



This contractual agreement (hereafter "Agreement") is entered in to between the State of Oklahoma *ex rel*, Oklahoma State Department of Education, 2500 N Lincoln Blvd, Oklahoma City, OK 73105, (hereafter "OSDE") and Muscogee Creek Nation, (hereafter "Vendor"), whose mailing address and contact information for the purpose of this Agreement is: P.O. Box 580, Okmulgee, OK 74447. OSDE and Vendor are sometimes referred to collectively as the "Parties" or individually the "Party".

## **1. PURPOSE**

- 1.1. The purpose of this Agreement is: The purpose of this Data Sharing Agreement is to establish a data transfer process between OSDE and Muscogee Creek Nation for the monitoring of public-school performance and enrollment of children in their tribal nation in order to provide targeted educational resources and support.
- 1.2. To fulfill the purpose of this Agreement, the Vendor hereby offers and agrees to perform and/or provide the following goods and/or services to OSDE, in accordance with Attachment B – Timeline & Deliverables:
  - 1.2.1. According to Attachment B, Muscogee Creek Nation will provide educational resources and supports to the school districts that have their tribal nation students enrolled and have been targeted for additional support to advance their level of academic performance. The Muscogee (Creek) Nation Department of Education and Training offers services to Muscogee (Creek) citizens and American Indian/Alaskan Native students within the Muscogee Nation Reservation. Services can include but are not limited to: special academic extra-curricular activity grants, employment and training opportunities, Mvskoke and Euchee Language classes/resources, undergraduate and post-graduate grants and scholarships, Head Start programs, Reintegration program, and Vocational Rehabilitation.
- 1.3. The OSDE **will** share student data with the Vendor for the performance of this Agreement. The specific data points of access are outlined in **Section 25** of this Data Sharing Agreement. The sole purpose for sharing this data is to address and support the academic outcomes of their tribal nation students' educational performance levels in all Oklahoma School districts. In accordance with House Bill 1104, a student's educational record must include tribal affiliation and other data associated with students who have been identified as having American Indian heritage.

## **2. PAYMENT TERMS & AGREEMENT DURATION**

In consideration of the satisfactory performance of this Agreement, the OSDE agrees to pay Vendor a total amount of \$0.00 zero dollars, and zero cents] (includes travel expenses) payable in arrears. It is further agreed by both parties that this Agreement shall be in effect from the Date of Award and an annual review from award date with the option of renewal between both parties; in accordance with Attachment A – Budget.

## **3. TAX EXEMPTION**

State agency acquisitions are exempt from state sales and federal excise taxes.

## **OKLAHOMA STATE DEPARTMENT OF EDUCATION AGREEMENT**

### **4. AUDIT AND RECORDS CLAUSE**

As used in this clause, "records" includes books, documents, 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. In accepting any Agreement with the State, the Vendor agrees that any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant Agreement.

The Vendor is required to retain records relative to the Agreement for the duration of the Agreement and for a period of seven (7) years following completion and/or termination of the Agreement. If an audit, litigation, or other action involving such records is started before the end of the seven (7) 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.

### **5. AGREEMENTS OPEN TO PUBLIC DISCLOSURE**

Unless otherwise specified in the Oklahoma Open Records Act, Central Purchasing Act, or other applicable law, documents and information Vendor submits as part of or in connection with this Agreement are public records and subject to disclosure. Vendors claiming any portion of this Agreement as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The Superintendent of OSDE shall make the final decision as to whether the documentation or information is confidential.

### **6. ENTIRE AGREEMENT**

This instrument contains the full understanding and agreement of the parties as to the subject matter hereof and may not be altered or amended except by written agreement signed by the parties. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Agreement.

Either party may initiate a request to amend this Agreement. Request for any amendment must be made in good faith and in compliance with Applicable Law. All such amendments shall be in writing, dated, signed by the Parties and identified as an amendment.

### **7. AGREEMENT MODIFICATION**

Any change to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the OSDE in writing, or made unilaterally by the Vendor, is a breach of the Agreement. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Agreement Modifications, shall be void and without effect, and the Vendor shall not be entitled to any claim under this Agreement based on those changes.

### **8. NON-APPROPRIATION CLAUSE**

The terms of any Agreement and any Purchase Order issued for multiple years under the Agreement are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the purchase order or any other Agreement document, the OSDE may terminate its obligations under the Agreement if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The decision of the OSDE as

## **OKLAHOMA STATE DEPARTMENT OF EDUCATION AGREEMENT**

to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final and binding.

### **9. GOVERNING LAW**

The Parties will use their best efforts to amicably resolve any dispute. Both the OSDE and the Nation recognize, respect, and accept the fact that under applicable laws each is governed by a separate sovereign with dominion over their respective territories and governments. By entering into this contractual relationship, neither the State nor the Nation has, in any way, caused the other's sovereignty to be waived or diminished.

### **10. TERMINATION FOR CAUSE**

The Vendor may terminate the Agreement for default or other just cause with a 30-day written request. The OSDE may terminate the Agreement for default or any other just cause upon a 30-day written notification to the Vendor.

The OSDE may terminate the Agreement immediately, without a 30-day written notice to the Vendor, when violations are found to be an impediment to the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the OSDE determines that an administrative error occurred prior to Agreement performance.

If the Agreement is terminated, the OSDE shall be liable only for payment for products and/or services delivered and accepted.

### **11. TERMINATION FOR CONVENIENCE**

The OSDE/Muscogee Creek Nation may terminate the Agreement, in whole or in part, for convenience only if the OSDE/Muscogee Creek Nation determines that termination is in the State's/Nation's best interest. The OSDE/Muscogee Creek Nation shall terminate the Agreement for convenience by delivering to the Vendor/OSDE a Notice of Termination for Convenience specifying the terms and effective date of Agreement termination. The Agreement termination date shall be a minimum of 30 days from the date the Notice of Termination for Convenience is issued by the OSDE/Muscogee Creek Nation.

If the Agreement is terminated, the OSDE shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the Vendor.

### **12. COUNTING OF DAYS**

Except where otherwise specifically provided, any reference in this Agreement to a period of "days" means calendar days, not business days.

### **13. SEVERABILITY**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

### **14. CAPTIONS**

The captions of the paragraphs of this Agreement are for convenience only and shall be disregarded in construing the terms of this Agreement.

## **OKLAHOMA STATE DEPARTMENT OF EDUCATION AGREEMENT**

### **15. INSURANCE**

The Vendor shall obtain and retain insurance, including worker's compensation, automobile insurance and general liability, as applicable, or as required by State or Federal law, prior to commencement of any work in connection with the Agreement. Vendor shall timely renew the policies to be carried pursuant to this section throughout the term of the Agreement and shall provide the OSDE with evidence of such insurance and renewals.

### **16. EMPLOYMENT RELATIONSHIP**

The Agreement does not create an employment relationship. Individuals performing services required by this Agreement are not employees of the OSDE. The Vendor's employees shall not be considered employees of the OSDE for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

### **17. CERTIFICATION REGARDING DEBARMENT, SUSPENSION & OTHER RESPONSIBLE MATTERS**

The Vendor certifies to the best of their knowledge and belief, that they and their principals, and any subcontractors: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency; Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) Agreement; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses aforementioned in this section; and Have not within a three-year period preceding this Agreement had one or more public (Federal, State or local) Agreements terminated for cause or default.

If the Vendor is unable to certify to any of the statements in this certification, the Vendor must attach an explanation of such circumstances under separate cover with reference to this Agreement.

### **18. COMPLIANCE WITH APPLICABLE LAWS**

The products and services supplied under the Agreement shall comply with all applicable federal, state and local laws, and the Vendor shall maintain all applicable licenses and permit requirements.

### **19. UNAUTHORIZED OBLIGATIONS**

At no time during the performance of this Agreement shall the Vendor have the authority to obligate the OSDE for payment of any goods or services over and above the awarded Agreement. If the need arises for goods or services over and above the Agreement for this project, Vendor shall cease the project and contact OSDE for approval prior to proceeding.

### **20. ASSIGNMENT**

Vendor's obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the OSDE.

### **21. EQUAL OPPORTUNITY AND DISCRIMINATION**

The Vendor certifies they are an Equal Opportunity Employer, a provider of services and/or

## **OKLAHOMA STATE DEPARTMENT OF EDUCATION AGREEMENT**

assistance, and is in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended and Executive Orders 11246 and 11375. The Vendor assures compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), all amendments to, and all requirements imposed by the regulations issued pursuant to this act.

### **22. LOBBYING**

The Vendor certifies they are in compliance with the Anti-Lobbying law, Section 1352, Title 31 of the U.S. Code, and implemented at 45 CFR Part 93, for persons entering into a grant or cooperative agreement over \$100,000.00 as defined at 45 CFR 93, Section 93.105 and 93.110.

### **23. ENVIRONMENTAL PROTECTION**

If the payments under the Agreement are expected to exceed \$100,000.00, then Vendor must comply with all applicable Federal Laws such as Section 306 of the Clean Air Act (42 U.S.C. 1857 (L)), Section 508 of the Clean Water Act (33 U.S.C. 1638), Executive Order 11738, and Environmental Protection Agency Regulations (40 C.F.R Part 15), which prohibit the use under nonexempt Federal Agreements, grants or loans of facilities included on the EPA List of Violating Facilities.

### **24. DRUG-FREE WORKPLACE**

The Vendor certifies compliance in providing or continuing to provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988, and implemented at 45 CFR part 76, Subpart F, for grantees, as defined at 45 CFR Part 76, Sections 76.605 and 76.610.

### **25. STUDENT DATA ACCESSIBILITY, TRANSPARENCY & ACCOUNTABILITY**

Parties ability to provide sharing of information under this Agreement requires OSDE to share student data containing confidential personally identifiable information ("PII") from education records maintained by OSDE with Vendor. Vendor agrees to comply with all applicable 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").

Student data released to Muscogee Creek Nation will be limited to data points specifically listed in this Agreement. If Muscogee Creek Nation determines that there is a legitimate need to receive or access additional student data and that such data is necessary to perform required duties, Muscogee Creek Nation 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 Data Sharing 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.

Muscogee Creek Nation 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. Vendor shall establish appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of all student data. Listed in the table are the data points of transfer of student information:

## OKLAHOMA STATE DEPARTMENT OF EDUCATION AGREEMENT

|                       |                    |                    |            |                  |
|-----------------------|--------------------|--------------------|------------|------------------|
| SchoolYear            | STN                | LastName           | FirstName  | MiddleName       |
| DOB                   | SchoolCode         | SchoolName         | EntryDate  | ExitDate         |
| Gradelevel            | IEP                | 504                | Homeless   | GiftedTalented   |
| Economic Disadvantage | TestYear           | TestAdministration | Fullcode   | Grade            |
| TestType              | Subject            | TestDate           | ScaleScore | Performancelevel |
| Free/Reduced Lunch    | Tribal Affiliation |                    |            |                  |

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. Vendor 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. OSDE will control access to the data, and as the owner of the data, maintains responsibility for its integrity up to and until the time of transfer to Muscogee Creek Nation. Only OSDE personnel, whose duties require the use of such information, will have regular access to the data. The source housing the data will be in secured area and only authorized staff will have access to the information. An annual audit of information security risk assessment may be performed at the discretion of OSDE's data compliances check.

Muscogee Creek Nation 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. Vendor shall take steps to maintain the confidentiality of student information from education records. **The Muscogee (Creek) Nation Department of Education and Training, Secretary of Education, Deputy Secretary of Education, Education Specialist, and the Johnson O'Malley Manager will have access to the student data disclosed by OSDE.**

This Agreement does not constitute a release of student-level data for the vendor'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 Vendor shall not obtain any right, title, or interest in any of the data furnished by OSDE.

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. Vendor shall not use the data for purposes other than the projects, task and assignments identified herein. **Muscogee Creek Nation may utilize a SFTP (Secure File Transfer Protocol) to receive student data established by their organization and provide credentials to OSDE. Another option to transfer student data between Parties is to save student data to an external device that must be picked up by a representative of Muscogee Creek Nation at the Oklahoma State Department of Education, Oliver Hodge Building.**

## OKLAHOMA STATE DEPARTMENT OF EDUCATION AGREEMENT

Vendor 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, Vendor will take reasonable steps and implement corrective procedures to ensure that further breaches do not occur.

OSDE shall be notified immediately if Vendor receives a request for the student data containing PII provided by the SDE. If Vendor becomes legally compelled to disclose any confidential PII (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise) then Vendor 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, Vendor shall only disclose that portion of the confidential PII that it is legally required to disclose.

Vendor may determine that it is necessary to employ a contractor or subcontractor to fulfill contractual obligations under the Agreement. Vendor shall ensure, by written agreement, that any contractor or subcontractor employed by Vendor remains in compliance with FERPA, (20 USC § 1232g; 34 CFR Part 99). Vendor shall enter into a Data Sharing Agreement with any contractor or subcontractor employed by Vendor. A copy of said Data Sharing Agreement shall be forwarded to OSDE prior to the release of any student data or personally identifiable information.

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 Vendor and OSDE may revoke any other existing RFP's or Agreement with Vendor.

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 Vendor until corrective procedures have been implemented to ensure further breaches do not occur.

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

### 26. 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 disasters), war, invasion, an 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.

## **OKLAHOMA STATE DEPARTMENT OF EDUCATION AGREEMENT**

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

- 26.1.** to terminate this Agreement in whole or in part; or
- 26.2.** 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.

### **27. VENDOR AGREEMENT CERTIFICATION**

The Vendor named herein certifies that no person who has been involved in any manner in the development of this Agreement while employed by the State of Oklahoma shall be employed by the Vendor to fulfill any of the services provided for under said Agreement.

If this Agreement is for professional services and if the final product is a written proposal, report, or study, the Vendor named herein further certifies that they have not previously provided the state agency or any other state agency with a final product that is a substantial duplication of the final product of the proposed Agreement.

### **28. NON-COLLUSION CERTIFICATION**

Any competitive bid submitted to this state or contract executed by the state for an acquisition in excess of the fair and reasonable acquisition threshold amount shall contain a certification, dated and in substantially the following form:

#### **28.1. I certify:**

- 28.1.1.** I am the duly authorized agent of **Muscogee Creek Nation**, for the purpose of certifying facts pertaining to the existence of collusion among and between bidders and suppliers and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in connection with the prospective acquisition;
- 28.1.2.** I am fully aware of the facts and circumstances surrounding the acquisition or making of the bid to which this statement relates and have been personally and directly involved in events leading to the acquisition or submission of such bid; and
- 28.1.3.** Neither the business entity that I represent in this certification nor anyone subject to the business entity's direction or control has been a party:
  - 28.1.3.1.** to any collusion among bidders or suppliers in restraint of freedom of competition by agreement to bid or contract at a fixed price or to refrain from bidding or contracting,
  - 28.1.3.2.** to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor

## OKLAHOMA STATE DEPARTMENT OF EDUCATION AGREEMENT

**28.1.3.3.** to any discussions between bidders or suppliers and any state official concerning exchange of money or other thing of value for special consideration in connection with the prospective contract.

**28.2.** I certify, if awarded the contract, whether competitively bid or not, neither the business entity I represent nor anyone subject to the business entity's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of this state any money or other thing of value, either directly or indirectly, in procuring the contract to which this statement relates.

### **29. NON-BOYCOTT OF ISRAEL GOODS OR SERVICES CERTIFICATION**

The Vendor also certifies is not currently engaged in a boycott of goods or services from Israel that constitutes an integral part of business conducted or sought to be conducted with the state.

### **30. EXECUTION BY COUNTERPARTS**

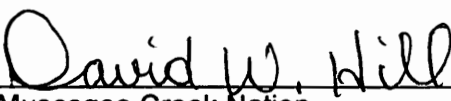
This Agreement may be executed in any number of counterparts by facsimile, electronic, scanned or digital signature and when executed so it shall be deemed an original signature.

The counterparts of this Agreement and all ancillary documents may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

**IN WITNESS THEREOF, the parties through their duly authorized representatives have accepted the terms of this Agreement.**

Muscogee Creek Nation  
P.O. Box 580  
Okmulgee, OK 74447

Date: 11/16/2022  
Certified this date

  
\_\_\_\_\_  
Muscogee Creek Nation  
Education Representative

Oklahoma State Department of Education  
2500 N Lincoln Blvd  
Oklahoma City OK 73105

Date: \_\_\_\_\_  
Certified this date

  
\_\_\_\_\_  
Joy Hofmeister  
State Superintendent of Public Instruction

# OKLAHOMA STATE DEPARTMENT OF EDUCATION CONTRACT

## Attachment A Budget

### Data Sharing Agreement

- 1. Contractual Services:** In consideration of satisfactory performance of this Agreement, the OSDE agrees to pay Vendor a total amount of \$0.00 [zero dollars and zero cents] (including travel expenses) payable in arrears in accordance with Attachment A – Budget.
- 2. Detailed Budget:** There is no cost involved for OSDE in this DSA. However, Muscogee Creek Nation may contract a third party vendor to support the transfer of requested student data. OSDE will not be responsible for any cost pertaining to the deployment of student data but Muscogee Creek Nation will seek OSDE's approval of contracted vendors used to support the completion of data transference. It is further agreed by both parties that this Agreement shall be in effect upon award date and an annual review of Data Sharing Agreement from award date.

**Total Budget: \$0**

### Attachment A – Budget

| Item                                        | COST | TOTAL |
|---------------------------------------------|------|-------|
| One deliverable of student data information | \$0  | \$0   |

# OKLAHOMA STATE DEPARTMENT OF EDUCATION CONTRACT

## Attachment B Timeline for Deliverables

### Data Sharing Agreement

- OSDE and Muscogee Creek Nation will establish an agreeable timeline to transfer requested student data.
- The Data Sharing Agreement is allowable for one year and the option to renew is available.
- Muscogee Creek Nation will provide educational resources and supports to the school districts that have their tribal nation students enrolled and have been targeted for additional supports to advance their level of academic performance.

Listed dates are based upon type of data transference, award date of DSA and delivery.

| Date             | Deliverable                             |
|------------------|-----------------------------------------|
| January 31, 2023 | Potential delivery date of student data |
| June 30, 2023    | Close out date of data delivery         |