**ACCEPTANCE OF THIS PURCHASE ORDER BINDS CONTRACTOR TO ALL THESE TERMS AND CONDITIONS AND ALL THE TERMS, CONDITIONS, AND PROVISIONS INCLUDED IN THE SOLICITATION THE UTAH STATE BOARD OF EDUCATION OFFERED RELATING TO THIS PURCHASE ORDER.**

**ATTACHMENT A – PURCHASE ORDER TERMS AND CONDITIONS FOR GOODS & SERVICES**

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:

1. “**Confidential Information**” means information that is deemed as confidential under applicable state and federal laws, including personal information. The Utah State Board of Education reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
2. **“Purchase Order”** means the Purchase Order including these terms and conditions.
3. “**Contractor**” means the individual or entity delivering the Procurement Item identified in this Purchase Order. The term “Contractor” shall include Contractor’s agents, officers, employees, and partners.
4. **"Procurement Item"** means a supply, a service, construction, or technology that Contractor is required to deliver to the USBE under this Purchase Order.
5. **“Response”** means the Contractor’s bid, proposals, quote, or any other document used by the Contractor to respond to the USBE’s Solicitation.
6. “**Solicitation**” means any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Purchase Order.
7. **“USBE” or “Utah State Board of Education”** means the Utah State Board of Education, the board, and its elected or appointed officers, employees, agents, and authorized volunteers.
8. “**State of Utah**” means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
9. “**Subcontractors**” means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.

2. **GOVERNING LAW AND VENUE:** This Purchase Order shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Purchase Order shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** At all times during this Purchase Order, Contractor and all Procurement Items delivered and/or performed under this Purchase Order will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Purchase Order is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.

4. **RECORDS ADMINISTRATION AND RIGHT TO AUDIT:**

* 1. Records: Contractor shall maintain records necessary to properly account for Contractor’s compliance, performance, and the payments made by USBE to Contractor. These records shall be retained by Contractor for six years after final payment, or until all audits initiated within the six years have been completed, whichever is later.
  2. Audit: Contractor agrees to provide, at no additional cost, the State of Utah, federal program staff, USBE staff, and their designees access to questionnaires and internal and external audit reports. This includes the right to audit all such records and Contractor’s sites and environments during normal business hours, and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to audit records and interview staff in any subcontract related to performance of this Purchase Order.

5. **PERMITS:** If necessary, Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Purchase Order.

6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM”:** Contractor shall comply with the requirements of the Status Verification System, also referred to as “E-verify,” as required by Utah Code § 13-47-2 et seq.

7. **DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST**: Contractor shall disclose whether any of its officers or employees are current or former officers or employees of USBE or the State of Utah. Contractor shall disclose if a current USBE employee is hired during the term of the Purchase Order (e.g., dual employment).

8. **INDEPENDENT CONTRACTOR**: Contractor is an independent contractor and shall not act or hold itself out as an officer, employee, or agent of the USBE or the State of Utah.

9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the Purchase Order, with responsibility for all Procurement Items delivered and/or performed as stated in this Purchase Order. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor’s responsibilities under this Purchase Order into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the USBE under this Purchase Order. Moreover, Contractor is responsible for its Subcontractors compliance under this Purchase Order.

10. **INDEMNITY:** Contractor shall be fully liable for its actions and shall fully indemnify USBE and the State of Utah from all claims arising out of Contractor’s performance, without limitation, except for the portion of any claim that is the sole fault of USBE or the State of Utah. Any limitation of Contractor’s liability shall not apply to injuries to persons, including death, or to damages to property.

11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i)Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor’s employees.

12. **AMENDMENTS AND CHANGES IN SCOPE:** Amendments to this Purchase Order, including execution of renewal options and changes to the scope, must be made by signed written agreement of both parties. The amendment will be attached and made part of this Purchase Order. Automatic renewals will not apply to this Purchase Order, even if listed elsewhere in this Purchase Order.

Any changes in the scope of the services to be performed under this Purchase Order shall be in the form of a written amendment or change order to this Purchase Order, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.

13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the USBE within thirty days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Purchase Order.

14. **TERMINATION:**

* 1. Termination for Cause: This Purchase Order may be terminated for cause by either party. A party in violation shall be given 10 days’ written notice to correct and cease the violations, after which this Purchase Order may be terminated immediately.
  2. Termination for Convenience: This Purchase Order may be terminated without cause (for convenience) by USBE upon 30 days’ written notice to Contractor.
  3. Termination by Mutual Agreement: USBE and Contractor may terminate this Purchase Order, in whole or in part, at any time, by written amendment.
  4. Termination For Nonappropriation of Funds: Upon 30 days’ written notice to Contractor, this Purchase Order may be amended or terminated by USBE if USBE reasonably determines: (i) a change in federal or state legislation or applicable laws materially affects the ability of either party to perform under the terms of this Purchase Order; or (ii) a change in available funds affects USBE’s ability to perform under this Purchase Order.
  5. Purchase Order Closeout: USBE shall pay Contractor for all Procurement Items ordered prior to termination of this Contract and accepted by USBE. USBE’s exercise of its right to terminate this Contract shall not relieve the Contractor of any liability to USBE for any damages or claims arising under this Purchase Order. USBE shall not be liable for any penalties or liquidated damages that accrue after the effective date of termination.
  6. Return or Destruction of Data: Following the termination of this Contract, USBE reserves the right to request a complete and secure (i.e., encrypted and appropriately authenticated) download file of all data. After USBE has accepted the return of data, declines the return of data, or provides other instructions, Contractor shall immediately destroy all data. If, after 30 days from termination, USBE has failed to make a request regarding data, Contractor shall immediately destroy the data. The Contractor shall notify USBE in writing of the date the data is destroyed.

16. **SALES TAX EXEMPTION:** USBE is a tax-exempt organization, and Contractor shall not include sales tax in any request for payment. USBE’s tax exemption number is: 11736850-005-STC It also is Contractor’s sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Purchase Order.

17. **WARRANTY OF PROCUREMENT ITEM(S):** Unless a longer warranty period is contained in the Purchase Order, Contractor warrants for a period of one year that: (i) the Procurement Items perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Items are suitable for the ordinary purposes for which such Procurement Items are used; (iii) the Procurement Items are suitable for any special purposes identified in the Contractor’s Response; (iv) the Procurement Items are designed and manufactured in a commercially reasonable manner; (v) the Procurement Items are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Items are free of defects. Unless otherwise specified, all Procurement Items provided shall be new and unused of the latest model or design.

Remedies available to the USBE under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the USBE within ten days of any written notification informing Contractor of the Goods not performing as required under this Purchase Order. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the USBE may otherwise have under this Purchase Order.

18. **CONTRACTOR’S INSURANCE RESPONSIBILITY**.

* 1. Contractor shall maintain insurance during this Purchase Order. All insurance policies required by this Purchase Order shall be issued by insurance companies with an AM Best rating of A-VIII or better.
  2. The Contractor shall maintain the following insurance coverage:
     1. Workers’ compensation insurance during the term of this Purchase Order for all its employees and any Subcontractor employees related to this Purchase Order. Workers’ compensation insurance shall cover full liability under the workers’ compensation laws of the jurisdiction of the State of Utah at the statutory limits required by said jurisdiction.
     2. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy shall be no less than $1,000,000.00 per person per occurrence and $3,000,000.00 aggregate.
     3. If Contractor uses a vehicle in the performance of this Purchase Order, Contractor shall maintain Commercial Automobile Liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in the performance of Services under this Purchase Order. The minimum liability limit must be $1,000,000.00 per occurrence, combined single limit.
     4. If Contractor has access to Data, Contractor shall maintain Protected Information Liability insurance covering all loss of Data and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits of $1,000,000.00 per occurrence and $2,000,000.00 aggregate.
  3. USBE shall be named as additional insured on all commercial general liability policies required of Contractor. Coverage required of Contractor shall be primary over any insurance or self-insurance program carried by Contractor or USBE.
  4. The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without the insurer giving at least 30 days’ prior notice to Contractor. Contractor shall forward such notice to the USBE’s contact as listed in the Contract within seven days of Contractor’s receipt of such notice.
  5. All insurance policies secured or maintained by Contractor in relation to this Purchase Order shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or USBE, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
  6. Contractor shall provide to USBE certificates evidencing Contractor’s insurance coverage required in this Contract within seven days following the effective date. No later than 15 days before the expiration date of Contractor’s coverage, Contractor shall deliver to USBE certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by USBE, Contractor shall, within seven days following the request by USBE, supply to USBE evidence satisfactory to USBE of compliance with the provisions of this section.
  7. USBE reserves the right to require higher or lower insurance limits where warranted.

19. **RESERVED**.

20. **PUBLIC INFORMATION:** This Purchase Order and all related solicitation documents, purchase orders, change orders, pricing documents, and invoices are public documents and may be available for public and private distribution in accordance with the State of Utah’s Government Records Access and Management Act (GRAMA).

21. **DELIVERY:** All deliveries under this Purchase Order will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the USBE, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Purchase Order.

22. **ACCEPTANCE AND REJECTION:** USBE shall have 30 days after delivery of the Procurement Items to perform an inspection of the Procurement Items to determine if the Procurement Items conform to the standards specified in the Solicitation and this Purchase Order prior to acceptance of the Procurement Items by USBE. If the Procurement Item is not rejected, it is presumed to be accepted.

If Contractor delivers nonconforming Procurement Items, USBE may, at its option and at Contractor’s expense: (i) return the Procurement Items for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Items; or (iii) obtain replacement Procurement Items from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Items without first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of USBE to redeliver the corrected Procurement Items. Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

If at any point a latent defect or fraud is identified, acceptance by USBE may be immediately nullified.

23. **INVOICING:** Contractor will submit invoices within thirty days of the delivery date of the Procurement Item(s) to the USBE. The Purchase Order number shall be listed on all invoices, freight tickets, and correspondencerelating to this Purchase Order. The prices paid by the USBE will be those prices listed in this Purchase Order, unless Contractor offers a prompt payment discount within its Response or on its invoice. The USBE has the right to adjust or return any invoice reflecting incorrect pricing.

24. **PAYMENT:** USBE shall make payment within 60 days after it receives a correct invoice by a check sent through the mail, electronic funds transfer, or the State of Utah’s Purchasing Card (major credit card). If payment has not been made 60 days after USBE receives a correct invoice, then Contractor may add interest in accordance with the Utah Prompt Payment Act. If the Contractor accepts final payment without a written protest to USBE within ten business days of receipt of final payment, Contractor releases USBE and the State of Utah from all claims for payment related to the Contract. USBE’s payment for the Procurement Items shall not be deemed an acceptance of the Procurement Items as identified in the Contract and does not release any claims that USBE or the State of Utah may have against Contractor. Contractor shall not charge USBE electronic payment fees.

25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor represents all Procurement Items are free of all liens and encumbrances and shall indemnify USBE and the State of Utah from any claim brought against USBE or the State of Utah for infringement of a third party’s intellectual property. Any limitation of Contractor’s liability does not apply to this section.

26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** Contractor conveys to USBE full ownership and title to all Procurement Items delivered under this Purchase Order. Procurement Items shall be transferred to USBE as work for hire, unless otherwise agreed to in the Purchase Order.

Unless included in the Purchase Order, neither party has any claim to the intellectual property of the other party.

27. **ASSIGNMENT:** Any assignment or delegation by Contractor must be made through an amendment to the Purchase Order.

28. **DEFAULT AND REMEDIES:**

* 1. Default: Any of the following events may constitute cause for USBE to declare Contractor in default of this Purchase Order: (i) Contractor’s non-performance of its contractual requirements or obligations under this Purchase Order; or (ii) Contractor’s material breach of any term or condition of this Purchase Order. Termination or expiration of this Purchase Order shall not extinguish or prejudice USBE’s right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Items that has not been cured.
  2. Opportunity to Cure: If the Contractor is in default for non-performance or breach, USBE may issue a written notice of default providing a ten-day period in which Contractor shall have an opportunity to cure. Contractor shall repair, replace, or reimburse USBE, at USBE’s discretion, the cost to cover Procurement Items at no charge to USBE. Time allowed for cure will not diminish or eliminate Contractor's liability for damages.
  3. Additional Remedies: If the default remains after Contractor has been provided the opportunity to cure, USBE may: (i) exercise any remedy provided by law or equity; (ii) terminate this Purchase Order; (iii) impose liquidated damages, if liquidated damages are listed in this Purchase Order; (iv) debar/suspend Contractor from receiving future contracts from USBE or the State of Utah; and (v) demand a full refund of any payment USBE has made to Contractor under this Purchase Order for Procurement Items that do not conform to this Purchase Order.

29. **FORCE MAJEURE:** Neither party to this Purchase Order will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The USBE may terminate this Purchase Order after determining such delay will prevent successful performance of this Purchase Order.

30. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Purchase Order; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the USBE of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the USBE and the State of Utah, including anyone for whom the USBE or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Purchase Order, Contractor will return all copies of Confidential Information to the USBE or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Purchase Order.

31. **PUBLICITY:** Contractor shall not use USBE’s name, logo, or endorsement (implied or actual) in any advertising, marketing, or publicity materials without prior written approval from USBE.

32. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES**: Contractor shall ensure that its personnel working on State of Utah premises: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions from USBE; and (iv) if required by USBE, pass a background check prior to entering the premises. USBE may remove any individual for a violation hereunder.

33. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

34. **SUSPENSION OF WORK:** USBE may suspend and reinstate work under this Contract by written notice to Contractor.

35. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the USBE is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the USBE, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

36. **ATTORNEY’S FEES:** The prevailing party in a judicial action to enforce rights under this Purchase Order shall be entitled to its costs and expenses, including reasonable attorney’s fees.

37. **TRAVEL COSTS:** Unless otherwise agreed, all travel costs must be pre-approved by USBE and may be booked by USBE at State of Utah per diem rates.

38. **RESERVED.**

39. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. USBE and Contractor will mutually agree upon a mediator, or if a mutually agreeable mediator is not selected, USBE will select an independent third party, who shall be a Utah Courts certified mediator, to assist in the resolution of a dispute. USBE and Contractor agree to cooperate in good faith in mediation proceedings.

40. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Purchase Order, the order of precedence shall be: (i) this Attachment A; (ii) USBE’s additional terms and conditions, if any; and (iii) Contractor’s terms and conditions that are attached to this Purchase Order, if any. Any provision attempting to limit the liability of Contractor or limit the rights of USBE or the State of Utah must be in writing and attached to this Purchase Order or it is rendered null and void.

41. **SURVIVAL OF TERMS:** Termination or expiration of this Purchase Order shall not diminish USBE’s right to enforce any term of this Purchase Order that by its nature would continue beyond termination, cancellation, or expiration.

42. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Purchase Order shall not affect the validity or enforceability of any other provision, term, or condition of this Purchase Order, which shall remain in full force and effect.

43. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Purchase Order. The Contractor must promptly notify the USBE of any errors and/or omissions that are discovered.

44. **ENTIRE AGREEMENT:** This Purchase Order constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

45. **PUBLIC CONTRACT BOYCOTT RESTRICTION:** In accordance with Utah Code 63G-27-102, Contractor certifies that it is not currently engaged in an “economic boycott” nor a “boycott of the State of Israel” as those terms are defined in that Code section. Contractor also agrees not to engage in either boycott for the duration of this Purchase Order. If Contractor does engage in such a boycott, it shall immediately provide written notification to USBE.

46. **GENERAL DATA PROVISIONS:**

* 1. **DATA OWNERSHIP**: USBE retains all rights, title, and interest, including all intellectual property and proprietary rights, in and to system data, Data, and all related data and content.
  2. **AGENT DESIGNATION**: Contractor is hereby designated as an agent of USBE pursuant to FERPA for the limited purpose of receiving Student Personally Identifiable Information to fulfill the purposes of this contract. Contractor may use the Student Personally Identifiable Information as provided herein, but may not transfer or otherwise convey Student Personally Identifiable Information to any other Person.
  3. **COMPLIANCE WITH DATA PRIVACY LAWS**: Contractor, as USBE’s agent, shall comply with all applicable data privacy laws, regulations, code, and rules including FERPA 20 U.S.C. § 1232g et seq. and 34 C.F.R. Part 99 et seq., the Individuals with Disabilities Education Act, 30 U.S.C. § 1400 et seq. and 34 C.F.R. Part 300 (“IDEA”), and the Utah Student Privacy and Data Protection Act , Utah Code § 53E-9 101 et seq.
  4. **DESTRUCTION OF DATA**: If USBE requests the Destruction of PII in Contractor’s possession as a result of this Contract, Contractor shall Destroy the information within five calendar days after the date of the request. Contractor shall provide USBE with written confirmation of the date the data is Destroyed.
     1. USBE retains the right to use the established operational services to access and retrieve Data stored on Contractor’s infrastructure at its sole discretion.
  5. **ACCESS TO DATA:**
     1. Contractor shall limit access to Data to Authorized Persons only and shall require a non-disclosure agreement be signed by all Authorized Persons prior to being granted access to Data.
     2. Contractor shall maintain past and current lists of all Authorized Persons, maintain each non-disclosure agreement, and shall permit inspection of the same by USBE upon request.
     3. Contractor shall maintain an audit trail for the duration of this Contract, which reflects the granting and revoking of access privileges to Authorized Persons. A copy of this audit trail may be requested by USBE from Contractor at any time and shall be provided within 10 days of the USBE request.
     4. Contractor shall have strong access controls in place. Contractor shall disable and/or immediately delete unused or terminated Authorized Persons’ accounts and shall periodically assess account inactivity for potential stale accounts.
     5. Contractor shall provide annual, mandatory privacy and security awareness and training for all Authorized Persons, maintain past and current lists of Authorized Persons that have completed training, and permit inspection of the same by USBE upon request.
  6. **USE AND DISCLOSURE OF DATA:**
     1. Contractor shall not collect, use, or share Data beyond the purposes set forth as follows:
        1. To carry out the Contractor’s responsibilities listed in the Statement of Work.
     2. Contractor shall share Data only for the purposes stated in the Statement of Work and only with the following entities:
        1. Law enforcement agencies or individuals only as authorized by law or court order. Contractor receives such a request, Contractor shall notify USBE within two business days of the receipt of the request, as permitted by law.
     3. If Contractor seeks to publicly release Data, Contractor must aggregate the Data by totaling the Data and reporting it at the group, cohort, school, school district, region, or state level. Contractor shall, upon request of USBE, provide USBE with a document that lists the steps and methods the Contractor shall use to de-identify the information. Any aggregate data that is publicly released without being redacted using the methods in this section shall be considered an Incident. The following methods shall be used on any aggregated reports:
        1. Aggregate data shall be reported publicly only if there is a sufficient number of individuals represented in any demographic or subgroup so that an individual cannot be identified.
        2. Aggregated reports shall be redacted using complementary suppression methods that remove the risk of Data being identifiable using simple mathematics or formulas.
     4. Contractor shall not use Data for any secondary use, including Targeted Advertising, except under the following conditions:
        1. For adaptive learning or customized student learning purposes.
        2. To market an educational application or product to a parent or legal guardian of a student if Contractor did not use Data, shared by or collected per this Contract, to market the educational application or product.
        3. To use a recommendation engine to recommend to a student (i) content that relates to learning or employment, within the third-party contractor's application, if the recommendation is not motivated by payment or other consideration from another party; or (ii) services that relate to learning or employment, within the third-party contractor's application, if the recommendation is not motivated by payment or other consideration from another party;
        4. To respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party.
        5. To use Data to allow or improve operability and functionality of the third-party contractor's application.
     5. Contractor shall not sell or otherwise monetize Data except Data transferred through the purchase of, merger with, or otherwise acquisition of Contractors provided that all parties remain in compliance with this Contract.
  7. **SECURITY AND PROTECTION OF DATA:**
     1. Contractor shall notify USBE of material system changes that may negatively impact the security of Data prior to such changes being implemented.
     2. If Contractor is given Data as part of this Contract, the protection of Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Data. Contractor shall safeguard the confidentiality, integrity, and availability of Data.
     3. Contractor shall comply with and protect and maintain Data using methods that are at least as good as or better than that established in the State of Utah’s Department of Technology Policies (https://dts.utah.gov/policies).
     4. Contractor shall only transmit or exchange Data via secure means (ex. HTTPS or FTPS). Contractor shall not use, store or process Data on any unencrypted portable or laptop computing device or any portable storage medium.
     5. Contractor shall store and maintain all Data in data centers located only within the United States.
     6. Contractor shall permit its employees and Subcontractors to access Data remotely only via a secured manner, such as Virtual Private Networks (VPN).
     7. Contractor shall store all Data, as well as any backups made of that data, in encrypted form using no less than 128-bit key and include all Data as part of a designated backup and recovery process.
     8. Contractor shall enforce strong password protections on all devices and networks with access to or that store Data.
  8. **INCIDENTS:**
     1. If Contractor becomes aware of an Incident involving Data by either Contractor or any of Contractor’s Subcontractors, Contractor shall notify USBE within one calendar day and cooperate with USBE regarding recovery, remediation, and the necessity to involve law enforcement, if any.
     2. Contractor shall produce a written remediation plan that includes information about the cause and extent of the Incident, and the actions Contractor will take to remediate the Incident and reduce the risk of incurring a similar type of Incident in the future. Contractor shall present its analysis and remediation plan to USBE within ten calendar days of notifying USBE of an Incident. USBE reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce its analysis and plan within the allotted time, USBE, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse USBE for the reasonable costs thereof.
     3. In the event of an Incident, Contractor shall provide USBE or its designated representatives with access 7 days a week, 24 hours a day, for the purpose of evaluating, mitigating, or resolving the Incident.
     4. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person whose personal information may have been compromised by the Incident.
     5. Disclosure of Data by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees, and agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Contract. Notwithstanding any other provision of this Contract, Contractor shall be liable to the State for all direct, consequential, and incidental damages arising from an Incident caused by Contractor or its Subcontractors.

(Revision Date: 16 May 2023)