

**ATTACHMENT C**  
**AGENCY TERMS**  
**SOLICITATION NO. 2650000396**

**C.1 Performance Penalty**

- C.1.1 Once completion dates are mutually agreed upon, and the Supplier fails to perform any of the services and/or make deliveries within the time specified in the contract, or any extension period, the Supplier shall pay the State of Oklahoma the sum of \$25,000 per calendar day for failed or delayed services/deliveries. The Supplier shall NOT be charged when delay in performance and or delivery arises out of causes due to acts of the STATE (State of Oklahoma).
- C.1.2 Should the Supplier see that it will not be able to meet a delivery date; the Supplier may request an extension in writing. This request may or may not be granted at the discretion of the State CIO upon recommendation of the STATE. If written approval is granted by the STATE, liquidated damages will not be assessed for the duration of the extension.
- C.1.3 Failure to correct any errors in materials or service interruptions or delays in the delivery of materials that negatively affect the ability to administer tests or to use the score reports or that denigrate confidence in the testing program will be viewed as a violation of the contract, and the Supplier will pay liquidated damages to the STATE in the amount of 5% of the total annual contract amount for each day during which the online, electronic, paper, print, or other document is incorrect until a corrected online, electronic, paper, print, or other document approved by the STATE is distributed by the Supplier. STATE agrees that when liquidated damages become a possibility, it will expedite its responses and requirements in this regard in an effort to limit the amount of liquidated damages.

**C.2 Authorized Users**

During the term of this contract, any State Entity, or Interlocal Entity, as defined herein, may utilize this contract. Under this contract, the State of Oklahoma bears no liability for the State or Interlocal Entities actions and the privies of contract exist solely between the Supplier and the State or Interlocal Entity.

**C.3 Manufacturer Accessibility VPAT Website**

The Supplier may provide a URL link for a website maintained by the Supplier or product manufacturer which provides VPAT's for all products offered through the Contract.

**C.4 Supplier Services**

The State of Oklahoma shall not guarantee any minimum or maximum amount of the Supplier services that may be required under this Contract.

**C.5 Data Storage and Formatting Requirements**

In order to preserve STATE's ability to report on any assessment data, it is highly preferred that all data storage be done in a non-proprietary format. Currently, OMES ISD and the STATE prefer data be SIF- or CEDS-compliant to allow for easy comparison with other data available.

## **C.6 Dispute Resolution**

Any dispute concerning the question of fact in connection with the work, not disposed of by the contract between the parties hereto, shall be referred to the State agency that initially awarded this contract. The decision of the administrator of said agency, or his/her duly authorized representatives, shall be final and conclusive on the parties to this contract.

## **C.7 Student Data Accessibility, Transparency, and Accountability**

- C.7.1** Supplier's ability to provide services under this Agreement requires OSDE to share student data containing confidential personally identifiable information ("PII") from education records maintained by OSDE with Supplier. Supplier agrees to comply with all state and federal laws relating to student data and privacy, including 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).
- C.7.2** Agreement must include the Purpose of the Agreement; must specifically include all data points to be released by OSDE and what the Supplier will do with the student data.
- C.7.3** Student data released to Supplier will be limited to data points specifically listed in this Agreement. If Supplier determines that there is a legitimate need to receive or access additional student data and that such data is necessary to perform required duties, Supplier shall submit a written request to OSDE detailing the data needed and state the purpose of the disclosure. If OSDE determines that access is necessary and appropriate, this Agreement may be modified in accordance with request. No additional data shall be provided until the Agreement is modified to reflect the additional data disclosures.
- C.7.4** Supplier will safeguard the confidentiality and integrity of all data received pursuant to this Agreement, place limitations on its use, and maintain compliance with all applicable privacy laws. Supplier shall establish appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of all student data.
- C.7.5** Student information from education records cannot be published in a way that would allow individual students or their parents to be identified. Any reports or published information that is a result of or derived from confidential student data containing PII provided by OSDE shall not allow individuals to be directly or indirectly identified and shall contain no individual student level data. Supplier may use student data from education records to perform contractual duties as required by this Agreement, but any published results must be presented in a manner which protects the privacy and confidentiality of students. The OSDE shall be provided the opportunity to review all results prior to publication.
- C.7.6** Supplier shall require all staff to comply with the data security and confidentiality provisions set forth herein. Only those employees that are directly involved in performing

tasks outlined herein and who have a legitimate interest in providing services according to the terms of this Agreement shall be entitled to access student data. Supplier shall take steps to maintain the confidentiality of student information from education records.

- C.7.7** This Agreement does not constitute a release of student-level data for the Supplier's discretionary use. Access to (or disclosure of) confidential student information contained from education records pursuant to the terms of this Agreement shall not constitute an assignment of ownership of the information provided. OSDE retains all ownership rights to the data transferred pursuant to this Agreement, and Supplier shall not obtain any right, title, or interest in any of the data furnished by OSDE.
- C.7.8** Data transferred pursuant to this agreement may only be used to carry out the responsibilities throughout the duration of the projects, task and assignments specified herein. Any unauthorized use of the data files beyond the terms specified in the Agreement is not permitted. Supplier shall not use the data for purposes other than the projects, task and assignments identified herein.
- C.7.9** Supplier shall immediately notify the OSDE if there is any unauthorized access or breach to the data provided by the OSDE and take reasonable steps to mitigate any breach. In the event a breach occurs, Supplier will take reasonable steps and implement corrective procedures to ensure that further breaches do not occur.
- C.7.10** OSDE shall be notified immediately if Supplier receives a request for the student data containing PII provided by the SDE. If Supplier becomes legally compelled to disclose any confidential PII (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise) then Supplier shall use all reasonable efforts to provide OSDE with prior notice before disclosure so that OSDE may seek a protective order or other appropriate remedy to prevent the disclosure. If a protective order or other remedy is not obtained prior to when any legally compelled disclosure is required, Supplier shall only disclose that portion of the confidential PII that it is legally required to disclose.
- C.7.11** Supplier may determine that it is necessary to employ a contractor or subcontractor to fulfill contractual obligations under the Contract. Supplier shall ensure, by written agreement, that any contractor or subcontractor employed by Supplier remains in compliance with (FERPA), 20 USC § 1232g; 34 CFR Part 99, and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013, 70 O.S. § 3-168. Supplier shall enter into a Data Sharing Agreement with any contractor or subcontractor employed by Supplier. A copy of said Data Sharing agreement shall be forwarded to OSDE prior to the release of any student data or personally identifiable information.

**C.7.12** The OSDE will immediately terminate this agreement and this agreement shall not be renewed due to the intentional breach of any of the terms and conditions of the data security and confidentiality provisions set forth herein by Supplier and OSDE may revoke any other existing RFP's or contract with Supplier.

**C.7.13** The OSDE may seek monetary, restitutive and punitive damages against Supplier for a breach of any of the terms and conditions of the data security and confidentiality provisions set forth herein as allowed by law.

**C.7.14** Upon notification of a breach in the terms and conditions of the data security and confidentiality provisions set forth herein, the OSDE will not release any additional confidential personally identifiable information ("PII") from education records maintained by OSDE to the Supplier until corrective procedures have been implemented to ensure further breaches do not occur.

**C.7.15** Upon completion of the services detailed in this agreement or upon termination of this agreement, Supplier shall immediately destroy all PII that was disclosed by the OSDE and provided to Supplier for the purposes detailed in this agreement. Within ten (10) days of destruction, Supplier shall provide written notification to the OSDE of the date and method of destruction of these records.

## **C.8 Force Majeure**

A party is not liable for failure to perform the party's obligations if such failure is a result of Acts of God (including fire, flood, earthquake, storm, or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), strikes or labor disputes, embargoes, government orders, epidemics, pandemics or other similar events beyond the reasonable control of the party. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in this clause.

If an event of Force Majeure occurs, the party injured by the other's inability to perform may elect one of the following remedies:

**C.8.1** to terminate this agreement in whole or in part; or

**C.8.2** to suspend the Agreement, in whole or part, for the duration of the Force Majeure circumstances.

The party experiencing the Force Majeure circumstances shall cooperate with and assist the injured party in all reasonable ways to minimize the impact of Force Majeure on the injured party

### **C.9 Exception to Ownership Rights**

The STATE does not intend to own the item bank for this assessment and expects a COTS product to be utilized. Refer to section D.11. Ownership Rights.

### **C.10 Purpose and Approval of Supplier**

Pursuant to 70 O.S. § 1210.508, the State Board of Education (SBE) is required to adopt a statewide system of student assessments in compliance with the Elementary and Secondary Education Act of 1965, as reauthorized and amended by the “Every Student Succeeds Act” (ESSA). Pursuant to a request for proposals and responses submitted pursuant thereto, the SBE is required to adopt the assessments from the selected proposals, which must be aligned with the Oklahoma Academic Standards and prepare students for college and careers.