

HOSTED SOFTWARE LICENSE AGREEMENT – Negotiated 8.8.13, 4.8.15, 12.11.15, 1.15.16, 2.16.16

This Hosted Software License Agreement ("Agreement") is made and entered into effective the 16th day of February, 2016 (the "Effective Date"), by and between Skyward, Inc., a Wisconsin corporation, with its principal offices located at 5233 Coye Drive, Stevens Point, Wisconsin, 54481, ("Skyward"), Integrated Systems Corporation, a Wisconsin corporation, with its principal offices located at 10325 North Port Washington Road, Mequon, Wisconsin 53092 ("ISCorp"), and The Board of Trustees of Illinois State University on behalf of the ISU Lab School, a Corporate and Body Politic of Illinois, whose principal office is at 506 Degarmo Hall, Normal, IL, 61761, ("Customer").

RECITALS

- A. Skyward is a computer software developer which provides computer systems consisting of software and the assembly, installation, training, and other forms of support and maintenance associated therewith in accordance with predetermined system specifications.
- B. ISCorp is an application service provider who is in the business of providing services for server and application hosting, management, and operations.
- C. Skyward has granted to ISCorp a license to host Skyward's software for the purpose of delivering Skyward's software system as a hosted service.
- D. Skyward and ISCorp have provided Customer with one or more proposals to provide Customer with a hosted computer system including certain software, hosting services, support, maintenance, and training associated with said hosted computer system.
- E. Customer has carefully reviewed said proposals and clearly understands the terms outlined therein as it relates to the manufacturer, hosting services, description, quantity, capability, and pricing, as well as the type of training and other support services offered and the cost thereof and Customer accepts the same and has requested that Skyward and ISCorp proceed according to said proposals, subject to the terms and conditions of this Agreement.

TERMS AND CONDITIONS

**ARTICLE I
Sale and Limited License**

Section 1.1 *Proposals and Terms and Conditions.* Skyward and ISCorp have previously provided Customer with one or more proposals setting forth the specific software, hardware, hosting services, support, maintenance, and training to be provided by Skyward and ISCorp to Customer, the costs associated therewith, and the terms and conditions of such sale and purchase. Such proposals further contain Skyward's Standard Terms and Conditions which govern the sale and purchase of the items listed in said proposals. As used herein, the term "Proposal" shall include: (a) all proposals entered into between Skyward, ISCorp, and Customer prior to or simultaneous with the Effective Date and Skyward's Standard Terms and Conditions attached thereto, copies of which are attached hereto and incorporated herein by reference; and (b) all subsequent proposals entered into between Skyward, ISCorp, and Customer that make specific reference to this Agreement. In the event any of the provisions of the Proposal conflicts with the provisions of this Agreement, the terms and conditions of this Agreement shall control.

Section 1.2 *Sale and Purchase.* Subject to the terms and conditions of this Agreement, Skyward agrees to sell and license to Customer and Customer agrees to purchase from Skyward, the products, materials, licenses, and services described in the Proposal and this Agreement (hereafter collectively referred to as the "System"), to be hosted by ISCorp as described in the Proposal and as provided herein.

Section 1.3 *Limited License.* Skyward has developed and is the owner of certain application software that is part of the System (hereafter collectively referred to as the "Software") and Skyward has granted ISCorp a license to host the Software sold and licensed by Skyward to its customers (the "Hosting Services"). Subject to the terms and conditions of this Agreement, Skyward hereby grants to Customer a nonexclusive and nontransferable limited license to use the Software exclusively through ISCorp as the host and application service provider. Customer shall not permit the Software or any portion thereof to be downloaded, embedded, or otherwise transferred to a third party processor, host, or any other server or equipment not under the exclusive control of Customer or Skyward. Skyward further grants to Customer a nonexclusive and nontransferable limited license to use all instruction manuals and other materials related to the Software and System produced and owned by Skyward and provided to Customer for its use in association with its purchase of the System (hereafter collectively referred to as the "System Materials").

**ARTICLE II
Purchase Price and Payment**

Section 2.1 *Purchase Price and Payment.* The purchase price to be paid by Customer for the System and Hosting Services and the payment thereof shall be per the Prompt Payment Act of Illinois. Interest on all past due amounts will be charged at the maximum rate allowed by law.

Section 2.2 *Sales and Use Tax*. Customer warrants and represents to Skyward and ISCorp that it is a tax-exempt entity and agrees to provide written confirmation of such exemption, upon the request of Skyward or ISCorp. If at any time during the term of this Agreement Customer is no longer a tax exempt entity, Customer agrees to pay any sales, use, ad valorem, personal property, general intangibles tax, and any registration fees arising out of this Agreement and the transactions contemplated herein, except for any taxes levied on the gross income of Skyward and ISCorp. Customer may not deduct from payments to Skyward and ISCorp, any amounts paid to third parties, however designated.

ARTICLE III Ownership and Protection of Intellectual Property

Section 3.1 *Reservation of Title*. Customer and ISCorp acknowledge and agree that: (a) the Software, including the specific design and structure of individual programs, input formats, and source code; (b) the System, and (c) the System Materials, all constitute trade secrets, confidential and proprietary information, and copyrighted material of Skyward. Customer further acknowledges and agrees that this Agreement does not affect any transfer of title in the Software, System, and System Materials and that Skyward is the sole owner of the Software, System, and System Materials. Customer and ISCorp shall implement reasonable security measures to protect such trade secrets, confidential and proprietary information, and copyrighted material.

Section 3.2 *Protection of Proprietary Information*. Customer and ISCorp shall protect the Software, System, and System Materials as confidential and proprietary information and the trade secrets of Skyward, and Customer and ISCorp shall devote their best efforts to ensure that all Customer's and ISCorp's personnel protect the Software, System, and System Materials as confidential and proprietary information and the trade secrets of Skyward to any other person, firm, organization, or employee that does not need (consistent with Customer's right of use hereunder) to obtain access to the Software, System, and System Materials.

Section 3.3 *No Copies*. CUSTOMER SHALL NOT: COPY, IN WHOLE OR IN PART, THE SOFTWARE AND SYSTEM MATERIALS; MODIFY, ENHANCE, REVERSE COMPILE OR REVERSE ASSEMBLE ALL OR ANY PORTION OF THE SOFTWARE OR SYSTEM MATERIALS; OR RENT, LEASE, DISTRIBUTE, SELL, OR CREATE DERIVATIVE WORKS OF THE SOFTWARE OR SYSTEM MATERIALS. Provided however, the Customer shall have the right to reproduce the System Materials for authorized use by personnel of Customer as required to operate the System, provided that Customer includes in those reproductions all Skyward notices of ownership and proprietary rights thereto. Said reproductions of the System Materials shall be subject to the same restrictions on use and disclosure as the original provided by Skyward hereunder.

Section 3.4 *Property of ISCorp*. All computer systems, operating software, network equipment, and any hardware, software, documentation, information, business practices, or operating methods provided by ISCorp as part of the Hosting Services shall remain the property of ISCorp. ISCorp will retain title to all rights in all intellectual property provided by ISCorp under the terms of this Agreement, including but not limited to, any know-how, customizations, practices, and other technologies related to the Hosting Services.

Section 3.5 *Prohibited Uses Policy*. Customer acknowledges and agrees that the use of the Hosted Services is subject to Customer's compliance with the terms and conditions of ISCorp's Prohibited Uses Policy, a copy of which has been provided to Customer prior to the execution of this Agreement. A violation of any of the terms of the Prohibited Uses Policy shall constitute an event of default under the terms of this Agreement and may result in the termination of this Agreement pursuant to Article VIII below.

Section 3.6 *Duration of Protection*. The duties and obligations of Customer under this Article III shall remain in full force and effect for so long as Customer continues to control, possess, or use the Software, System, and System Materials. Customer shall promptly notify Skyward and return the Software, System, System Materials, and immediately discontinue use of the Hosting Services upon: (a) termination of this Agreement or the limited license granted herein for any reason, or (b) abandonment or other termination of Customer's control, possession or use of the Software, System, or System Materials.

ARTICLE IV Limited Warranty and Limitation of Liability

Section 4.1 *Skyward's Limited Warranty*. Skyward warrants that for a period of thirty (30) days from the date of the first day of training provided by Skyward to Customer: (a) that the Software will be free of defects in materials and workmanship under normal use; and (b) that the Software substantially conforms to its published specifications. Except for the foregoing, the Software, System, and System Materials are provided AS IS. This limited warranty extends only to Customer as the original licensee. Customer's sole and exclusive remedy and the entire liability of Skyward under this limited warranty will be, at Skyward's option, repair or replacement of the Software. In no event does Skyward warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. This limited warranty does not apply if Customer has failed to pay the annual license fees due under the terms of this Agreement or if the Software: (i) has been altered in any way, except by Skyward; (ii) has not been installed, operated, repaired, or maintained in accordance with instructions and specifications supplied by Skyward; or (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident. EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

Section 4.2 *ISCorp Limited Warranty for Hosting Services.* ISCorp warrants that the Hosting Services will be available 99.5% of the time during Operational Hours (as defined herein), except for service interruptions for routine maintenance and backups. For the purposes of this Agreement, "Operational Hours" are 7 days per week, 24 hours per day and 365 days per year. Regular maintenance and service activities are scheduled outside of Normal User Hours (as defined herein). For the purposes of this Agreement, the "Normal User Hours" are Monday through Friday from 7 A.M. to 5 P.M. central standard time excluding the following ISCorp observed holidays: New Years' Day, Martin Luther King, Jr. Birthday, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. In the event there is an interruption in the Hosting Services during Normal User Hours, ISCorp will respond in 30 minutes or less of being notified of such an interruption in the Hosting Services. ISCorp will use its best efforts to respond to any interruptions in the Hosting Services outside of Normal User Hours. Except as specifically set forth in this Agreement, ISCorp makes no warranties of any kind with respect to the Hosting Services or products provided under this Agreement. Except as specifically set forth in this Agreement, ISCorp DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In any instance involving performance or nonperformance of the Hosting Services or products provided hereunder, Customer's sole and exclusive remedy shall be: (a) in the case of Hosting Services, refund or credit, at Customer's election, of a pro rata portion of the price paid for such Hosting Services which were not provided, or (b) in the case of products, repair, replacement or return of the defective product to ISCorp for refund, at the option of ISCorp. A credit for an interruption in the Hosting Services during the Normal User Hours will be issued only for periods, calculated in 15 minute increments, in excess of the 99.5% scheduled available up-time within a calendar month. A credit for an interruption in the Hosting Services during the Operational Hours, but outside of the Normal User Hours, will be issued only for periods, calculated in one hour increments, in excess of the 99.5% scheduled available up-time within a calendar month. An interruption in the Hosting Services is deemed to have occurred only if the Hosting Services have stopped or been severely impacted that they are unusable by Customer as a result of failure of ISCorp facilities, equipment, or personnel used to provide the Hosting Services, and only where the interruption in the Hosting Services is not the result of: (i) negligence or other conduct of Customer, its agents or customers, including a failure or malfunction resulting from applications or services provided by Customer or Skyward; (ii) failure or malfunction of any equipment or services not provided by ISCorp; (iii) circumstances beyond the control of ISCorp; or (iv) interruption due to scheduled maintenance, alteration, or implementation, provided that such scheduled event is provided in writing and in advance to Customer. All claims for a credit must be submitted to ISCorp in writing within 60 days of the date of such interruption in the Hosting Services.

Section 4.3 *Limitation of Liability.* The liability of Skyward and ISCorp to Customer for any claim whatsoever related to this Agreement, including any cause of action arising in contract, tort, or strict liability, shall not exceed the total amount of all payments made under this Agreement by Customer to Skyward or ISCorp with respect to the Software or Hosting Services during the 365 days preceding the cause of action. IN NO EVENT WILL SKYWARD OR ISCORP BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR HOSTING SERVICES EVEN IF SKYWARD OR ISCORP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Skyward and ISCorp shall not be held liable for any claims or demands brought against Customer by any other party unless Customer has properly notified Skyward and ISCorp as to such damages, claims, or demands, and Customer has taken action to minimize such damages, claims, or demands. The Customer further agrees that Skyward and ISCorp will not be liable for any claim or action whatsoever or damages, regardless of type, resulting from the Customer's failure to properly save or back up all data and information inputted by Customer.

ARTICLE V Third Party Software and Hardware

Section 5.1 *System Compatibility.* In the event Skyward or ISCorp provide any third party software and/or hardware in conjunction with the performance of its obligations under the terms of this Agreement, said third party software and/or hardware will be compatible with the System and Hosting Services. Customer shall be solely responsible for acquiring any additional software and/or hardware not identified in the Proposal. Skyward and ISCorp make no representations or warranties as to the compatibility of any third party software and/or hardware not provided by Skyward or ISCorp and Skyward and ISCorp will not be responsible for any maintenance and support associated therewith.

Section 5.2 *Third Party Warranties.* In the event Skyward or ISCorp provide any third party software and/or hardware in conjunction with the performance of its obligations under the terms of this Agreement, Skyward and ISCorp shall assign any third party warranties associated therewith to Customer to the extent allowed by such warranties. Customer acknowledges and agrees that it will benefit from and be bound by any and all third party warranties, warranty limitations, license agreements, and any other rights and obligations provided by the third party software and/or hardware supplier to the purchasers and users of its products, whether provided in written or electronic format. Skyward and ISCorp do not provide any warranties for third party software and hardware.

ARTICLE VI Customer Records and Confidential Information

Section 6.1 *Confidentiality of All Data.* All personally identifiable information and data relating to Customer's students and/or employees used by Customer in conjunction with the Software shall at all times be treated as confidential by Skyward and ISCorp and will not be copied, used or disclosed by Skyward and ISCorp for any purpose. Skyward and ISCorp recognize that personally identifiable information is protected against disclosure by federal and state statutes and regulations and Skyward and ISCorp agree to comply with said restrictions.

Section 6.2 Server Security. Customer acknowledges that no security systems or procedures currently available are capable of providing complete protection from unauthorized individuals who may seek to gain access to ISCorp's servers. ISCorp shall use commercially reasonable efforts and processes to secure its servers from access by unauthorized individuals, test its servers for viruses at reasonable intervals and maintain back up copies of all content. Accordingly, so long as ISCorp uses the commercially reasonable efforts set forth above, ISCorp shall not be liable for any damage to the Customer or Skyward arising from unauthorized access or the introduction of a bug or virus. ISCorp shall maintain complete and accurate records of these security measures and produce such records to client for purposes of audit upon reasonable prior notice during normal business hours. Notwithstanding anything in this Agreement to the contrary, ISCorp shall not be liable for any damage caused by Customer or any agent of Customer. Customer agrees that its use of the Hosting Services will be in compliance with applicable law and will not otherwise violate the terms of any applicable license. Customer acknowledges that Skyward is not responsible for the security of ISCorp's servers and will not be responsible to maintain any back up copies of the content on ISCorp's servers. Notwithstanding anything in this Agreement to the contrary, Skyward and ISCorp shall not be liable for any damages to Customer caused by unauthorized individuals who gain access to the ISCorp's servers. Customer assumes all risk related to the processing of transactions related to electronic commerce.

Section 6.3 Family Educational Rights and Privacy Act. The parties expect and anticipate that Skyward and ISCorp may receive education records from Customer only as an incident of service or training that Skyward and ISCorp is required to provide to Customer pursuant to the terms of this Agreement. In the event Customer provides Personally Identifiable Information ("PII") (including but not limited to personally identifiable student information as defined by applicable state and federal law) to Skyward or ISCorp, they shall be deemed a "school official determined to have a legitimate educational interest" under 34 CFR 99.31(a)(1), as provided by Customer's policies and procedures. Skyward and ISCorp acknowledge that PII is the confidential information of Customer and shall not use it for any purpose, commercial or otherwise, except as expressly provided in this Agreement. Skyward and ISCorp agree to abide by the requirements of applicable federal and state law pertaining to the disclosure of PII, and agrees to take all reasonable measures to protect against the unauthorized disclosure of any PII. Except for use and disclosure to their employees and personnel to the extent necessary to fulfill its obligations under the terms of this Agreement, Skyward and ISCorp shall not use or further disclose PII. Upon the expiration or termination of this Agreement, Skyward and ISCorp agree to promptly return to Customer any and all PII in Skyward or ISCorp's possession.

Section 6.4 Health Insurance Portability and Accountability Act. In the event that Customer is converting its data and information management system or systems to the System contemplated by this Agreement, then the parties represent and acknowledge that such conversion process may necessarily involve the incidental receipt of data by Skyward or ISCorp that constitutes personal health information, as that term is defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). In addition to the terms and conditions contained herein, Skyward, ISCorp, and Customer may enter into a HIPAA Business Associate Agreement providing for the protection of such personal health information as required by HIPAA.

Section 6.5 Open Database Connection. If requested by Customer and agreed to by Skyward, Skyward may establish an open database connection ("ODBC") between Skyward's database and the database of Customer. In the event such an ODBC is established by Skyward, Customer will be permitted to insert its data into the Skyward database subject to the following terms and conditions: (a) Customer will be the sole and exclusive owner of all data inserted into the Skyward database, (b) Customer agrees to hold Skyward harmless from any liability relating to Customer's insertion of data into the Skyward database, including but not limited to the corruption of such database, (c) Customer shall compensate Skyward to repair any problems relating to the corruption of the Skyward database arising from or related to the insertion of the Customer's data, (d) Customer agrees to log all data inserts by date, time, database, table and field and to create a backup of the database prior to inserting any data, and (e) Customer shall not allow any third party vendors, suppliers, or other individuals or entities associated with Customer access to the ODBC without the prior written consent of Skyward and Skyward may, in its sole discretion, require that any such third party execute a confidentiality and nondisclosure agreement in the form and substance required by Skyward. The Customer further agrees that Skyward will not be liable for any claim or action whatsoever or damages, regardless of type, resulting from the Customer's failure to properly save or back up all data and information inputted by Customer through the ODBC.

Section 6.6 Customer Content. Customer is solely responsible for information, data, and content of Customer placed on ISCorp's servers as a result of the Hosting Services. ISCorp will use commercially reasonable efforts to back up the information on its servers and to store the information in a reasonably secure environment. ISCorp shall also use commercially reasonable efforts to provide redundant systems designed to decrease the risk or magnitude of a loss of data. Notwithstanding the foregoing, except as provided above, ISCorp shall not be liable to Customer for loss of its information, data, and content placed on ISCorp's servers as a result of the Hosting Services, but shall, in the event of a loss, use its commercially reasonable efforts to attempt to recover or reconstruct any such information that has been lost. Customer warrants and represents that information, data, and content placed on ISCorp's servers as a result of the Hosting Services: (a) is not offensive, defamatory, or obscene; (b) is not racially, ethnically or otherwise objectionable; (c) does not promote discrimination based on sex, race, religion, nationality, disability, sexual orientation or age; and (d) does not violate any other applicable law. Skyward and ISCorp reserve the right to delete any material installed or inputted on ISCorp's server or to disconnect a server which contains material which Skyward and/or ISCorp believes in good faith breaches any of these warranties. A breach of any of the foregoing warranties by Customer shall constitute an event of default under the terms of this Agreement and may result in the termination of this Agreement pursuant to Article VIII below.

Section 6.7 *Confidential Information of ISCorp.* The performance of the duties contemplated under the Proposal and this Agreement may require Customer and/or Skyward to have access to information concerning ISCorp's business affairs, customers, finances, properties, procedures, operations, techniques, trade secrets or other proprietary or business information (collectively referred to as the "ISCorp Confidential Information"). Customer and Skyward will not, directly or indirectly, use, disclose, or cause to be disclosed, any ISCorp Confidential Information for any reason other than to carry out those purposes contemplated by the Proposal and this Agreement, except where compelled by law or securities requirements to disclose. Customer and Skyward agree that the restrictions described in this section will remain in force during the term of this Agreement and thereafter unless and until such time as the ISCorp Confidential Information becomes generally available to the public through no fault of Customer or Skyward. Customer and Skyward further agree to require their employees and agents to protect the ISCorp Confidential Information in accordance with the terms of this Agreement. Skyward and Customer acknowledge that the unauthorized use, disclosure or duplication of any such Confidential Information is likely to cause irreparable injury to ISCorp and/or to ISCorp's customers for which ISCorp and/or ISCorp's customers will have no adequate remedy at law. Accordingly, Skyward and Customer hereby consent to the entry of injunctive relief against it to prevent or remedy any breach of the confidentiality obligation described herein without ISCorp being required to post bond, or, if bond is required, only nominal bond.

ARTICLE VII Infringement and Defense

Section 7.1 *Ownership.* Skyward represents and warrants that it has full right, power and authority to license the Software and System Materials to Customer and ISCorp represents and warrants that it has full right, power and authority to provide the Hosting Services to Customer, subject to the terms and conditions of this Agreement. Skyward and ISCorp shall indemnify and hold Customer harmless from any and all claims, liabilities, or actions brought by any third party against Customer for infringement of Customer's right to use the Software, Hosting Services, or System Materials in accordance with the terms of this Agreement.

Section 7.2 *Infringement Claim.* Notwithstanding the express limitation of liability contained in Section 4.3 above, at Skyward and ISCorp's sole expense, Skyward and ISCorp shall defend and hold harmless Customer from and against any and all claims, actions, and liabilities brought by any third party alleging that the Software, Hosting Services, and/or System Materials infringe upon a trade secret, or a registered patent or copyright in the United States and Skyward or ISCorp (as the case may be) shall pay all costs and damages arising out of any such claim. To qualify for such defense and payment, Customer must give Skyward or ISCorp (as the case may be) prompt written notice of such claim and allow Skyward or ISCorp (as the case may be) to control or institute all defenses to a such claim, including settlement of all such claims, in litigation or otherwise, provided no such settlement adversely affects Customer's ability to exercise the rights granted in this Agreement, unless Customer consents thereto.

Section 7.3 *Remedy.* Customer agrees that if the Software, Hosting Services, and/or System Materials become or, in the opinion of Skyward or ISCorp, is likely to become the subject of a trade secret, patent, or copyright infringement claim, Customer shall permit Skyward or ISCorp (as the case may be) at its option and expense, to: (a) promptly procure for Customer the right to continue to use the Software, Hosting Services, and/or System Materials (as the case may be); or (b) replace the Software, Hosting Services, and/or System Materials (as the case may be) with an alternative that functions substantially the same as the product which becomes or is likely to become the subject of such a claim; or (c) modify the Software, Hosting Services, and/or System Materials (as the case may be) in a manner which causes it to function substantially the same as it had prior to modification.

Section 7.4 *Source Code.* Subject to the terms and conditions contained in this Agreement, in the event Skyward at any time files for bankruptcy, has an involuntary petition for bankruptcy filed against it, makes an assignment for the benefit of creditors, or otherwise in any way discontinues support for the then current version of the Software, Skyward agrees to deliver to Customer a copy of the current source code for the Software at no charge to Customer. Provided however, Customer acknowledges and agrees that any such source code provided to Customer shall continue to be subject to the license and protections contained in this Agreement.

ARTICLE VIII Term and Termination

Section 8.1 *Term.* This Agreement shall commence on the Effective Date and shall continue for period of three calendar years (the "Initial Term"), unless terminated earlier pursuant to Section 8.2 below. Upon the expiration of the Initial Term, this Agreement shall automatically renew for successive one year periods (collectively a "Renewal Term"), unless terminated earlier pursuant to Section 8.2 below. This term shall be limited to 10 years. All references to the "term" of this Agreement shall include the Initial Term and any Renewal Term.

Section 8.2 *Termination.*

(a) *Termination by Any Party.* Any party to this Agreement may terminate this Agreement by providing the other parties with written notice of such termination at least 60 days prior to the end of the Initial Term or any Renewal Term.

(b) *Termination by Customer.* Except as provided in Section 8.2(a) above, Customer may not terminate this Agreement without the prior written consent of Skyward and ISCorp. In the event Customer attempts to terminate this Agreement without the prior written consent of Skyward and ISCorp: (i) all of Customer's rights and privileges under this Agreement, including but not limited to Customer's rights to use the Software, System, Hosting Services, and System Materials shall be immediately terminated; (ii) Customer shall pay to Skyward and ISCorp as liquidated damages, all amounts due Skyward and ISCorp for the remainder of the Initial Term or any Renewal Term; and (iii) such action shall be considered an Event of Default (as defined herein) and Skyward and ISCorp shall have the right to seek injunctive relief as provided in Section 8.4 below.

(c) Termination by Skyward and ISCorp. In addition to their rights to terminate described above, upon the occurrence of an Event of Default (as defined herein), Skyward and ISCorp will have the right to immediately terminate this Agreement. Upon Skyward's or ISCorp's termination of this Agreement: (i) all of Customer's rights and privileges under this Agreement, including but not limited to Customer's rights to use the Software, System, Hosting Services, and System Materials shall be immediately terminated; (ii) Customer shall pay to Skyward and ISCorp as liquidated damages, all amounts due Skyward and ISCorp for the remainder of the Initial Term or any Renewal Term; and (iii) Skyward and ISCorp shall have the right to seek injunctive relief as provided in Section 8.4 below.

Section 8.3 *Event of Default.* The occurrence of any one or more of the following shall be deemed an "Event of Default" by Customer: (a) any attempted sale, sublicense, transfer or assignment of all or any part of the Software, System, or System Materials without the prior written consent of Skyward; (b) any attempt to decompile, disassemble, or otherwise reverse engineer all or any part of the Software, System, or System Materials, or assist another in so doing; (c) Customer fails to pay when due any amounts due Skyward or ISCorp under the terms of this Agreement and any Proposals; or (d) any other breach of Customer's obligation under the terms of this Agreement, including but not limited to, Skyward or ISCorp's confidential and proprietary rights, trade secrets, or copyrights in the Software, System, Hosting Services, or System Materials.

Section 8.4 *Injunctive Relief.* Skyward and Customer acknowledge and agree that any Event of Default by Customer will result in Skyward and ISCorp suffering irreparable harm that cannot be adequately compensated in damages in an action of law. Therefore, in the event of an Event of Default, in addition to the rights of Skyward and ISCorp as described in Section 8.2 above, Skyward and ISCorp will be entitled, without proof of damages, to immediate injunctive relief (including but not limited to, a temporary restraining order, temporary injunction, and permanent injunction, all without bond), restraining Customer from any further use of the Software, System, Hosting Services, and System Materials and requiring that all copies (including any permitted back up copies) be immediately returned to Skyward and ISCorp. Notwithstanding anything contained herein to the contrary, this Section will not be construed to limit Skyward and ISCorp's rights to pursue any other remedy or relief available under this Agreement or otherwise available. Customer further agrees that Skyward and ISCorp's pursuit of any remedy under this Agreement or otherwise available will not constitute an election of remedies by Skyward and ISCorp. If Skyward or ISCorp prevail in any suit or proceeding to enforce its rights under this Agreement, Customer shall indemnify Skyward and ISCorp for all expenses incurred by Skyward and ISCorp in such suit or proceeding, including reasonable attorneys' fees.

ARTICLE IX Interpretation and Construction

Section 9.1 *Governing Law and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and any applicable federal trademark, copyright and/or patent laws. The exclusive forum for any lawsuit or legal action that arises in whole or part out of this Agreement shall be the Circuit Court of McLean County, Illinois and Customer hereby consents to the personal jurisdiction of the Circuit Court of McLean County, Illinois.

Section 9.2 *Successors or Assigns.* This Agreement shall inure to the benefit of and be binding on the parties and their respective successors, affiliates, and permitted assigns.

Section 9.3 *Waiver.* Each party agrees that no failure or delay by the other party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

Section 9.4 *Counterparts and Signatures.* This Agreement may be executed in any number of counterparts, all of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties agree that facsimile or PDF signatures when attached to this Agreement shall bear the same legal import as original signatures on one document.

Section 9.5 *Severability.* If any provision of this Agreement is found or declared to be invalid or unenforceable by any court having jurisdiction, such finding or declaration shall not invalidate any other provision hereof, and this Agreement shall thereafter continue in full force and effect except that such invalid or unenforceable provision, and (if necessary) other provisions hereof, shall be reformed by a court of competent jurisdiction so as to effect insofar as is practicable the intention of the parties as set forth in this Agreement. Provided, that if such court is unable or unwilling to effect such reformation, the invalid or unenforceable provision shall be deemed deleted to the same extent as if it had never existed.

Section 9.6 *Entire Agreement and its Exhibits.* This Agreement, its exhibits and the Illinois State University Terms and Conditions constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior and contemporaneous representations, proposals, agreements, negotiations, advertisements, statements, or understandings, whether oral or written. No amendment to this agreement shall be binding on either party unless such amendment is in writing and is executed by authorized representatives of both parties to this Agreement. No provision of this Agreement shall be construed for or against either of the parties based on whether it or its representative drafted this Agreement.

Section 9.7 *Assignment.* Customer will not assign, transfer, mortgage, encumber, lease, or sublicense this Agreement, the right to use the Software, System, and System Materials, without the prior written consent of Skyward. Any assignment by Customer in contravention of this Section will be void. Skyward reserves the right to assign or transfer unilaterally its interest in this Agreement, including all rights and obligations arising hereunder, without Customer's approval or consent. Any assignment or transfer by Skyward will inure to the benefit of Skyward's successors and assigns. Skyward will provide Customer with written notice of any such assignment or transfer.

Section 9.8 *Notices*. Any notice required or permitted to be given pursuant to this Agreement shall be valid only if in writing and shall be deemed to have been duly given (a) when personally delivered, (b) when transmitted by fax if confirmation of receipt is printed out on the sending fax machine, or (c) three business days after being mailed by certified mail, postage prepaid, addressed to the party receiving notice at the address listed in the opening paragraph of this Agreement, unless that person otherwise notifies the other parties in accordance with this Section of a change of address.

Section 9.9 *Headings*. Section headings in this Agreement are for convenience of reference only and shall not govern the interpretation of any of the provisions of this Agreement.

Section 9.10 *No Third Party Beneficiaries*. This Agreement is solely for the benefit of the parties hereto, and their respective successors and permitted assigns. No provision of this Agreement shall be deemed to confer upon other third parties any remedy, claim, reimbursement, cause of action or other right.

Section 9.11 *Survival*. The provisions contained in Articles III, IV, VI, and VIII, this Section, and any other provisions of this Agreement which by their very nature are intended to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement and will inure to the benefit of and be binding upon the parties hereto.

The undersigned have agreed to the terms and conditions of this Agreement as of the Effective Date.

CUSTOMER:

SKYWARD, INC.:


Signature

DocuSigned by:
Raymond H. Ackerlund
0E2702EBBC07483
Signature

~~Stacy Brown~~ *Judy L. Johnson*
Printed Name

Raymond Ackerlund
Printed Name

Director of Purchases
Printed Title

Chief Marketing Officer
Printed Title

INTEGRATED SYSTEMS CORPORATION

DocuSigned by:
Jeff Zillner
2E83A1A25751490
Signature

Jeff Zillner
Printed Name

VP Operations
Printed Title

Certifications

Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of any resulting contract and any renewals is a material requirement and condition of the contract. By executing the contract Vendor certifies compliance with this subsection in its entirety, and is under a continuing obligation to remain in compliance and report any non-compliance.

This subsection, in its entirety, also applies to subcontractors used on this contract. Vendor shall include these Standard Certifications in any subcontract used in the performance of the contract using the Standard Subcontractor Certification form provided by the State.

If the contract extends over multiple fiscal years, including the initial term and all renewals, Vendor and its subcontractors shall confirm compliance with this section in the manner and format determined by the State by the date specified by the State and in no event later than July 1 of each year that the contract remains in effect.

If the Parties determine that any certification in this section is not applicable to the contract it may be stricken without affecting the remaining subsections.

1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:
 - the contract may be void by operation of law,
 - the State may void the contract, and
 - the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. Vendor certifies it and its employees will comply with applicable provisions of the United States Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and applicable rules in performance of this contract.
3. **This applies to individuals, sole proprietorships, partnerships and LLCs, but is otherwise not applicable.** Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3
4. Vendor certifies that it has reviewed and will comply with the Department of Employment Security Law (20 ILCS 1005/1005-47) as applicable.
5. **This applies only to certain service contracts and does NOT include contracts for professional or artistic services.** To the extent there was a current Vendor providing the services covered by this contract and the employees of that Vendor who provided those services are covered by a collective bargaining agreement, Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer; and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit who perform substantially similar work to the work that will be performed pursuant to this contract. This does not apply to heating, air conditioning, plumbing and electrical service contracts. 30 ILCS 500/25-80
6. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record. 30 ILCS 500/50-5
7. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business. 30 ILCS 500/50-10

8. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract. 30 ILCS 500/50-10.5
9. Vendor certifies it is not barred from having a contract with the State based upon violating the prohibitions related to either submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request of information, or similar assistance (except as part of a public request for such information). 30 ILCS 500/50-10.5(e)
10. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent have entered into a deferred payment plan to pay the debt. 30 ILCS 500/50-11, 50-60
11. Vendor certifies that it and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act. 30 ILCS 500/50-12
12. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract. 30 ILCS 500/50-14
13. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. 30 ILCS 500/50-25
14. Vendor certifies it has read, understands and is not knowingly in violation of the "Revolving Door" provisions of the Illinois Procurement Code. 30 ILCS 500/50-30
15. Vendor certifies that if it hires a person required to register under the Lobbyist Registration Act to assist in obtaining any State contract, that none of the lobbyist's costs, fees, compensation, reimbursements or other remuneration will be billed to the State. 30 ILCS 500/50-38
16. Vendor certifies that it will not retain a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. 30 ILCS 500/50-38
17. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers, or employees of the State. 30 ILCS 500/50-40, 50-45, 50-50
18. Vendor certifies that if it is awarded a contract through the use of the preference required by the Procurement of Domestic Products Act, then it shall provide products pursuant to the contract or subcontract that are manufactured in the United States. 30 ILCS 517
19. Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring Agency/University grants an exception. 30 ILCS 565
20. Drug Free Workplace
 - 20.1 If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act
 - 20.2 If Vendor is an individual and this contract is worth more than \$5000, Vendor certifies it shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract. 30 ILCS 580

21. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States Department of Commerce. 30 ILCS 582
22. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583
23. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12. 30 ILCS 584
24. This applies to information technology contracts and is otherwise not applicable. Vendor certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at (www.dhs.state.il.us/iitaa). 30 ILCS 587
25. **This only applies to vendors who own residential buildings but is otherwise not applicable.** Vendor certifies, if it owns residential buildings, that any violation of the Lead Poisoning Prevention Act has been mitigated. 410 ILCS 45
26. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4
27. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105
28. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club." 775 ILCS 25/2
29. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
30. Vendor certifies that if an individual, sole proprietor, partner or an individual as a member of a LLC, he/she has not received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. 30 ILCS 105/15a; 40 ILCS 5/14-108.3; 40 ILCS 5/16-133
31. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. Vendor will not make a political contribution that will violate these requirements. 30 ILCS 500/20-160 and 50-37.
32. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity and authorized to transact business or conduct affairs in Illinois prior to submitting a bid or offer. If you do not meet these criteria, then your bid or offer will be disqualified. 30 ILCS 500/20-43

Additional Terms:

Assignment and Subcontracting: (30 ILCS 500/20-120) Any contract may not be assigned or transferred in whole or in part by Vendor without the prior written consent of the University. For purposes of this section, subcontractors are those specifically hired by the Vendor to perform all or part of the work covered by the contract. Vendor shall describe the names and addresses of all subcontractors to be utilized by Vendor in the performance of the resulting contract, together with a description of the work to be performed by the subcontractor and the anticipated amount of money that each subcontractor is expected to receive pursuant to a subsequent contract. Vendor shall notify the University in writing of any additional or substitute subcontractors hired during the term of a resulting contract, and shall supply the names and addresses and the expected amount of money that each new or replaced subcontractor will receive pursuant to the Contract. All subcontracts must include the same certifications and disclosures that Vendor must make as a condition of their contract.

Audit / Retention of Records: (30 ILCS 500/20-65) Vendor and its subcontractors shall maintain books and records relating to the performance of the resulting contract or subcontract and necessary to support amounts charged to the University. Books and records, including information stored electronically, shall be maintained by the Vendor for a period of three years from the later of the date of final payment under the contract or completion of the contract, and by the subcontractor for a period of three years from the later of final payment under the term or completion of the subcontract. If federal funds are used to pay contract costs, the Vendor and its subcontractors must retain its records for a minimum of five years after completion of work. Books and records required to be maintained under this section shall be available for review or audit by representatives of: the University, the Auditor General, the Executive Inspector General, the Chief Procurement Officer, State of Illinois internal auditors or other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this section shall establish a presumption in favor of the University for the recovery of any funds paid by the University under the contract for which adequate books and records are not available to support the purported disbursement. The Vendor or subcontractors shall not impose a charge for audit or examination of the Vendor's books and records.

Availability of Appropriation (30 ILCS 500/20-60): Any resulting contract is contingent upon and subject to the availability of funds. The University, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation. If funds needed are insufficient for any reason, the University has discretion on which contracts will be funded.

Transportation Sustainability Procurement Program Act (30 ILCS 530/10 (b): All contracts for freight, small package delivery, and any transportation of cargo require providers to report the amount of energy the service provider consumed to provide those services to the State and the amount of associated greenhouse gas emissions, including energy use and greenhouse gases emitted as a result of the provider's use of electricity in its facilities and the energy use and greenhouse gas emissions by the service provider's subcontractors in the performance of those services.

Data Security Addendum – Negotiated 2.16.16

Vendor acknowledges and agrees that compliance with this Addendum in its entirety for the term of the contract and any renewals is a material requirement and condition of this contract. If the Parties determine that any clause in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

UNLESS SPECIFICALLY EXEMPTED, THE FOLLOWING CONFIDENTIALITY AND DATA SECURITY REQUIREMENTS APPLY TO UNIVERSITY DATA (HIGHLY RESTRICTED DATA, RESTRICTED DATA, AND UNRESTRICTED DATA AS DEFINED BELOW) MADE AVAILABLE TO THE VENDOR UNDER THE TERMS OF THIS AGREEMENT.

1. **Order of Precedence:**
 - a. To the extent, any provision in this Addendum is inconsistent or incompatible to terms included elsewhere in this Agreement, the parties agree that the Skyward Software License Agreement (SLA) shall take precedence and the conflicting provisions shall be null and void.
2. **Confidential Information:**
 - a. Confidential Information may be made available to the Vendor under this Agreement. The Vendor agrees to i) protect any Confidential Information from unauthorized use or disclosure; ii) disclose Confidential Information only to employees and other representatives who have agreed to comply with this agreement; and iii) use the Confidential Information only for the purposes authorized in this Agreement.
 - b. All Confidential Information remains the property of the University.
 - c. "Confidential Information" means any information provided by the University whether of a technical, business or other nature that is disclosed to the Vendor that is designated as Confidential by the University, that is protected from disclosure by applicable state or federal law, or that the Vendor has reason to believe is confidential, proprietary, or trade secret information of the University. Confidential Information does not include any information that: (a) was acquired lawfully by the Vendor or independently developed or acquired by the Vendor outside this Agreement; (b) is or becomes part of the public domain through no fault of the Vendor; or, (c) is authorized for release by written notice from University to Vendor; or (d) is otherwise required to be disclosed by law.
3. **University Data Security Policy & Procedures:** The University adopted Policy 9.8 and associated procedures (available at policy.ilstu.edu) to establish standards to protect security of University Data which shall include all information provided to Vendor under the terms of this Agreement. This Agreement involves Vendor's access, use, storage or processing of University Data and is subject to these Standards. The University reserves the right to update these Standards upon provision of 30 days prior written notice to the Vendor.
4. **Definitions:** The following terms shall be defined as follows for purposes of the Agreement.
 - i. The terms "Highly Restricted Data," and "Restricted Data" shall have the meaning in University Procedure 9.8.1 and shall include data that are protected by federal or state law, regulation, or University policy, or the University is required to take action if the data are inappropriately accessed or disclosed (i.e. notification requirements to parties). The data includes but is not be limited to an (i) identification numbers (e.g. individual's government-issued identification number social security number, driver's license number); (ii) information protected by federal or state law including but not limited to Family Educational Rights and Privacy Act ("FERPA"), (iii) financial data (including account numbers, credit card number, or other information that would permit access to an individual's financial data; (iii) biometric or health data, including but not limited to data protected by HIPAA; or (iv.) data that if released could create a safety or security concern for the University or members of the University community. Data in these categories may only be accessed by employees of the University

who have a role-based need to see and use the information and individuals who are working pursuant to a written contract with the University.

- ii. **“Unrestricted Data”** shall have the meaning in University Policy 9.8 and includes information typically publically available, data not subject to any restrictions imposed by law, University Policy, or other contract.

5. **University Data Security Protections:** Vendor shall provide commercially reasonable and adequate protection on its network and systems to include firewalls and intrusion detection/prevention, authentication and encryption capabilities (including mobile devices, USB storage devices and backup media) in accordance with standard industry practices deemed acceptable by the University Information Security Officer.
- a. **Data Transmission:** In general, Vendor shall implement administrative, physical and technical safeguards to protect University Data that are no less rigorous than accepted industry practices. Vendor agrees that any Highly Restricted Data and Restricted Data must be transmitted in accordance with standard industry encryption standards deemed acceptable by the University Information Security Officer.
 - b. **Storage:** As applicable, Vendor agrees to store Highly Restricted Data and Restricted Data with standard industry encryption or masking standards deemed acceptable by the University Information Security Officer.
 - c. **Third-Party Assurances / Subcontractors:** Vendor may only release University Data to a subcontractor, affiliate or other third party with the designated University authorized official's prior written consent and provided that such subcontractor, affiliate, or other third party agrees to comply with all provisions of this Agreement.
 - d. **Return/Destruction of Data:**
 - i. As applicable, within two weeks (or other time period acceptable to the University) after termination of this Agreement, for any reason, Vendor shall return or destroy (as specified by the University) all data received from University, or created or received by Vendor on behalf of the University. This provision shall apply to data in the possession of subcontractors or agents of Vendor.
 - ii. Destruction of University data will be conducted in accordance with standard industry practices deemed acceptable by the University.
 - iii. Vendor shall provide proof or certification of destruction of the data to the University's Information Security Officer.
 - e. **Service Level / Data Availability:** Vendor shall use commercially reasonable measures to back up systems or media and apply sufficient protections to meet business continuity requirements, as agreed by the parties. Unless specifically agreed to by the University Information Security Officer or other authorized official, as applicable, Vendor shall maintain a service level availability of 99.9%, as measured on a monthly basis. The Vendor shall provide an availability report to the University's Service Level Manager on a monthly basis. Services will be delivered 24 hours a day, 365 days a year. Any standard maintenance periods will be mutually agreed upon by the University and the Vendor. For any monthly period where the service level falls under 99.9%, the University will be eligible for a service credit equal to the percentage of time in the month where the service level fell below the required threshold. The University does not need to notify the Vendor in order to receive the service credit.
 - f. **Data Processing Integrity:** As applicable, Vendor shall take commercially reasonable measures, including regular data integrity audits, to protect Data against deterioration or degradation of data quality and authenticity. Vendor must maintain an incident tracking system and formal incident handling process. In addition, Vendor will maintain appropriate contingency / recovery plans for any University Data in the event of loss of data or breach.
 - g. **Termination:** The parties acknowledge that applicable data security protections may change during the term of the Agreement. Following the execution of the Agreement or any renewal of the Agreement, in the event the University and the Vendor are unable to reach mutual agreement regarding acceptable protections of University Data in accordance with this Section, either party may terminate the Agreement upon provision of 120 days advance written notice.

6. **Vendor Certifications:** Prior to performing services which require access to, transmission of and/or storage of Highly Restricted Data or Restricted Data, Vendor will provide a third party certification of compliance with standard industry practices in a form acceptable to the University Information Security Officer.
7. **Breach:**
 - a. **Notice:** Vendor, including any subcontractors, affiliates, and third parties, shall immediately, upon discovery, report to the University Information Security Officer in writing in accordance with the University Procedure 9.8.6 (i) any breach of security involving, or potentially involving, University Data, or (ii) any use or disclosure of University Data other than the Permitted Uses (each, a "Report"). Vendor shall fully cooperate with the University with respect thereto. The University Information Security Officer can be contacted by calling the Change Management Office at Illinois State University at atiso@illinoisstate.edu.
 - b. **Indemnification:** It is understood and agreed that neither party to this agreement shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other, unless such liability is imposed by law, and that this agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one party against the other or against a third party.
 - c. **Termination:** In the event of a material breach under this section (notwithstanding any contrary or inconsistent provision elsewhere in the Agreement), the University has the right to terminate the Agreement upon provision of thirty days written notice to the Vendor.
8. **Legal Compliance:** Vendor acknowledges that University Data provided pursuant to this agreement may be protected by applicable federal and state law and agrees to comply with such law. Vendor shall be liable for any damages arising from breach of FERPA or other applicable federal and state privacy laws.
 - a. **Compliance with FERPA:** Vendor hereby acknowledge and agrees to comply with the limitations on the use and re-disclosure of Personally Identifiable Information from education records as defined in 34 CFR § 99.00 et seq. Vendor further acknowledge and agrees that it shall maintain the confidentiality, and shall not re-disclose, personally Identifiable Information from education records except as authorized by the University in writing.
 - b. **Compliance with Health Insurance Portability and Accountability Act ("HIPAA"):** If the Vendor is a "covered entity" as that term is defined under HIPAA, the Vendor shall enter into a Business Associate Agreement with the University. If the Vendor is not a "covered entity" as that term is defined under HIPAA, the Vendor acknowledges i) any students working at the Vendor's site or under the Vendor's supervision and control are "part of the Vendor's "workforce" as defined in HIPAA Privacy Regulations at 43 C.F.R. 160.103, and ii) no Business Associate agreement is required between the University and Facility. The Facility will provide the necessary HIPAA training to students and students will be expected to comply with HIPAA and any other confidentiality requirements of the Facility.
 - c. **Compliance with PCI Standards:** If, in the course of providing services to University, Vendor has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, Vendor shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at Service Provider's sole cost and expense
 - d. **Highly Restricted University Data** is not permitted to be stored or processed offshore (outside the US).
9. **Vendor Monitoring/Audit:** With prior written notice, University (or its agent or affiliate) may audit Vendor's use of the University Data to ensure that Vendor is in compliance with the terms of this Agreement. Vendor will keep complete and accurate records of all use of University data, including a log file of all employees with access to University Data. University may at its own expense and upon no less than five working days written notice audit Vendor's use, access, or maintenance of the University Data.

As part of such audit, University is entitled to obtain physical and electronic data concerning use of University's data upon submitting a reasonable request to Vendor. Such audit will not interfere unreasonably with Vendor's business activities, will be conducted no more often than once per calendar year at a location, unless a previous audit disclosed a material breach. If an audit reveals the Vendor has breached this Agreement, University may immediately terminate the Agreement.

10. **Use of University Data**. Vendor agrees that any and all University Data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. University Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of the vendor. Vendor, including subcontractors, affiliates, or associated third-parties, may only use University Data will not sell University data, nor use University data for profit, including any aggregate data.