenses purchased under this Contract.
Attachment B - General Terms, Section 8.1, Maintenance of Insurance, Payment of Taxes, and Workers' Compensation	Section 8.1B is hereby deleted in its entirety and replaced with the following: 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 \$2,000,000 per occurrence;
Attachment B - General Terms, Section 8.1, Maintenance of Insurance, Payment of Taxes, and	Section 8.1C is hereby deleted in its entirety and replaced with the following: C. Automobile Liability Insurance with limits of liability of not less than \$2,000,000 combined single limit each accident;

RFP Section	Exception
Workers' Compensation	
Attachment B - General Terms, Section 8.1, Maintenance of Insurance, Payment of Taxes, and Workers' Compensation	<p>Section 8.1D is hereby deleted in its entirety and replaced with the following:</p> <p>D. Directors and Officers Insurance which shall include Employment Practices Liability with limits not less than \$2,000,000 per occurrence;</p>
Attachment B - General Terms, Section 17, Termination for Funding Insufficiency	<p>Section 17.2 is hereby deleted in its entirety and replaced with the following:</p> <p>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. Licenses that have been accepted by the Customer will be activated by the Supplier and shall be deemed used and non-refundable Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.</p>
Attachment B - General Terms, Section 18, Termination for Cause	<p>Section 18.3 is hereby deleted in its entirety and replaced with the following:</p> <p>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. Licenses that have been accepted by the Customer will be activated by the</p>

RFP Section	Exception
	<p>Supplier and shall be deemed used and non-refundable. 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.</p>
<p>Attachment B - General Terms, Section 19, Termination for Convenience</p>	<p>Section 19.2 is hereby deleted in its entirety and replaced with the following:</p> <p>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. Licenses that have been accepted by the Customer will be activated by the Supplier and shall be deemed used and non-refundable. 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</p>
<p>Attachment B - General Terms, Section 20, Suspension of Supplier</p>	<p>Section 20.2 is hereby deleted in its entirety and replaced with the following:</p> <p>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. Licenses that have been accepted by the Customer will be</p>

RFP Section	Exception
	<p>activated by the Supplier and shall be deemed used and non-refundable. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.</p>
<p>Attachment B - General Terms, Section 26, Miscellaneous</p>	<p>Section 26.1 is hereby deleted in its entirety and replaced with the following:</p> <p>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</p>
<p>Attachment B - General Terms, Section 26, Miscellaneous</p>	<p>Section 26.4 is hereby deleted in its entirety as non-applicable.</p>
<p>Attachment C - General Terms, Section 5, Termination for Convenience</p>	<p>Section 5 is hereby modified to add the following to the end of the paragraph:</p> <p>Licenses that have been accepted by the Customer will be activated by the Supplier and shall be deemed used and non-refundable.</p>
<p>Attachment D – Information Technology Terms, Section 18, Data Security</p>	<p>Section 18.7 is hereby deleted in its entirety and replaced with the following:</p> <p>18.7 Supplier shall conduct internal and external penetration testing annually and a NIST CSF assessment biennially. Due to security policies, the Supplier does not provide reports to Customers, but all findings will be tracked and addressed as required.</p>