



This addendum is added to and is to be considered part of the subject contract.

Statewide Contract #: SW1041A

PeopleSoft Contract ID: 7211

Contract Title: Software Value Added Reseller

Contract Issuance Date: 12/22/2023

Contract Supplier: Avaya

Addendum # 1

Addendum Date: 03/07/2024

OMES Point of Contact:

Contracting Officer: Marc Brown

Phone Number: 405-521-6669

E-mail address: Marc.brown@omes.ok.gov

Addendum Information: _____

Addendum #1 is issued for term renewal for Avaya per the original T&C's.

Contract Period: 03/14/2024 – 03/13/2025

Agreement Period: 03/14/2024 – 03/13/2028



OKLAHOMA

CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000583733
 AVAYA HOLDINGS CORP
 AVAYA LLC
 350 MOUNT KEMBLE AVE
 MORRISTOWN NJ 07960-0001
 USA

Contract ID 0000000000000000000000007211			Page 1 of 3	
Contract Dates 12/22/2023 to 03/13/2025		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041A - Avaya			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1	43231500 / Business Function Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
2	43231600 / Finance Accounting and Enterprise Resource Planning ERP Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
3	43232000 / Computer Game or Entertainment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
4	43232100 / Content Authoring and Editing Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
5	43232200 / Content Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
6	43232300 / Data Management and Query Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
7	43232400 / Development Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
8	43232500 / Educational or Reference Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001

Final = The price is final after adjustments
 Hard = Apply adjustments regardless of other adjustments
 Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



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Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
9	43232600 / Industry Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
10	43232700 / Network Applications Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
11	43232800 / Network Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
12	43232900 / Networking Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
13	43233000 / Operating Environment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
14	43233200 / Security and Protection Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
15	43233400 / Utility and Device Driver Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
16	43233500 / Information Exchange Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
17	43233600 / Electrical Equipment Software	EA	1.00	0.00	0.00	0.00

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Description: SW1041A - Avaya			Contract Maximum 0.00	
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TYPE: STATEWIDE				

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Official signed contract documents are on file with OMES Central Purchasing.

Contract title: Software Value Added Reseller

Contract Number: SW1041A

Date of Contract issuance: 12.22.2023

Contract period: 12.22.2023 through 03.13.2024

Agreement period: 12.23.2023 through 03.14.2028

Type of contract: Mandatory ☐ Non-Mandatory ☒

OMES POC Skyler J. Greco

Title: SW Contracting Officer

Phone: (405) - 521 - 2174

Email: skyler.greco@omes.ok.gov

Vendor POC

Vendor POC:
Colette Buxton
972-745-5021
cbuxton@avaya.com

Supplier ID:

Supplier 0000583733
AVAYA HOLDINGS CORP
AVAYA LLC
350 MOUNT KEMBLE AVE
MORRISTOWN NJ 07960-0001
USA

Contract ID: 0000000000000000000007211

Please verify that the software item being purchased is not available on existing mandatory statewide contracts. (i.e. SW1010, SW1079, etc.) This statewide contract is for software, software maintenance, software as a service (SaaS), and software implementation services.

Contract Overview: Value-Added Software

Authorized Users: All state departments, boards, commissions, agencies, and institutions, in Addition to counties, school districts and municipalities which may avail themselves of this contract.

How to order:

Contact POC listed above

Ensure quote references SW1041A

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Available Brands:

See pricing attachment.

Available Products and Services:

Software, Value-Added

Authorized Dealer/Reseller(s): N/A



State of Oklahoma

Contract ID 000000000000000000000000007211			Page 1 of 3	
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Tax Exempt? Y Tax Exempt ID:736017987

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order		Maximum / Open	
			Qty	Amt	Qty	Amt
1	43231500 / Business Function Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0001		
2	43231600 / Finance Accounting and Enterprise Resource Planning ERP Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0001		
3	43232000 / Computer Game or Entertainment Software	EA	1.00	0.00	0.00	0.00
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Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
	Contract Base Pricing	0.00000	EA	0001		
18	43233700 / System Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		
19	81112200 / Software Maintenance and Support	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		
20	81112000 / Data Services (SaaS)	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		
21	81111508 / Software Implementation Services	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		

Vendor POC:
Colette Buxton
972-745-5021
cbuxton@avaya.com

Authorized Signature



**STATE OF OKLAHOMA STATEWIDE CONTRACT WITH
AVAYA, INC.**

This State of Oklahoma Statewide Contract No. 1041 (“Contract”) is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services and Avaya, Inc. (“Supplier”) and is effective as the date of the last signature to this Contract. The initial Contract term, which begins on the effective date of the Contract, is one year and there are four (4) one-year options to renew the Contract.

Purpose

The State is awarding this Contract to Supplier for software and services to support State agencies and other eligible Oklahoma Interlocal Entities. This Supplier will provide software, training, presales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration, as more particularly described in certain Contract Documents. Supplier submitted a proposal which did not contain exceptions to the Solicitation and a best and final offer. This Contract memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Oklahoma Statewide Contract Terms, Attachment C;
 - 2.4. State of Oklahoma Information Technology Terms, Attachment D;
 - 2.5. Information Security Requirements, Attachment D-1;
 - 2.6. Additional Terms, Attachment E1;
 - 2.7. Master Terms, Attachment E2
 - 2.8. Pricing, Attachment E3;
 - 2.9. Value-Add, Attachment E4;
 - 2.10. Third Party, Attachment E5;
 - 2.11. Negotiated Exceptions to Contract, Attachment F; and

2.12. Template for Contract Modifications for Quotes, Statements of Work, or other Ordering Documents, Attachment F1;

3. The parties additionally agree:

- 3.1. Except for information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.
- 3.2. Unless mutually agreed to in writing by the Chief Information Officer (CIO) utilizing Attachment F-1, no Contract Document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State. If supplier is acting as a reseller, any third-party terms provided are also subject to the foregoing.
- 3.3. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.
- 3.4. Third party products resold under this Contract shall also be governed by the negotiated electronic license, subscription, maintenance, support or similar agreement between the State and the third party publisher or supplier. Supplier agrees that all such agreements will pass to any applicable Acquisition placed by the State or Customer hereunder. Any other third party product terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement shall be binding only upon the State's acceptance of those additional terms.


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


4. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

[Remainder of page intentionally left blank.]

STATE OF OKLAHOMA
by and through the
OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES

AVAYA, INC.

By: 
Joe McIntosh (Dec 22, 2023 10:09 CST)
Name: Joe McIntosh
Title: CIO
Date: Dec 22, 2023

By: 
Jenifer Bond (Dec 21, 2023 17:26 CST)
Name: Jenifer Bond
Title: VP US SLED
Date: Dec 21, 2023

ATTACHMENT A
SOLICITATION NO. 0900000556

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded by the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract Document.

PURPOSE

The Contract is awarded as a statewide contract on behalf of the Office of Management and Enterprise Services for software and services to support State agencies and other eligible Oklahoma Interlocal Entities. This Supplier will provide software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration.

1. Contract Term and Renewal Options

The initial Contract term, which begins on the effective date of the Contract, is one year and there are [4] one-year options to renew the Contract.

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

This State of Oklahoma General Terms (“General Terms”) is a Contract Document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract Document, Supplier and State agree to the following General Terms:

1 Scope and Contract Renewal

- 1.1** Supplier may not add products or services to its offerings under the Contract without the State’s prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier’s performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract Documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Addendum. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4** The State may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the State

exercises such option to extend ninety (90) days, the State shall notify the Supplier in writing prior to Contract end date. The State, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

- 1.5** Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

2 Contract Effectiveness and Order of Priority

- 2.1** Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until the Contract is effective.

- 2.2** Contract Documents shall be read to be consistent and complementary. Any conflict among the Contract Documents shall be resolved by giving priority to Contract Documents in the following order of precedence:

- A.** any Addendum;
- B.** any applicable Solicitation;
- C.** any Contract-specific State terms contained in a Contract Document including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
- D.** the terms contained in this Contract Document;
- E.** any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation or applicable law;
- F.** any statement of work, work order, or other similar ordering document as applicable; and
- G.** other mutually agreed Contract Documents.

- 2.3** If there is a conflict between the terms contained in this Contract Document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms

provided by Supplier shall not take priority over this Contract Document or Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Addendum.

- 2.4 Any Contract Document shall be legibly written in ink or typed. All Contract transactions, and any Contract Document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

3 **Modification of Contract Terms and Contract Documents**

- 3.1 The Contract may only be modified, amended, or expanded by an Addendum. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.
- 3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.

4 **Definitions**

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 4.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 4.2 **Addendum** means a mutually executed, written modification to a Contract Document.
- 4.3 **Amendment** means a written change, addition, correction or revision to the Solicitation.
- 4.4 **Bid** means an offer a Bidder submits in response to the Solicitation.

- 4.5 Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.6 Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract Documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 4.7 Contract Document** means this document; any master or enterprise agreement terms entered into between the parties that are mutually agreed to be applicable to the Contract; any Solicitation; any Contract-specific terms; any Supplier's Bid as may be negotiated; any statement of work, work order, or other similar mutually executed ordering document; other mutually executed documents and any Addendum.
- 4.8 Customer** means the entity receiving goods or services contemplated by the Contract.
- 4.9 Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 4.10 Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.
- 4.11 Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 4.12 Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.13 Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 4.14 OAC** means the Oklahoma Administrative Code.
- 4.15 OMES** means the Office of Management and Enterprise Services.

- 4.16 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.17 State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 4.18 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 4.19 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 4.20 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 4.21 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract Document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created,

prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5 Pricing

- 5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 5.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

6 Ordering, Inspection, and Acceptance

- 6.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.
- 6.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-5, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 6.3** Supplier shall deliver products and services on or before the required date specified in a Contract Document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract Document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.
- 6.4** Product warranty and return policies and terms provided under any Contract Document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

7 Invoices and Payment

- 7.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.
- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F.** Supplier shall have no right of setoff.
- G.** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.
- H.** The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.

8 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

- 8.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set

forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a thirty (30) day notice of cancellation and name the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$5,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$5,000,000 combined single limit each accident;
- D.** Directors and Officers Insurance which shall include Employment Practices Liability as well as Consultant's Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than \$5,000,000 per occurrence;
- E.** Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and
- F.** Additional coverage required in writing in connection with a particular Acquisition.

- 8.2** Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.
- 8.3** Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

9 Compliance with Applicable Laws

- 9.1** As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:
- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
 - B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
 - C.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;
 - D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
 - E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;

- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
 - G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
 - H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify;
 - I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
 - J.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- 9.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at [Information Security Policy, Procedures, Guidelines \(oklahoma.gov\)](http://Information%20Security%20Policy,%20Procedures,%20Guidelines%20(oklahoma.gov)). Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 9.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.4** In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory

contract provisions required in connection with the receipt of federal funds or other funding source.

- 9.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 9.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.
- 9.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 9.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.
- 9.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 9.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format

usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

10 Audits and Records Clause

- 10.1** As used in this clause and pursuant to 67 O.S. §203, “record” includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 10.2** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
- 10.3** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

11 Confidentiality

- 11.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer’s prior express written

permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.

- 11.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 11.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll free telephone call center services.
- 11.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 11.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents,

representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.

11.6 The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

11.7 Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) résumé, pricing or marketing materials provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

12 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is

related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

13 Assignment and Permitted Subcontractors

- 13.1** Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.
- 13.2** Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.
- 13.3** If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to

the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

13.4 All payments under the Contract shall be made directly to the Supplier, except as provided in subsection A above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.

13.5 Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

14 Background Checks and Criminal History Investigations

Prior to the commencement of any services, background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to the State in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or services.

15 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property,

copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

16 Indemnification

16.1 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.
- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

16.2 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

16.3 Notice and Cooperation

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

16.4 Coordination of Defense

In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally

participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

16.5 Limitation of Liability

- A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.
- B.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- C.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

17 Termination for Funding Insufficiency

- 17.1** Notwithstanding anything to the contrary in any Contract Document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

17.2 Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.

17.3 The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

18 Termination for Cause

18.1 Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.

18.2 The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.

18.3 Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence

of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

18.4 The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-9 is an example.

19 Termination for Convenience

19.1 The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.

19.2 Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but

there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

20 Suspension of Supplier

- 20.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.
- 20.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.
- 20.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract.

A determination that Supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

22 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

23 Force Majeure

23.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

23.2 Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

23.3 Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay

or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

24 Security of Property and Personnel

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

25 Notices

All notices, approvals or requests allowed or required by the terms of any Contract Document shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the physical address set forth below. Notice information may be updated in writing to the other party as necessary. Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall not be delivered solely via e-mail.

If sent to the State:

State Purchasing Director
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

With a copy, which shall not constitute notice, to:

Purchasing Division Deputy General Counsel
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

26 Miscellaneous

26.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract Documents, in the singular or in the aggregate, shall be governed by the laws of the State without regard to application of choice of law principles. Pursuant to 74 O.S. §85.14, where federal granted funds are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents, shall be in Oklahoma County, Oklahoma.

26.2 No Guarantee of Products or Services Required

The State shall not guarantee any minimum or maximum amount of Supplier products or services required under the Contract.

26.3 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

26.4 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

26.5 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

26.6 Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 *et seq.* Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required.

26.7 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

26.8 Mutual Responsibilities

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

26.9 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or

condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

26.10 Severability

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

26.11 Section Headings

The headings used in any Contract Document are for convenience only and do not constitute terms of the Contract.

26.12 Sovereign Immunity

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State.

26.13 Survival

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract Documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

26.14 Entire Agreement

The Contract Documents taken together as a whole constitute the entire agreement between the parties. No statement, promise, condition,

understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract Document shall be binding or valid. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

26.15 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent, or another representative violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

26.16 Import/Export Controls

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

ATTACHMENT C

OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

- 1.1** The Contract is a non-mandatory statewide contract for use by State agencies. Additionally, the Contract may be used by any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department or other entity designated to act on behalf of the political subdivision; a state, county or local governmental entity in its state of origin; and entities authorized to utilize contracts by the State via a multistate or multigovernmental contract.
- 1.2** The Contract is a firm, fixed price contract for indefinite delivery and quantity for the Acquisitions available under the Contract.

2. Orders and Addendums

- 2.1** Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations may be required.
- 2.2** Any ordering document shall be effective between Supplier and the Customer only and shall not be an Addendum to the Contract in its entirety or apply to any Acquisition by another Customer.
- 2.3** Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Addendum to the Contract shall be signed by the State Purchasing Director or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.

3. Termination for Funding Insufficiency

In addition to Contract terms relating to termination due to insufficient funding, a Customer may terminate any purchase order or other payment mechanism if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. The determination by the Customer of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

4. Termination for Cause

In addition to Contract terms relating to termination for cause, a customer may terminate its obligations, in whole or in part, to Supplier if it has provided Supplier with written notice of material breach and Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. The Customer may also terminate a purchase order or other payment mechanism or Supplier's activities under the Contract immediately without a thirty (30) day written notice to Supplier, if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements if such non-compliance relates or may relate to Supplier provision of products or services to the Customer or if Supplier's material breach is reasonably determined (i) to be an impediment to the function of the Customer and detrimental to the Customer, or (ii) when conditions preclude the thirty (30) day notice.

5. Termination for Convenience

In addition to any termination for convenience provisions in the Contract, a Customer may terminate a purchase order or other payment mechanism for convenience if it is determined that termination is in the Customer's best interest. Supplier will be provided at least thirty (30) days' written notice of termination.

6. Contract Management Fee and Usage Report

6.1 Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the

right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

6.2 While Supplier is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

6.3 All Contract Usage Reports shall meet the following criteria:

- i. Electronic submission in Microsoft Excel format to strategic.sourcing@omes.ok.gov;
- ii. Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;
- iii. Submission no later than forty-five (45) days following the end of each calendar quarter;
- iv. Contract quarterly reporting periods shall be as follows:
 - a. January 01 through March 31;
 - b. April 01 through June 30;
 - c. July 01 through September 30; and
 - d. October 01 through December 31.
- v. Reports must include the following information:
 - a. Procuring entity;
 - b. Order date;

- c. Purchase Order number or note that the transaction was paid by Purchase Card;
- d. City in which products or services were received or specific office or subdivision title;
- e. Product manufacturer or type of service;
- f. Manufacturer item number, if applicable;
- g. Product description;
- h. General product category, if applicable;
- i. Quantity;
- j. Unit list price or MSRP, as applicable;
- k. Unit price charged to the purchasing entity; and
- l. Other Contract usage information requested by the State.

6.4 Payment of the contract management fee shall be delivered to the following address within forty-five (45) calendar days after the end of each quarterly reporting period:

State of Oklahoma
Office of Management and Enterprise Services, Central Purchasing
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

To ensure payment is properly accounted for, Supplier shall provide the following information with payment: (i) reference to the applicable Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s) and the amount of the contract management fee being paid for each contract number.

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, OMES-Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

1 Definitions

- 1.1 **COTS** means software that is commercial off the shelf.
- 1.2 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier.
- 1.3 **Data Breach** means the unauthorized access by an unauthorized person that results in the use, disclosure or theft of Customer Data.
- 1.4 **Host** includes the terms **Hosted** or **Hosting** and means the accessing, processing or storing of Customer Data.
- 1.5 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.6 **Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 1.7 **Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential

by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.

- 1.8 Personal Data** means Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.
- 1.9 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.10 State CIO** means the State Chief Information Officer or authorized designee.
- 1.11 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 1.12 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.
- 1.13 Work Product** means any and all deliverables produced by Supplier for Customer under a statement of work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (i) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts,

personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or statement of work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or a statement of work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Supplier personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2 Termination of Maintenance and Support Services

Customer may terminate maintenance or support services without an adjustment charge, provided any of the following circumstances occur:

- 2.1** Customer removes the product for which the services are provided, from productive use or;
- 2.2** The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).

If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 Compliance and Electronic and Information Technology Accessibility

State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at <https://omes.ok.gov/services/information-services/accessibility-standards>. Supplier shall provide a Voluntary Product Accessibility Template ("VPAT") describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.

4 Media Ownership (Disk Drive and/or Memory Chip Ownership)

- 4.1** Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the property of the Customer.
- 4.2** Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime (repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 Offshore Services

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 Compliance with Technology Policies

- 6.1** The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at https://omes.ok.gov/s/g/files/gmc316/f/InfoSecPPG_0.pdf.

Supplier's employees and subcontractors shall adhere to the applicable State IT Standard Methodologies and Templates including but not limited to Project Management, Business Analysis, System Analysis, Enterprise and IT Architecture, Quality, Application and Security Methodologies and Templates as set forth at <http://eclipse.omes.ok.gov>.

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

- 6.3** Supplier shall comply with the CJIS Security Policy as more particularly described at Appendix 2 attached hereto and incorporated herein.

7 Emerging Technologies

The State of Oklahoma reserves the right to enter into an Addendum to the Contract at any time to allow for emerging technologies not identified elsewhere in the Contract Documents if there are repeated requests for such emerging technology or the State determines it is warranted to add such technology.

8 Extension Right

In addition to extension rights of the State set forth in the Contract, the State CIO reserves the right to extend any Contract if the State CIO determines such extension to be in the best interest of the State.

9 Source Code Escrow

Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- 9.4** The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5** The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6** The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7** Supplier's ceasing of maintenance and support of the software; or
- 9.8** Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 Commercial Off The Shelf Software

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail.

11 Ownership Rights

Any software developed by the Supplier under the terms of the Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as “Work for Hire”, Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be

shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 Intellectual Property Ownership

The following terms apply to ownership and rights related to Intellectual Property:

- 12.1** As between Supplier and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier hereby agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is hereby effectively transferred, granted, conveyed, assigned and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.
- 12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier’s signature due to the dissolution of Supplier or Supplier’s failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier’s agent and Supplier’s attorney-in-fact to act for and in Supplier’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer’s sole expense, in the preparation and

prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or

necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

- 12.9** Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.
- 12.10** To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.
- 12.11** If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 Hosting Services

- 13.1** If Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract Hosts Customer Data in connection with an Acquisition, the provisions of Appendix 1, attached hereto and incorporated herein, apply to such Acquisition.

13.2 If the Hosting of Customer Data by Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract contributes to or directly causes a Data Breach, Supplier shall be responsible for the obligations set forth in Appendix 1 related to breach reporting requirements and associated costs. Likewise if such Hosting contributes to or directly causes a Security Incident, Supplier shall be responsible for the obligations set forth in Appendix 1, as applicable.

14 Change Management

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon renewal or if future bids submitted by Supplier are evaluated by the State.

15 Service Level Deficiency

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

16 Notices

In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

With a copy, which shall not constitute notice, to:

Information Services Deputy Counsel
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Appendix 1 to State of Oklahoma Information Technology Terms

The parties agree to the following provisions in connection with any Customer Data accessed, processed or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract

A. Customer Data

1. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).
2. Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
3. Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

B. Data Security

1. Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public

Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

2. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data.
3. Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
4. Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
5. Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.
6. Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
7. Any remedies provided in this Appendix are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

C. Security Assessment

1. The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards

during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.

2. Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

D. Security Incident or Data Breach Notification: Supplier shall inform Customer of any Security Incident or Data Breach.

1. Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
2. Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).
3. Supplier shall:
 - a. Maintain processes and procedures to identify, respond to and analyze Security Incidents;
 - b. Make summary information regarding such procedures available to Customer at Customer's request;
 - c. Mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Supplier; and

d. Document all Security Incidents and their outcomes.

4. If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

E. **Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Supplier.

1. Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
2. Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.
3. If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

F. **Notices**

In addition to notice requirements under the terms of the Contract and those set forth above, a request, an approval or a notice in connection with this Appendix provided by Supplier shall be provided to:

Chief Information Security Officer

3115 N. Lincoln Blvd

Oklahoma City, OK 73105

and

servicedesk@omes.ok.gov.

G. Supplier Representations and Warranties

Supplier represents and warrants the following:

1. The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
2. Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.
3. The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.
4. Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

H. Indemnity

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier's breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party's patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier's

opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

I. Termination, Expiration and Suspension of Service

1. During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.

2. In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;

b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or

c. a combination of the two immediately preceding options.

3. Supplier shall not take any action to intentionally erase any Customer Data for a period of:

a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;

b. 30 days after the effective date of termination, if the termination is for convenience; or

c. 60 days after the effective date of termination, if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

4. The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

5. Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

Appendix 2 to State of Oklahoma Information Technology Terms

INTRODUCTION

The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation (“FBI”), Criminal Justice Information Services (CJIS) Division’s CJIS Security Policy (“CJIS Security Policy” or “Security Policy” herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer (“CSO”) and the FBI CJIS Division’s Audit Staff.

CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. **Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”**

DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI and CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy **plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.**

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at: <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

Policy Requirement Checklist		Compliance checklist –
Policy Area 1	Information Exchange Agreements	
Policy Area 2	Security Awareness Training	
Policy Area 3	Incident Response	
Policy Area 4	Auditing and Accountability	
Policy Area 5	Access Control	
Policy Area 6	Identification and Authentication	
Policy Area 7	Configuration Management	
Policy Area 8	Media Protection	
Policy Area 9	Physical Protection	
Policy Area 10	Systems and Communications Protection and Information Integrity	
Policy Area 11	Formal Audits	
Policy Area 12	Personnel Security	

Attachment D-1

Information Security Requirements

1. General Information Security Requirements

- a. No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.
- b. Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.
- c. Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.
- d. Contractor or its subcontractors agree to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

2. HIPAA Requirements

- a. Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).
- b. If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse, and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor's security compliance as it pertains to this contract.
- c. Business Associate Terms Definitions:
 - i. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that "PHI" and "ePHI" shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. "Administrative Safeguards" shall have the same meaning as the term "administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business

Associate's workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.

- ii. Business Associate. "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
 - iii. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 C.F.R. 160.103.
 - iv. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
 - v. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.
- d. Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, "PHI") solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:
- i. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
 - ii. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
 - iii. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
 - iv. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
 - v. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA's compliance and the Secretary of the Department of Health and Human Services (HHS);
 - vi. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
 - vii. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the

form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;

- viii. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- ix. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- x. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual who's Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;
- xi. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
- xii. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
- xiii. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
- xiv. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to

- respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- xv. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and
 - xvi. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.
- e. Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:
- i. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
 - ii. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
 - iii. disclose PHI to report violations of law to appropriate federal and state authorities; or
 - iv. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;

- v. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
 - vi. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § (d)(1)].
- f. Obligations of Covered Entity
- i. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
 - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.
 - iii. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
 - iv. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
 - v. Covered Entity shall provide the minimum necessary PHI to Business Associate.
- g. Term and Termination:
- i. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
 - (1) retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
 - (3) continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - (4) not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under "Permitted Uses and Disclosures By Business Associate" that applied prior to termination; and
 - (5) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- ii. All other applicable obligations of Business Associate under this Agreement shall survive termination.
 - iii. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D).
- h. Miscellaneous Provisions:
- i. No Third Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
 - ii. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
 - iii. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
 - iv. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
 - v. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
 - vi. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
 - vii. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s)

to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

3. 42 C.F.R. Part 2 Related Provisions

- a. Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:
 - i. Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
 - ii. Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of an kind;
 - iii. Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
 - iv. Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).

- v. Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
- vi. Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
- vii. Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
- viii. Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;
- ix. Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.
- b. Data Security. The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.
- c. Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.
- d. Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.
- e. Redisclosure of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

4. Federal Tax Information Requirements IRS Publication 1075 (If Applicable)

- a. **PERFORMANCE:** If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent

within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

- i. All work will be performed under the supervision of the State of Oklahoma.
- ii. The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- iii. FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- iv. FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- v. The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- vi. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- vii. All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- viii. No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- ix. Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- x. To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

- xi. In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- xii. For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- xiii. The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

b. CRIMINAL/CIVIL SANCTIONS

- i. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- ii. Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- iii. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- iv. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material

in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- v. Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c. INSPECTION: The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

5. SSA Requirements (If applicable)

- a. PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
 - i. All work will be done under the supervision of the State of Oklahoma.
 - ii. Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
 - iii. All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

- iv. No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- v. The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- vi. Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- vii. Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful assess and/or disclosure.
- viii. Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.
- ix. The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- x. Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- xi. SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- xii. SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.

- xiii. If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
 - xiv. In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
 - xv. The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.
- b. **CRIMINAL/CIVIL SANCTIONS:** The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.
- i. **Civil Remedies.**
 - (1) In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of —
 - (a) actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
 - (b) the costs of the action together with reasonable attorney fees as determined by the court.
 - (2) An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where

parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

ii. Criminal Penalties

- (1) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).
- (2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- (3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

6. Child Support FPLS Requirements (If applicable)

- a. Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.

- i. This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- ii. This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

7. FERPA Requirements (If applicable)

- a. If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

8. CJIS Requirements (If applicable)

a. INTRODUCTION

This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.

b. CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”

c. DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI AND CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at:
<https://www.fbi.gov/services/cjis/cjissecurity-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

Attachment E-1

Additional Terms

State and Supplier further agree that the terms and conditions of Attachment A through D-1 control and therefore take precedence over the embedded hyperlinks, or any terms and conditions contained within this attachment. Any terms and conditions of any embedded hyperlinks or terms or conditions contained within this attachment which expand liabilities or reduce rights and protections for the State are not agreed to by the State.

Customer represents that it is an agency or department of a State, County or Municipal Government, or a public educational institution.

ORDER SPECIFIC TERMS

The terms for the offers listed below ("Order Specific Terms") found at <https://support.avaya.com/TermsOfSale> (or a successor site that is properly noticed) apply to the Order with respect to the Products and Services included in the Order:

- **Products and Subscription Licenses**
- **Professional Services**
- **Support & Managed Services**
- **Cloud Services**

1. ORDERS, INVOICING, PAYMENT AND TAXES

1.1 Orders. All Orders accepted by Avaya are subject to the terms of this SLSA, except where the terms conflict with the terms and conditions of the SW1041 contract.

1.2 Invoicing and Payment. Unless otherwise governed by applicable law, or unless specified otherwise in this SLSA or otherwise agreed to in writing,

- Avaya will invoice Customer for Products after deliver and acceptance..
- Avaya will invoice to, and process associated payments from, Customer via Avaya's electronic bill application, unless otherwise requested in writing in advance by Customer.
- Payment is due within 45 days from the date of Avaya's invoice other than with respect solely to those portions that are disputed by Customer and noticed by Customer to Avaya within 15 days from the date of Avaya's invoice.
- If a payment is not timely received from Customer, late payments will be subject to an incremental fee equal to the lesser of 1.5% per month or the maximum rate allowed by applicable law that must be paid in order for overdue amounts to be deemed paid in full.

1.3 Reserved.

1.4 Reserved.

2. LICENSE INFORMATION

except where the terms conflict with the terms and conditions of the Attachment A through D-1 of this Contract.. Any Software licenses (including Subscription Licenses) granted by Avaya to the Customer under this SLSA shall be in accordance with the then-current terms and conditions set forth in the Avaya Global Software License Terms, found at <http://support.avaya.com/LicenseInfo> (or a successor site properly noticed) which may be updated from time to time and will apply prospectively (the "EULA").

3. WARRANTY AND DISCLAIMER OF OTHER WARRANTIES

3.1 Warranties. Warranties for Products and Services provided to Customer shall be set forth in the Order Specific Terms.

3.2 RESERVED.

3.3 Avaya provides Third-Party Products and Third-Party Services on an "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND. However, such Third-Party Products or Third-Party Services may carry warranties from their manufacturers or providers, and Avaya will pass through to Customer any such warranties to the extent authorized. Exercise of such warranties will be directly between Customer and the relevant Third Party.

4. CUSTOMER RESPONSIBILITIES

4.1 Cooperation. Customer agrees to:

- Cooperate with Avaya as reasonably necessary for Avaya's delivery of Products and performance of Services in a timely manner.
- Adequately secure its networks and systems against unauthorized intrusion or attack.
- Properly use, safeguard, and return to Avaya any Avaya Tools (items that Avaya lends or makes available to Customer for purposes of the Order (e.g., Secure Access Link, etc.)). It being understood that Avaya Tools are not Products.

4.2 Customer acknowledges that its cooperation hereunder is essential to Avaya's performance of the Services. Avaya is not liable for any delay or deficiency in performing the Services as a result of Customer not meeting their responsibilities.

5. IP OWNERSHIP

5.1 Avaya Intellectual Property. Avaya, its Affiliates, licensors and suppliers own all rights, title and interest in and to any intellectual property in the Products, the Services, any and all Deliverables provided to Customer hereunder as well as any know-how, derivative works, inventions, processes, databases, Documentation, training materials, and any other intellectual property and any tangible embodiments of it (collectively, "Avaya Intellectual Property"), except for software developed under the terms of the contract. Customer shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works of any Avaya Intellectual Property. Customer shall receive a license to use Deliverables as described in the applicable Order Specific Terms.

5.2 Customer Intellectual Property. Customer reserves all rights, including, but not limited to, ownership, title, intellectual property rights and all other rights and interest in and to any Intellectual Property that Customer owns and makes available to Avaya under this Agreement.

5.3 Marks. Nothing herein grants Customer any right to use any trade names, trademarks, service marks, logos, domain names, trade dress, or other distinctive brand features of Avaya or its subcontractors or suppliers. Customer shall not remove, obscure, or alter any proprietary rights notices, such as copyright or trademark notices, attached to or contained within Avaya Intellectual Property, Services or Software.

6. INDEMNIFICATION

6.1 Defense and Indemnity. Subject to Sections 6.2, 6.3, and 6.4 below, Avaya will defend and indemnify Customer for any judgments, settlements and court awarded attorneys' fees resulting from a Claim, provided Customer:

- (a) Promptly notifies Avaya of the Claim in writing upon becoming aware of a potential Claim

(b) Reserved.

(c) Provides information and assistance reasonably requested by Avaya to defend against or settle the Claim.

6.2 Remedial Measures. If a Product becomes, or its use reasonably may become, the subject of a Claim, Avaya may opt to: (i) procure for Customer the right to continue use of the Product; (ii) replace or modify the Product;

6.3 Reserved.

6.4 Reserved.

6.5 General Indemnification. Avaya shall defend Customer, Customer's agents, servants and employees against all third party actions, suits or proceedings (as used in this Section 6.5, "Claim") for damages to real or tangible personal property or for bodily injury or death to any person arising out of, or in connection with this Agreement, to the extent such damage, injury or death was caused by the negligence of Avaya, any subcontractor of Avaya or their employees, servants or agents while performing under this Agreement, and shall indemnify Customer for any judgments, settlements and reasonable attorney fees resulting from a Claim as provided in this Section; Customer agrees: (i) that Avaya shall be notified in writing promptly of any such Claim, (ii) reserved; and that (iii) Customer provides all information and assistance reasonable requested by Avaya to handle the settlement or defense of the Claim.

7. TERM AND TERMINATION

7.1 Termination for Breach. Either Party may terminate the Order by giving written notice to the other Party if the other Party breaches any material term of this SLSA and fails to cure such breach within 30 days after receipt of such notice.

7.2 Termination for Convenience. Reserved.

8. LIMITATION OF LIABILITY

8.1 Limitation of Liability. reserved.

8.2 Exclusion of Consequential and Related Damages. NEITHER PARTY NOR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS SLSA FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, COST OF COVER, COST OF SUBSTITUTE GOODS OR COST OF SUBSTITUTE PERFORMANCE.

8.3 Applicability.

reserved.

9. CONFIDENTIALITY

9.1 Confidential Information. Each party acknowledges that it may receive Confidential Information from the other party in connection with this SLSA, any Order, and during the course of the parties' general business relationship.

9.2 Authorized Disclosure. Subject to applicable all state and federal law, including but not limited to the Oklahoma Open Records Act, the receiving party may disclose Confidential Information only to its employees, contractors, agents, directors, officers, professional legal advisors, Affiliates or subcontractors with a need to know and who are bound by confidentiality obligations at least as protective as the terms stated in this Section 9 (collectively, the "Authorized Parties"). Each party is responsible for any Authorized Party's breach of this Section 9. Notwithstanding the foregoing, the receiving party is authorized to disclose Confidential Information as required by applicable law or in accordance with a valid order issued by a court, government agency or relevant regulatory or listing exchange authority. The confidentiality obligations of each party will survive following the expiration or termination of this SLSA or the Order. Upon such termination or expiration, the receiving party, upon request of the disclosing party, will cease all use of and/or destroy the disclosing party's Confidential Information (including any copies thereof) in the receiving party's possession, custody, or control, provided that the receiving party may keep archival copies due to mandatory retention laws, for regulatory purposes or to enforce its rights, subject to the confidentiality obligations as stated in this Section 9.

10. GOVERNING LAW AND DISPUTE RESOLUTION

10.1 Governing Law. This SLSA, including any Dispute under the Order or this SLSA, will be governed by the laws of Oklahoma excluding both conflict of laws principles and United Nations Convention on Contracts for International Sale of Goods.

10.2 Dispute Resolution. In the event of any Dispute, the disputing party shall give the other party written notice of the Dispute in accordance with the notice provision of this SLSA.

10.3 Choice of Forum. For any Dispute arising or based upon an alleged breach committed, then either party may bring an action or in either the state or federal courts in Oklahoma. Each party consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings arising out of or relating to this Agreement.

10.4 Undisputed Invoices. reserved.

10.5 Injunctive Relief. Nothing in this Agreement will be construed to preclude either party from seeking provisional remedies, including temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights at any time.

10.6 Time Limit. reserved.

11. THIRD PARTY TERMS

Third-Party Terms. Customer may elect to purchase Third-Party Products and Third-Party Services from Avaya and, in that case, Customer agrees to be bound by any additional terms and conditions negotiated for the Third-Party Products and/or Third-Party Services ("Third-Party Terms"). In case of a conflict, the terms of the Statewide 1041 will control.

12. DATA PRIVACY

12.1 DPA. Avaya respects Customer's privacy and will only use information provided to Avaya by Customer or collected by Avaya in the provision of Services in accordance with Avaya's data privacy policies and the DPA. To the extent Avaya processes Personal Data on behalf of Customer, the most current Avaya DPA, published on <http://support.avaya.com/TermsOfSale> at the time of the Order, applies and is incorporated herein by reference. The DPA is considered a Supplemental Term, if applicable.

12.2 Where Avaya has received Customer's electronic contact data (e.g. e-mail address) in connection with a Product or Service Order, Avaya may occasionally send Customer information about similar Products and Services that may be of interest to Customer. If Customer does not wish to receive such information, Customer should contact Avaya Sales or notify Avaya via email at dataprivacy@avaya.com.

13. MISCELLANEOUS

13.1 Compliance. The parties will observe all applicable laws and regulations when using the Products and Services. Avaya Products and Services are subject to applicable import and export control laws and regulations of the United States and other countries. Each party, at its own expense, will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export to certain countries, for certain uses, or to certain end users. Each party agrees to provide the other party the information, support documents and assistance as may be reasonably required in connection with securing necessary authorizations or licenses required for the transactions contemplated by this SLA or in connection with associated reporting or recordkeeping obligations.

13.2 Assignment, Independent Contractor, & Subcontractors. Avaya is an independent contractor and no partnership, joint venture, or agency relationship exists between the parties. Each party will be responsible for paying its own employees, including employment related taxes and insurance.

13.3 Force Majeure. Neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including without limitation, fire, flood, Act of God, explosion, terroristic acts, war, strike, embargo, labor dispute,

13.4 Notices. Any required notice will be addressed to the applicable party as set forth below. Notices will be delivered by: (i) personal delivery; (ii) courier or first class mail (with all fees or postage prepaid). Notices will be deemed to have been given, as applicable, on the earlier of: (a) the date of receipt.

For Customer: Address as set forth on the Order form

For Avaya: Avaya Inc. Attn: Law Dept. 350 Mount Kemble Avenue Morristown, NJ 07960 United States, Email: lglnoticescomm@avaya.com

For Customer notification of cancellation or intent not to renew maintenance, managed service and subscription services, send notice to Avaya: Avaya World Services Inc., Customer Care Center - Attn: Services Termination, 14400 Hertz Quail Spring Pkwy, Oklahoma City, OK 73134, Email: mycontract@avaya.com, Facsimile: 800-441-6371. If the order was placed on an Avaya Affiliate, the notice of cancellation must be sent to the e-mail or address stated on the relevant order.

13.5 Reference. Neither Party may use the name, logos and trademark(s) of the other Party or to list it as a provider or recipient of Products or Services for marketing purposes, whether on websites, social media or in public announcements, without the prior consent of the other Party

13.6 Construction. The provisions concerning confidentiality, license grant to Customer, indemnity, and any other terms which, by their nature, are intended to survive termination or expiration of the Order will survive. If any term of this SLA is found to be invalid, the remaining provisions will remain effective. No waiver of any term, condition, or breach shall be construed as a waiver of subsequent terms, conditions, or breaches. Only written and signed modifications shall be enforceable. Paragraph headings are for reference only. The singular includes the plural, and vice versa. Each party represents that the person signing this SLA or an associated Order on its behalf has authority to contractually bind such party to the terms and conditions of this SLA. This SLA or any related documents may be executed by electronic signature in lieu of a handwritten signature. This SLA may be executed in one or more counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and shall have the same force and effect as an original.

13.7 Avaya's Ethics, Compliance and Corporate Responsibility. Avaya is committed to ethical business conduct and corporate responsibility.

13.8 Order of Precedence.

(a) reserved.

(b) reserved.

14. DEFINITIONS

"Avaya" means, as the context requires, either Avaya Inc. or the appropriate Avaya Affiliate or permitted assignee accepting an Order from or entering into a with Customer.

"Claim" means a claim, action, suit or proceeding brought by a third party against a party alleging that a Product, as of its Delivery Date under the Order infringes a patent, copyright or trademark.

These Order Specific Terms apply to Orders for any Products and/or Subscription Licenses. These terms are incorporated into the SLSA between Avaya and Customer. Capitalized terms not otherwise defined here or in the SLSA have the meaning in Section 5.

1. ORDERS AND CHANGES

1.1 Product Changes. Prior to its delivery, Avaya may make changes to the Product, modify the drawings and specifications relating to the Product, or substitute the Product for a Product of later design; provided that the changes do not have a materially adverse effect on the function of the Product. Notwithstanding the foregoing, the parties may agree to change an Order at any time and such changes may be subject to additional charges.

1.2 Cancellation of Product Orders. Customer may cancel an Order for Product prior to shipping by written notice to Avaya as follows:

1.2.1 within 72 hours of Order placement: subject to a cancellation fee of 5% of the purchase price

1.2.2 more than 72 hours after Order placement: subject to a cancellation fee of 10% of the purchase price

1.2.3 Avaya may invoice for cancellation fees immediately.

1.2.4 Customer may not cancel an Order once the relevant Product(s) has been shipped or made available for download.

1.3 Delays to Product Orders. Customer may request that the Delivery Date for Products be delayed by up to 75 days from the original Delivery Date. Any request for delay by Customer in excess of 75 days from the Delivery Date will entitle Avaya to cancel the Order for Products that have not yet been delivered, subject to a cancellation fee of 10 % of the Product price for such cancelled Products, payable by Customer upon cancellation by Avaya. The remainder of the Order will remain in full force.

1.4 Termination of Subscription Licenses. Subscription Licenses terms, termination and any applicable termination fees are set forth in the applicable Subscription License Supplement.

2. DELIVERY, TITLE, AND RISK OF LOSS

2.1 Delivery and Risk of Loss. Unless otherwise agreed in an order, all deliveries of Products will be made CIP (Destination on Order or Delivery Point). Avaya may charge Customer for shipping and handling charges in relation to the delivery of the Products, which will be reflected as a separate line item in Avaya's invoice. Risk of loss will pass to Customer on the Delivery Date.

2.2 RESERVED.

2.3 Title to Software does not Pass. Software that is a Product is licensed to Customer as specified in Section 3. Title to Software will remain with Avaya and its licensors (provided that Customer will be entitled to retain the copies of the Software supplied for the duration of the license term that applies to the use of the Software concerned).

2.4 RESERVED

3. SUBSCRIPTION LICENSE

Subscription licenses are also subject to then-current Subscription License Supplement.

4. WARRANTIES

4.1 Warranty Scope. Avaya warrants to Customer that during the applicable warranty period that Products will conform to and operate in accordance with the applicable Documentation in all material respects.

4.2 Warranty Period. The warranty periods are as follows: (i) RESERVED (ii) Software and Software media: 90 days, beginning on the In-Service Date for Avaya-installed

Software; on the Delivery Date for all other Software and media; or the Subscription License Term Start Date as set forth in the SLS.

4.3 Remedies. If a Product does not conform to the warranty above and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Product failed to be in conformance, then Customer's sole and exclusive remedy, Avaya will, at its option: (i) repair or replace same to achieve conformance or (ii) refund to Customer the applicable fees paid for the non-conforming hardware or Software, upon return of the non-conforming hardware, Software media to Avaya in accordance with Avaya's instructions. Customer will return Products subject to a warranty claim to Avaya in accordance with Avaya's instructions. Replacement hardware may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent and will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya's property. Replacement Products are warranted as above for the remainder of the original applicable Product warranty period. For Software warranty claims, Avaya will provide access to available Software corrective content and Product support knowledge base on a self-service basis.

4.4 Costs. If a Product is returned within the applicable warranty period subject to a valid warranty claim, Avaya will not charge for any repair, replacement, error identification or correction, or return shipment of the non-conforming Product. If Avaya determines that the Product was operating in conformance with its applicable warranty, Avaya may charge Customer for error identification or correction efforts, repair, replacement and shipment costs at Avaya's then current time and materials rates.

4.5 Exclusions and Disclaimers. The warranties do not extend to any damages, malfunctions, or non-conformities caused by: (i) Customer's use of Products in violation of the license granted under this SLSA or in a manner inconsistent with the Documentation; (ii) normal wear due to Product use, including but not limited to Product cosmetics and display scratches; (iii) use of non-Avaya furnished equipment, software, or facilities with Products (except to the extent provided in the Documentation); (iv) Customer's failure to follow Avaya's installation, operation or support instructions; (v) Customer's failure to permit Avaya timely access, remote or otherwise, to Products; or (vi) failure to implement updates provided by Avaya. Warranties do not extend to Products that have been serviced or modified by a party other than Avaya or a third party specifically authorized by Avaya to provide the service or modification.

5. DEFINITIONS

"In-Service Date" means the earlier date of (i) Avaya notifying Customer that the Products are installed and available for production use; or (ii) Customer begins using the Product in a production environment.

"Subscription Licensing Supplement" or "SLS" means the then-current Avaya offer description document for Subscription Licenses found at <http://support.avaya.com/LicenseInfo> or a successor site and incorporated herein by this reference as of the date of Avaya's acceptance of an Order.

"Subscription License(s)" means the software licenses ordered by Customer which are subject to a Subscription.

These Professional Services Terms apply to Orders for Professional Services. Capitalized terms have the meaning given in the Definitions.

1. SCOPE

Avaya will provide Professional Services as specified in an Order, a Service Description Document (SDD) and/or a SOW (the "Order") describing the Professional Services to be performed. Professional Services may include installation and configuration of Products, consulting and other Professional Services where Avaya creates a Deliverable and/or completes other defined objectives or a project phase on a milestone basis, time and material basis, or other basis.

2. ACCEPTANCE

2.1 T&M Services. T&M Services are deemed accepted upon performance.

2.2 Order without Acceptance Procedures. Where the Order does not contain specific acceptance criteria and procedures, Professional Services are deemed accepted upon the earlier of either: (i) Avaya providing notice of completion to Customer; or (ii) Customer signing of an acceptance certificate.

2.3 Order with Acceptance Procedures. The Professional Services are deemed accepted upon the earlier of either: (i) the end of the acceptance period as set out in the Order, unless before the end of the acceptance period Avaya has received from Customer a rejection notice; or (ii) Customer signing of an acceptance certificate. If the Professional Services fail to conform to the agreed acceptance criteria and Avaya has received a rejection notice, then Avaya will re-perform the non-conforming Professional Services and re-submit it for acceptance as described above. If, after resubmission, the Professional Services fail to conform to the agreed acceptance criteria in any material respect, then Customer's sole and exclusive remedies will be for Customer to either: (i) terminate the non-conforming Professional Services and return all non-conforming Deliverables for a refund of fees paid under the SOW for the non-conforming Professional Services; or (i) accept the Professional Services, subject to the warranties and remedies described in Section 6. Customer will be deemed to have accepted the applicable Professional Services, in accordance with subsection 2.2 above if Avaya has not received a written termination notice within 5 days of Avaya's resubmission for acceptance.

2.4 Acceptance certificate. Upon acceptance in accordance with this Section 2, Customer will promptly sign and return an acceptance certificate. Acceptance certificates may be provided by Customer to Avaya by electronic mail, at the email address provided by Avaya to Customer from time to time, or other agreed means of electronic communication.

2.5 Production Use. Notwithstanding any other provisions above, production use by customer will constitute acceptance for all purposes under the SLSA.

3. TRANSFER OF RISK AND LICENSE TO DELIVERABLES

3.1 Transfer of Risk. If the Professional Services include tangible items to be delivered to Customer, risk of loss and title shall pass when carrier receives the Deliverable for shipment to Customer.

3.2 License to Deliverables. Subject to Customer's payment of fees for the Professional Services, Avaya grants Customer a non-exclusive, non-transferable, limited, non-sublicensable license to use Deliverables created by Avaya and delivered to Customer. Software contained in Deliverables will be licensed subject to the Avaya Global Software License Terms found at <http://support.avaya.com/LicenseInfo> or a successor site.

4. INVOICING OF PROFESSIONAL SERVICES

4.1 Professional Services will be invoiced in advance, or as specified in the Order.

4.2 T&M services will be invoiced monthly in arrears.

5. DELAYS

Any delays in the performance of Professional Services caused by Customer may result in additional applicable charges for resource time. If such delay continues for more than 30 days, Avaya may terminate the Order and Customer agrees to pay for all Professional Services performed to date of termination and if applicable, any termination fees.

6. WARRANTY

6.1 Avaya warrants that Professional Services will be performed in a professional and workmanlike manner by qualified personnel, and that for a period of 30 days from the acceptance or deemed acceptance date of the Professional Services, the Professional Services will conform in all material respects to the specifications contained in the Order.

6.2 Remedy. If the Professional Services do not conform to the warranty above and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Professional Services failed to be in conformance, Avaya will, at its option: (i) re-perform the applicable Professional Services or (ii) refund to Customer the fees for the non-conforming Professional Services. In the case of T&M Services, Customer may cancel the affected T&M Services, subject to payment of fees for T&M Services already performed. THESE REMEDIES WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST AVAYA WITH RESPECT TO THE NON-CONFORMANCE OF PROFESSIONAL SERVICES.

6.3 Disclaimer. Professional Services provided to enhance network security are not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures. Neither Avaya nor its suppliers make any warranty, express or implied, that all security threats and vulnerabilities will be detected or that the Professional Services will render an end user's network or particular network elements safe from intrusions and other security breaches.

7. ORDER TERMINATION

RESERVED

8. DEFINITIONS

"Professional Services" means the implementation of Products and other Services described in an Order or Service Description (hereinafter "Services").

"T&M Services" or "time and material Services" are Professional Services which are billed by Avaya based upon the time spent to perform the work and for the materials used.

Order Specific Terms: Support and Managed Services

These Order Specific Terms apply to Orders for Managed or Support Services. Capitalized terms have the meaning given in the Definitions.

1. ORDER AND PROVISION OF SERVICES

In return for the payment of applicable fees and subject to compliance with the terms of the SLSA, these Order Specific Terms, and the applicable Service Description or Service Agreement Supplement, Avaya will provide the Support or Managed Services (collectively "Services") options selected by Customer for Supported Products at the Supported Sites set forth in the applicable Order.

2. MONITORING

Avaya may electronically monitor Supported Products for the following purposes: (i) to perform remote diagnostics and corrective actions; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable End User License Agreement; (iv) to assess Customer needs for additional Products or Services to address or resolve Services issues; or (v) as otherwise provided in the Service Description.

3. INCIDENT CORRECTION

Some Services options may include correction of incidents. The incident categories and the corresponding support level, if any, are further described in the applicable Service Description.

4. HELP LINE SUPPORT

Where the selected Services option includes help line support, Avaya will provide it in accordance with the coverage option (service hours, target response intervals, etc.) that Customer has selected.

5. END OF SUPPORT

Periodically, Avaya or a third party manufacturer may declare end of support for certain Supported Products. Customer may access Avaya's user support website (<http://support.avaya.com>, or such successor site) for end of support notifications, and to register an e-mail address to receive e-mail notifications of the same, when published by Avaya. For Products subject to End of Support, Avaya will continue to provide extended support (except for the end of support exceptions listed therein). If the Service Description does not include extended support information, Avaya will make available the description of extended support (if available) for the Products concerned at the same time as its end of support notification. For Products not subject to extended support, if Services are discontinued for a Supported Product, the Supported Product will be removed from the Order and rates will be adjusted accordingly.

6. REPLACEMENT HARDWARE

RESERVED.

7. ADDED PRODUCTS

Added Products will be added to the Order automatically for the remainder of the term at the applicable rates. Customer will inform Avaya without undue delay of any added Products not acquired from Avaya. Added Products purchased from a party other than the manufacturer or an Avaya channel partner may be added to or declined from being added to the Supported Products at Avaya's discretion, and will be subject to certification by Avaya at Avaya's then current Services rates.

8. GENERAL LIMITATIONS

Unless the applicable Service Description provides otherwise, Avaya will provide software Services only for the unaltered current release of the Software and the prior release. The following items are included in the Services only if the Service Description specifically includes them: (i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than Avaya (except for installation of standard, self-installed Updates provided by the manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of Incidents arising from causes external to the Supported Products (such as power failures or surges); and (vii) services for Supported Products that have been misused, used in breach of their license restrictions, improperly installed or configured, have had their serial numbers altered, defaced or deleted.

9. ADDITIONAL CUSTOMER RESPONSIBILITIES

9.1 General. At Customer's expense, Customer will cooperate with Avaya as reasonably necessary for Avaya's performance of its obligations, including, without

limitation: (i) providing Avaya with full, free and safe access to its facilities; (ii) providing telephone numbers, network addresses and passwords necessary for remote access; (iii) providing interface information for Supported Products and necessary third party consents and licenses to access them; and (iv) any other responsibilities as set out in the applicable Service Description or SOW. If Avaya provides patches or Updates as part of Services, Customer will implement them promptly.

9.2 Provision of Supported Products and Systems. Customer will provide all Supported Products and Supported Sites. Customer continuously represents and warrants that: (i) Customer is either the owner of, or is authorized to access and use, each of them; and (ii) Avaya, its suppliers, and subcontractors are authorized to do the same to the extent necessary to provide the Services in a timely manner.

9.3 Moves of Supported Products. Customer will notify Avaya in advance before moving Supported Products. Identical Services may not be available in all locations and in such circumstances either cancellation charges will apply, or additional charges may apply if Avaya incurs additional costs in providing Services as a result of such moves.

9.4 Vendor Management. Where the applicable SAS states that Avaya provides vendor management for Customer, Customer will provide Avaya, upon request, a letter of agency or similar document, permitting Avaya to perform Vendor Management. Where the third-party vendor's consent is required for Avaya to be able to perform Vendor Management in a timely manner, Customer will obtain the written consent of the vendor and provide Avaya a copy of it upon request.

9.5 Third-Party Hosting. In the event one or more network addresses to be monitored by Avaya are associated with systems owned, managed, and/or hosted by a third-party service provider, Customer will: (i) notify Avaya of the third-party service provider prior to commencement of the Services; (ii) obtain the third-party service provider's advance written consent for Avaya to perform the Services on the third-party service provider's computer systems and provide Avaya with a copy of the consent upon request; and (iii) facilitate necessary communications between Avaya and the third-party service provider in connection with the Services.

9.6 Access to Personal Data. From time to time, Customer may require Avaya to access a Supported Product containing Personal Data. Where Customer instructs Avaya to access any Personal Data, or to provide Customer or a third party identified by Customer with access, Customer will: (i) notify all relevant employees and other individuals of the fact that Avaya will have access to such Personal Data in accordance with Customer's instructions, and (ii) indemnify Avaya and its officers, directors, employees, subcontractors and Affiliates against, and hold each of them harmless from, any and all liabilities, costs, damages, judgments and expenses (including reasonable attorneys' fees and costs) arising out of Avaya accessing or providing access in accordance with Customer's instructions.

10. WARRANTY

10.1 Warranty Scope. Avaya warrants to Customer that, during the applicable warranty period, Services will be carried out in a professional and workmanlike manner by qualified personnel.

10.2 Warranty Period.

10.3 Remedies. If the Service does not conform in any material respect to the warranty above and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Service failed to be in conformance, Customer's sole and exclusive remedy will be for Avaya to re-perform non-conforming Support Services or Managed Services or, if Avaya is unable to re-perform the Services within a reasonable period of time such that they conform in all material respects with the applicable warranty, Avaya shall refund the fees paid for the non-conforming Services.

10.3.1 Warranty Procedures. Customer must provide written notice to Avaya during the applicable warranty period describing in reasonable detail how the Support Services, or Managed Services failed to be in conformance with the applicable warranty.

11. TERM

11.1 Support Service Term. Unless a different term is specified in the applicable Service Description, Avaya will provide Services for an initial term of 1 year. Services will be renewed automatically for successive 1-year terms (unless a longer renewal period is specified in the applicable Service Description) applying the most similar generally available support offer and then current rates, unless either party gives the other written notice of its intent not to renew at least 30 days prior to the expiration of the applicable initial or renewal term.

11.2 Managed Services. Unless a longer initial term or different renewal terms are defined in the Order or Statement of Work, Avaya will provide Managed Services for an initial term of 3 years and such initial term will be renewed automatically for subsequent

1 year periods, applying the then-current rates, unless either party gives the other party written notice of its intent not to renew at least 90 days prior to the expiration of the applicable initial or renewal term.

12. DEFINITIONS

"Managed Services" means the management of Supported Products, including (where applicable) automated client notifications, configuration management, incident and problem management, service desk, and monitoring.

"SAS" or **"Service Agreement Supplement"** means a document that describes the features, terms and conditions of an Avaya Support Services offer.

"SD" or **"Service Description"** means the features, terms and conditions of an Avaya service offer as described in, as the context requires, SOWs or SASs.

"Support Services" means the maintenance and support of Products in accordance with the SD.

"Supported Products" means the Products for which the Services are to be provided, as identified in the applicable Order or SOW, together with any added Products, which may include Products made available for Customer's use as part of Subscription Services and non-Avaya Products to the extent they are specified in the relevant Order or Service Description.

"Supported Sites" means Customer's location(s) to which Services are to be provided, as set out in the applicable Order or SOW.

Order Specific Terms: Cloud Terms

These Order Specific Terms and the Supplemental Terms apply to Orders for Avaya OneCloud™ services and other services delivered from the 'cloud', all as listed in the Matrix ("Cloud Service"). Capitalized terms not defined herein or in the SLSA have the meaning assigned in Exhibit A and, if applicable,

- Schedule 1 (Terms for the purchase of Avaya OneCloud™ CPaaS Services) are part of these Order Specific Terms; and
- Country Specific Additional Terms available at <https://support.avaya.com/TermsOfSale> (or such successor site).

1 TERMS OF SERVICE

- 1.1 Terms of Service.** Upon acceptance of an Order (pursuant to Section 1.1 of the General Terms), Avaya will make the Cloud Services available to Customer for the Initial Term. The Initial Term will renew for consecutive Renewal Terms where auto renew is available, unless either party gives the other 30 days (or longer period if expressly stated in the applicable SOW or Supplemental Terms) advance written notice before the end of the Initial Term or current Renewal Term of their intent not to renew. Where autorenewal is available, the Renewal Term shall be as described in the SOW or Supplemental Terms.
- 1.2 Changes to, and Discontinuation of, the Cloud Service.** From time to time Avaya may update or modify the Cloud Service, including features, functionality and Supplemental Terms, provided that: (a) the change and modification applies to all customers generally, and are not targeted to any particular customer; and (b) one-month prior notice is provided to Customer for any material changes to the Cloud Service or the Supplemental Terms and in such case, Customer has the right to discontinue using the Cloud Service and terminate the respective Service Order without penalty in case of any change to the Cloud Service or Supplemental Terms that is of material detriment to Customer, by written notice within 60 days after Avaya notifies Customer of the change.
- 1.2.1** Avaya will use commercially reasonable efforts to provide 60 days' notice prior to ending the sale of a Cloud Service, at which time the Cloud Service will no longer be available for order. Avaya will continue to provide the Cloud Service through the end of Customer's then current Cloud Service Period.
- 1.3 System Requirements.** Cloud Services are dependent upon Customer's maintenance of internet access, network access and power. Customer is responsible for maintaining all telecommunications (including mobile service and devices), broadband and computer equipment and services needed to access and use the Cloud Services, and for paying all charges associated with these services.
- 1.4 Registration.** Customer may be required to register to use the Cloud Services. Registration may include providing information (e.g., email or physical addresses, etc.) and Customer agrees to keep such information updated.
- 1.5 Use Policies.** When Customer accesses and uses a Cloud Service, Customer is responsible for complying with the SLSA, applicable laws and the Use Policies referenced in the Matrix. The Use Policies are posted on this website: <http://support.avaya.com/TermsOfSale> (or such successor site) and are incorporated into and form part of this SLSA. Avaya may update the Use Policies from time to time and will post the updated version. Such updates will become effective on the next calendar month in which Avaya posts the updated version. Customer is responsible for reviewing the Matrix to determine which Use Policy applies to each Service.

2 PAYMENT, INVOICING, FEES and TAXES

- 2.1 Charges.** Unless otherwise stated in the Supplemental Terms or Order, prices are quoted on a consumption and/or subscription basis and are expressed in local currency. Pricing herein does not include charges for taxes, fees, and government-imposed surcharges, which may be included in the invoices. All fees due to Avaya under this SLSA are non-cancellable and the sums paid are non-refundable, except as otherwise expressly provided in this SLSA. Payments must be made at the address designated on the invoice or as otherwise indicated by Avaya.
- 2.2** If Customer adds or removes users or numbers, during a month, the applicable Subscription fees will be pro-rated for the month.
- 2.3 Price Changes.** Avaya may change the fees associated with any Cloud Services upon 30 days advance written notice. Customer's continued use of the Service after any price change becomes effective constitutes Customer acceptance of the modified fees, and such amounts shall

apply as of the first day of the next month after the fee change was posted or communicated to Customer.

- 2.4 Regulatory Fees.** Customer will be responsible for all governmental assessments, surcharges and regulatory fees pertaining to Customer's use of the Service, that are imposed on Avaya or any Affiliate of Avaya incident to the provision or sale of the Service or chargeable to customers by any governmental entity, including, but not limited to, any government assessment or regulatory fees imposed on Avaya as a result of a material change in the manner in which the Service or Avaya is regulated.

3 SERVICES PROVIDED, USE OF THE SERVICE

- 3.1 Commencement of Cloud Services.** Avaya will notify Customer of the Service Activation Date. Unless Customer notifies Avaya by the close of the second Business Day following the Service Activation Date that the Cloud Services are not operational, the Service Period will commence on the Service Activation Date and will continue until expiration or termination of the Cloud Services.
- 3.2 Support.** Customer may access technical support by sending an email or calling the numbers detailed in the applicable Supplemental Terms.
- 3.3 Customer's Use of Service.** Customer may use the Service solely for Customer's internal business use in accordance with and in the countries designated in the applicable Supplemental Terms, this SLSA and the Order, for avoidance of doubt, not for further sublicense or resale. Customer shall be solely responsible for all activities that occur under Customer's account. Upon request, Customer will provide Avaya with signed confirmation of its compliance with this provision.
- 3.4 Co-operation with Law Enforcement Authorities.** Avaya may charge Customer an administrative fee to recover Avaya's costs that arise from requests from law enforcement authorities, regulatory authorities, or court orders resulting from Customer's use of the Cloud Service.

4 AGREEMENT TERM; TERMINATION; DOWNTIME AND SERVICE SUSPENSION; SURVIVAL

- 4.1 RESERVED).**
- 4.2 Expiration/Termination.** Upon expiration of the Service Period or termination pursuant to Section 4.1 Customer shall immediately cease use of the Service and return or destroy (in accordance with Avaya's instructions) any Deliverables provided to Customer in connection with the Service, including any Avaya's Intellectual Property. Upon request, Customer shall certify in writing to Avaya that Customer has complied with this provision and Avaya may provide such certification to its suppliers.
- 4.3 Service Availability.** Cloud Services (or part) may be unavailable for use by Customer (a) for scheduled downtime to permit Avaya to conduct maintenance, or to modify, upgrade or update the Service, and Avaya will use reasonable efforts to notify Customer of such scheduled downtime in advance in accordance with the Supplemental Terms, (b) without notice in the event that Avaya reasonably believes there may be a denial of service attack or other security risk to the Service, Customer (or its users) or Avaya's other customers, or (c) without notice in the event that Avaya determines that it is necessary or prudent to do so to or for legal or regulatory reasons (collectively, "Service Suspensions"). Avaya shall not be liable to Customer for Service Suspensions.

5 CUSTOMER CONTENT AND MARKS

- 5.1** Customer is solely responsible for Customer Content, including any loss or damage to Avaya, its suppliers or a third party arising from or relating to Customer Content. Customer represents and warrants that it has all necessary rights to, and hereby does, grant to Avaya a limited, non-exclusive, non-transferable, non-sublicensable license to access, use, store, archive for a period of time, modify, display, reproduce, prepare

derivative works of, and distribute Customer Content to the extent necessary for the purpose of providing the Cloud Service.

- 5.2 As between Avaya and Customer, Customer retains all right, title and interest in and to Customer Content. Avaya will not share Customer Content or Other Users' Content with any third parties unless: (a) Avaya has Customer written or electronic consent for sharing any of Customer Content and Other Users' Content; (b) it is required by law; or (c) Avaya provides Customer Content or Other Users' Content to third parties (e.g. sub-contractors) to carry out tasks on Avaya's behalf (e.g., data storage, etc.) as directed by Avaya and subject to appropriate agreements with those third parties.
- 5.3 In connection with the provision of the Cloud Service, Customer hereby grants Avaya a limited, non-exclusive, non-transferable, non-sublicensable license to display Customer trade names, trademarks, service marks, logos, domain names and the like ("Customer Marks") and to host and display likenesses and photo images; provided, that the use of Customer Marks in connection with this SLSA shall not create any right or title in or to the use of Customer Marks and all such use and goodwill associated with Customer Marks will inure to the benefit of Customer.

6 RIGHTS AND DISCLAIMERS

- 6.1 All information transmitted through the Cloud Service is the sole responsibility of the person from whom such information originated. Avaya reserves the right, but is not obligated to pre-screen, refuse, flag, filter, or remove any material posted on the Cloud Service, including any Customer Content, which Avaya, in its sole discretion, deems inconsistent with this Agreement, including any material Avaya has been informed or has reason to believe constitutes intellectual property infringement. Avaya may take the action(s) set forth above, or similar actions, without notice or liability to Customer or any other party. Accordingly, Avaya assumes no liability for any action or inaction regarding transmissions, communications, or content provided by Customer or any third parties.
- 6.2 Customer acknowledges that, in performing the Cloud Service, Avaya may archive Customer Content and Other Users' Content and may periodically delete Customer Content and Other Users' Content without notice to Customer. Customer is solely responsible to ensure that any information, including Customer Content, Customer wishes to retain is downloaded, saved and/or backed-up. Avaya may implement reasonable limits as to the size or duration of storage of any Customer Content or Other Users' Content related to the use of the Service.
- 6.3 Any software security feature is not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures.
- 6.4 It is Avaya's policy to respond to notices of alleged copyright infringement that comply with the United States Digital Millennium Copyright Act and where appropriate at Avaya's discretion to terminate the accounts or subscription of infringers. If Customer would like to send Avaya an alleged copyright infringement notice as it pertains to the Service, go to the following link <http://support.avaya.com/AvayaCopyrightAgent> (or such successor site) and follow the instructions on how to get in touch with Avaya. If Customer has trouble accessing this link, then Customer may contact Avaya for further information at copyrightagent@avaya.com with the subject line: "DMCA Takedown Request" or by mail to:
 Avaya Copyright Agent Notification
 350 Mount Kemble Avenue, Room 2C109
 Morristown, NJ 07960
 1-908-953-2044

7 INDEMNIFICATION

RESERVED

8 FEEDBACK

Avaya welcomes Customer Feedback about the Service. All such Feedback provided by Customer or its users to Avaya or its authorized channel partners becomes Avaya's property and Customer agrees to and does hereby grant and assign all intellectual property rights therein to Avaya. Customer agrees to cooperate fully with Avaya in connection with such transfer and assignment and Avaya may use such Feedback however it elects without any monetary or other consideration of any kind owed to Customer or any third party.

9 EXTERNAL LINKS AND THIRD-PARTY SERVICES

In some cases, the Service may contain hyperlinks to External Services and Sites. Customer's use of such External Services and Sites is at Customer's own risk. Customer acknowledges and agrees that Avaya neither endorses nor has any responsibility for the External Services and Sites.

10 SOFTWARE LICENSE TERMS AND UPDATES

- 10.1 If use of the Service requires Customer to download Software or Software is otherwise made available to Customer, such Software is licensed pursuant to (a) the terms and conditions made available to Customer when Customer downloads or installs the Software portion of the Service, or (b) if no such terms and conditions exist, then the applicable Avaya Global Software License Terms posted at <http://support.avaya.com/LicenseInfo> (or such successor site) in effect as of the Service Activation Date will apply, for the sole purpose of using the Service, and solely for the duration of the Service Period.
- 10.2 It is possible that Software may automatically download and install Updates from Avaya or its Affiliates from time to time. In such event, Customer agrees to promptly allow such Updates to be downloaded and installed.

11 RECORDING

If conferences are applicable to the Service Customer is subscribing to, Customer acknowledges that the laws of certain states, provinces or countries require that if a conference is to be recorded, all participants in the conference must be informed of that prior to the recording taking place, so they may consent to being recorded (if required by applicable laws) in the relevant jurisdictions when using recording features. Customer acknowledges and agrees that Customer shall be solely responsible for complying with the local laws in the relevant jurisdictions when using recording features (this includes Customer's obligation to obtain the consent, if required by applicable laws, of all participants before the commencement of the recording). Avaya shall have no liability to Customer or any user or third party if consent is not obtained.

12 EMERGENCY SERVICES, HIPAA and PCI DISCLAIMERS

CUSTOMER HAS READ, UNDERSTOOD, AND AGREES, UNLESS OTHERWISE STATED HEREIN OR IN THE SUPPLEMENTAL TERMS THAT:
A. THE SERVICE, AS PROVIDED BY AVAYA, IS NOT CONFIGURED TO SUPPORT OR PROVIDE EMERGENCY CALLS OR COMMUNICATIONS OF ANY KIND, INCLUDING, BUT NOT LIMITED TO 112, 999, 911 AND E911 SERVICE.

B.

C. THE SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE PAYMENT CARD INDUSTRY DATA SECURITY STANDARD ALSO REFERRED TO AS PCI OR PCI DSS.

13 GENERAL

Message Routing. Customer may not use phone numbers provided by Avaya to route SMS messages over any other provider's network. All SMS messages sent and received for an Avaya number must be sent and received via the Cloud Services. If Customer uses SMS it is Customer's responsibility to ensure that if Customer initiates any unsolicited SMS, Customer provides Customer's end user with the option to opt in or opt out of receiving those messages as required by applicable law.

EXHIBIT A- Definitions

Defined terms are identified by capitalized letters and have the meaning given in this Exhibit or elsewhere in the Agreement. This Exhibit A is incorporated into and part of the Agreement.

"Acceptable Use Policy" or "AUP" means the document posted at <http://support.avaya.com/TermsOfSale> (or such successor site) which describes actions that Avaya prohibits when any party uses its services.

"Add-on Services" means the implementation, onboarding, professional and/or managed services as described in the applicable Order Specific Terms.

"Affiliate" means, with respect to either party, an entity that is directly or indirectly controlling, controlled by, or under common control with a signatory of this Agreement. For purposes of this definition, **"control"** means the power to direct the management and policies of such party, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the term **"controlled"** has the meaning correlative to the foregoing.

"Application" means a software application or website within a Customer's domain or that Customer creates using the API's that interfaces or connects to the Cloud Services.

"Business Days" means Monday through Friday, 8:00 to 5:00 pm ET, excluding Avaya holidays.

"Confidential Information" means non-public confidential or proprietary information of the disclosing party that is (a) clearly marked confidential at the time of disclosure or (b) a reasonable person would know, based on the circumstances surrounding disclosure and the nature of the information, that the information should be treated as confidential.

"Customer" means the legal entity which signs this Agreement.

"Customer Content" means the content of all data, information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by Customer or Customer personnel, including Other Users Content, while utilizing the Service.

"Data Subject" means an identified or identifiable natural person.

"Delivery Date" means the date on which Avaya delivers Equipment in accordance with the applicable Order Specific Terms or, in the case of Software that can be enabled by Avaya remotely or delivered via electronic means, the date the Software is enabled or downloaded to the target processor.

"Deliverables" means customized software, customized documentation, or other work product provided under the applicable Order Specific Terms.

"Dispute" means any dispute, claim or controversy arising out of or relating to this Agreement.

"DPA" means Data Privacy Addendum.

"Documentation" means information published by Avaya or its Affiliates in varying mediums which may include product information, operating instructions and performance specifications that Avaya or its Affiliates generally makes available to users of its products. Documentation does not include marketing materials.

"Effective Date" means the date in which the last party signs this Agreement.

"Equipment" means phones compatible with the Service or other hardware.

"External Services and Sites" means non-Avaya websites, content, or resources or otherwise interface or work with third party services which are not maintained or controlled by Avaya.

"Feedback" means comments or suggestions.

"Initial Term" means the term of the Subscription that is indicated in Customer's order and commences upon the date the Service is available for Customer's use.

"Matrix" means the chart that is posted on the following website (or such successor site): <http://support.avaya.com/TermsOfSale> and referred to as the Master Cloud Agreement Matrix that indicates the Schedules and Supplemental Terms that apply to a specific Service. Avaya reserves the right to update the Matrix.

"Other Users' Content" means the content of any information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by other users while interacting with the Service, including, without limitation, likenesses or photo images, advertisements or sponsored content.

"Personal Data" means data that identifies or may be used to identify an individual.

"Processing," "Process," "Processed" means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

"Project Phase" means a defined activity, objective or period as set out in the applicable SOW during which Add-On Services will be provided.

"Rejection Notice" means a notice Avaya receives from Customer before the end of the Acceptance Period indicating in reasonable detail the material failure of the Add-On Services, Deliverable, or Project Phase to conform to the agreed acceptance criteria in the acceptance procedures.

"Renewal Term" means each of the subsequent terms after the Initial Term.

"Service Activation Date" means the date Avaya advises Customer that the Cloud Services are available for Customer's use.

"Service Description" means the applicable description of the Cloud Services then current as of the date of Customer's ordering of the Cloud Services which is incorporated by reference and is available to Customer upon request or via links in the Matrix.

"Service Period" means the period of time in which Avaya is providing Cloud Services to Customer, whether the Initial Term or Renewal Term.

"Software" means computer programs in object code, provided by Avaya whether as stand-alone products or pre-installed on Equipment, and any upgrades, Updates, patches, bug fixes, or modified versions thereto.

"Statement of Work" or "SOW" means a Customer-specific document(s) that describes the features, terms and conditions of an Avaya service being purchased by Customer.

"Supplemental Terms" means, individually or collectively, the Use Policies and Service Descriptions.

"T&M Services" or "time and material Services" means Add-On Services which are billed by Avaya based upon the time spent to perform the work and for the materials used.

"Third-Party Products" means any product made or provided by a party other than Avaya, including: (i) products ordered by Customer from third parties; (ii) products provided by Avaya that are recognizable as standalone items, and; (iii) products identified as separate items on Avaya's price list, quotes, Order specification forms or Documentation.

"Third-Party Services" means any non-Avaya branded service provided under this Agreement.

"Traffic Data" means user billing data and/or metadata, including Caller ID, name, number dialed, duration of call, landline or mobile originated call, SMS send / receive destinations.

SCHEDULE 1 - Terms for the Purchase of Avaya OneCloud™ CPaaS

These terms for the purchase of Avaya OneCloud™ CPaaS apply to Customer's purchase and use of any CPaaS Services. Any capitalized terms used in this Schedule have the meaning given to them herein or in the General Terms.

1. MANDATORY PREREQUISITES FOR THE AVAYA ONECLOUD™ CPAAS TERMS OF SERVICE

In order to use the Avaya API's and markup language (the "**API**"), or make use of the Properties and various Avaya OneCloud™ CPaaS services and information contained therein (the API, Properties and Avaya OneCloud™ CPaaS services are collectively referred to herein as the "**Avaya CPaaS Services**") and are included within the definition of "Services, Customer must accept the terms in this Schedule.

Customer agrees to incorporate terms and conditions into the terms and conditions that apply to Customer's own products and services using applications that incorporate the Avaya CPaaS Services ("**Customer's End User Agreements**") that enable Avaya to use Customer's or any of Customer's users, employees, clients or customers' ("**End Users**") data as necessary to provide the Avaya CPaaS Services and that protect Avaya's rights to the same extent as the terms and conditions of this Schedule and the Agreement. By way of example, Customer's End-User Agreements must include terms concerning restrictions on use, protection of proprietary rights, disclaimer of warranties, and limitations of liability. Customer must ensure that Customer's End Users using applications that incorporate the API or the Avaya CPaaS Services adhere to this Agreement, and Customer agrees to notify Avaya promptly if Customer becomes aware of any breach of the terms of Customer's End-User Agreements that may impact Avaya. Customer will take all reasonable precautions to prevent unauthorized access to or use of the Avaya CPaaS Services and notify Avaya promptly of any such unauthorized access or use.

2. GRANT OF RIGHTS TO USE THE SERVICE

2.1 So long as Customer is in compliance with this Agreement, Avaya hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable right and license during the Service Period to access and use the Avaya CPaaS Services, solely in accordance with this Agreement. Unless explicitly stated otherwise, any new features provided by Avaya that augment or enhance the current Avaya CPaaS Services shall also constitute "Avaya CPaaS Services" and shall be subject to this Agreement. Customer may not, nor may Customer allow any third party to, copy, distribute, sell, disclose, lend, transfer, convey, modify, decompile, disassemble or reverse engineer the Avaya CPaaS Services for any purpose whatsoever. Customer may not allow any unauthorized third party to access the Avaya CPaaS Services for any purpose whatsoever. All rights not expressly granted under this Agreement are retained by Avaya or its Affiliates, licensors or suppliers.

2.2 Customer may create a software application or website (an "**Application(s)**") that interfaces with the Avaya CPaaS Services, provided that Customer complies with this Agreement. Customer may use the Avaya CPaaS Services to execute Applications owned or lawfully obtained by Customer, except as limited by this Agreement or Customer's End User Agreement.

2.3 Customer and any Applications that Customer may create, build or distribute may make network calls or requests to the Avaya CPaaS Services, or may receive telephone calls via the Avaya CPaaS Service, at any time that the Avaya CPaaS Services are available, provided that those requests do not violate this Agreement.

2.4 Customer may not remove, obscure, or alter any notice of any Avaya trademark, service mark ("**Marks**") or other intellectual property or proprietary right appearing on the Avaya CPaaS website posted at <https://www.avaya.com/en/products/CPaaS/> or such successor site ("**Website**") or contained within the Avaya CPaaS Services.

2.5 Customer acknowledges that Avaya may change APIs for any Avaya CPaaS Service or any feature of an Avaya CPaaS Service from time to time, and that it is Customer's responsibility to ensure that calls or requests from Customer's Applications made to or via Avaya CPaaS Services are compatible with then-current APIs for the Avaya CPaaS Services. Avaya will attempt to provide reasonable prior notice to Customer of any API changes so Customer can adjust Customer's Applications, but Avaya is under no obligation to do so.

2.6 Customer is solely responsible for Customer's Applications, including any data, text, images or content contained therein. Customer is also solely responsible for all traffic originating from Customer's Applications that uses Customer's account credentials to access the Avaya CPaaS Services. Actions taken using Customer's credentials shall be deemed to be actions taken by Customer, with all associated consequences including charges for Avaya CPaaS Services, service termination, civil and criminal penalties.

2.7 Avaya may make available to Customer, for Customer's installation, copying or use in connection with the Avaya CPaaS Services, a variety of software, data and other content and printed and electronic documentation (the "**Properties**"). Avaya hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable license, during the Service Period only, to install, copy and use the Properties solely in connection with and as necessary for Customer's use of the Avaya CPaaS Services in accordance with this Agreement. The Properties may include, without limitation: (a) The Website; (b) APIs; (c) Documentation; and (d) Specifications describing the operational and functional capabilities, use limitations, technical and engineering requirements, and testing and performance criteria relevant to the proper use of the Avaya CPaaS Service and its related APIs and technology.

2.8 Avaya may make additional content or software available under another license agreement, such as an open source license. Any such content or software will be clearly marked with such a license indicating the usage rights available for that content or software. Such content or software may include: (a) Developer tools, such as software development kits or sample code for use in connection with the APIs; and (b) Articles and documentation for use in connection with the use and implementation of the APIs (collectively, "**Documentation**").

2.9 Except as may be expressly authorized under this Agreement: (a) Customer may not, and may not attempt to, modify, alter, tamper with, repair, or otherwise create derivative works of the Properties; (b) Customer may not, and may not attempt to, reverse engineer, disassemble, or decompile the Properties or the Avaya CPaaS Service or apply any other process or procedure to derive the source code of any software included in the Properties.

2.10 Customer hereby grants Avaya a limited, non-exclusive, non-transferable, non-sublicensable license to display Customer's trade names, trademarks, service marks, logos, domain names and the like for the purpose of providing the Avaya CPaaS Services to Customer or promoting or advertising that Customer uses the Avaya CPaaS Services. Customer may not display or use the Properties in any manner unless Customer obtains Avaya's prior written consent. All uses of the Marks and goodwill associated therewith shall inure to the benefit of Avaya or its Affiliates.

The rights granted by Avaya in this Agreement with respect to the Properties and the Avaya CPaaS Services are nonexclusive, and Avaya reserves the right to: (i) act as a developer of products or services similar to any of the products or services that Customer may develop in connection with the Properties or the Avaya CPaaS Services; and (ii) grant similar rights to those provided under this Agreement to third parties that as developers or systems integrators may offer products or services which compete with Customer's Application(s).

2.11 Customer understands and acknowledges that Avaya is not certifying or endorsing, and has no obligation to certify or endorse, any of Customer's Applications or Customer's Content.

3. SUSPENSION OR TERMINATION

Avaya may suspend or terminate Customer's right to use the Avaya CPaaS Service for cause immediately upon Avaya's notice to Customer in accordance with the notice provisions set forth in this Agreement if: (i) Customer or Customer's End Users violate, or Avaya has reason to believe that Customer or Customer's End Users have violated, any provision of the AUP; (ii) there is an unusual spike or increase in Customer's use of the Avaya CPaaS Service, and there is reason to believe such traffic or use is fraudulent or negatively impacting the operating capability of the Avaya CPaaS Service; (iii) Avaya determines, in Avaya's sole discretion, that Avaya's provision of the Avaya CPaaS Service to Customer is prohibited by applicable law, or has become impractical or unfeasible due to any legal or regulatory change; or (iv) subject to applicable law, upon Customer's liquidation, Customer's commencement of dissolution proceedings, the disposal of Customer's assets, the failure to continue Customer's business, an assignment for the benefit of Customer's creditors, or Customer's becoming the subject of a voluntary or involuntary bankruptcy or similar proceeding.

4. BACKUP AND RETENTION

Notwithstanding Sections 8 and 9 of the General Terms, Customer acknowledges that Customer bears sole responsibility for adequate backup of Customer's Content, including all audio recordings associated with Customer's account. AVAYA SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LIABILITIES, LOSSES

(INCLUDING ANY LOSS OF DATA OR PROFITS) OR ANY OTHER CONSEQUENCES THAT CUSTOMER OR CUSTOMER'S END USERS MAY INCUR WITH RESPECT TO LOSS OF DATA ASSOCIATED WITH CUSTOMER'S ACCOUNT AND CUSTOMER'S OR ANY OF CUSTOMER'S END USERS' CONTENT DATA THEREIN.

5. INTELLECTUAL PROPERTY

5.1 Other than the limited use and access rights and licenses expressly set forth in this Agreement, Avaya and/or its Affiliates, suppliers and licensors reserve all right, title and interest (including all intellectual property and proprietary rights) in and to: (i) the Avaya CPaaS Services; (ii) the Properties; (iii) the Marks; and (iv) any other technology and software that Avaya provides or uses to provide the Avaya CPaaS Services and the Properties. Customer does not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in the Avaya CPaaS Services, the Properties, the Marks, or any other technology and software, except for the limited use and access rights described in this Agreement.

5.2 Avaya may, at its discretion, offer certain software development kits, tools, application samples, documentation or other software under an open source license. Any such products will be marked with copyright details, and those copyrights will apply to those and only those software development kits, tools, application samples, documentation or other software. Avaya, its Affiliates, suppliers and licensors reserve all rights to any documents, tools, services, technologies and the like not subject to an open source license.

5.3 Other than the rights and interests expressly set forth in this Agreement and excluding any and all works derived from Properties, Customer reserves all right, title and interest (including all intellectual property and proprietary rights) in and to: (i) Customer Content Customer may send to Avaya or use as part of Customer's use of the Avaya CPaaS Services; and (ii) Customer's Applications.

5.4 During and after the Services Period, with respect to the Avaya CPaaS Services that Customer elects to use, Customer will not assert, nor will Customer authorize, assist, or encourage any third party to assert, against Avaya or any of Avaya's Affiliates, customers, end users, vendors, business partners (including third-party sellers on websites operated by or on behalf of Avaya), sub-licensees or transferees, any patent infringement or other intellectual property infringement claim with respect to such Avaya CPaaS Services.

6. REPRESENTATIONS

6.1 Customer represents and warrants that Customer will not use the Avaya CPaaS Services, Properties, Marks, Customer's Application or Customer's Content in a manner that violates this Agreement. Although Avaya does not assume the duty or obligation to monitor any materials created, posted or uploaded by Customer or any third parties, Avaya reserves the right, in its sole and absolute discretion, to monitor any and all materials posted or uploaded by Customer or any third parties at any time without prior notice to ensure that they conform to any usage guidelines or policies (including Avaya's AUP).

6.2 Customer shall not use the Avaya CPaaS Services to create a medical device or take other action that would violate regulations promulgated by the Food and Drug Administration, including but not limited to (i) diagnosing a disease or other condition, (ii) curing, mitigating, treating, or preventing a disease or condition, or (iii) using the Avaya CPaaS Services in a way that may affect the structure or function of the body of a human or animal. Avaya shall have no liability of any kind whatsoever as a result of Customer's violation of this Section. Customer's violations of this Section will be subject to the indemnification provisions in this Agreement.

6.3 Customer represents and warrants that Customer is responsible for any charges incurred by virtue of Customer's use of the Avaya CPaaS Services, no matter whether Customer's Application acted in error. Customer also represents and warrants: (i) that Customer is solely responsible for the development, operation, and maintenance of Customer's Application and for Customer's Content, including, the accuracy, appropriateness and completeness of Customer's Content and all product-related materials and descriptions; (ii) that Customer has the necessary rights and licenses, consents, permissions, waivers and releases to use and display Customer's Application and Customer's Content; (iii) that neither Customer's Application nor Customer's Content (a) violates, misappropriates or infringes any rights of Avaya or any third party, (b) constitutes defamation, invasion of privacy or publicity, or otherwise violates any rights of any third party, (c) violates any applicable laws or regulations, or (d) is designed for use in any illegal activity or promotes illegal activities, including, without limitation, activity that might be libelous or defamatory or otherwise malicious, illegal or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age; (iv) that neither Customer's Application nor Customer's Content contains any components capable of harming Avaya's network or Avaya CPaaS Services; and (v) to the extent to which Customer is authorized by Avaya to use any of the Marks, that Customer will conduct Customer's business in a professional manner and in a way that reflects favorably on the goodwill and reputation of Avaya.

6.4 Customer agrees to abide by all applicable local, state, national, foreign and international laws and regulations and that Customer will be solely responsible for all acts or omissions that occur under or through Customer's account or password, including the content of Customer's and Customer's customers' transmissions through the Avaya CPaaS Services. Customer further agrees that neither Customer nor Customer's End Users will use the Avaya CPaaS Service for any purpose that is unlawful, abusive, intrusive on another's privacy, harassing, libelous, threatening or hateful, or in any other way that would violate any applicable laws or regulations. Customer represents and warrants that (i) Customer has the legal right and authority, and will maintain the legal right and authority during each Service Term, to install and use the Avaya CPaaS Services as contemplated hereunder; (ii) the performance of Customer's obligations under this Agreement and use of Avaya CPaaS Services will not violate any applicable law, rule or regulation or any applicable manufacturers' specifications or unreasonably interfere with Avaya's or its other customers' use of the Avaya CPaaS Services or network; (iii) Customer is authorized and has completed all required corporate actions necessary to execute this Agreement; and (iv) Customer shall not intentionally carry out any act or omission that results in Avaya breaching any law, rule or regulation. Customer shall comply with all the applicable legal and/or regulatory licenses and consents specifically required from the relevant governmental authorities with respect to any permitted resale of the Avaya CPaaS Services. Customer shall be solely responsible and liable for any misuse of the Avaya CPaaS Services by Customer's End Users or any third parties in respect of Customer's resale of the Avaya CPaaS Services and shall defend and indemnify and hold harmless Avaya for against any claims or proceedings, including any judgments, settlements and reasonable attorneys' fees resulting from and against any and all third party claims or proceedings arising from or related to such resale of the Avaya CPaaS Services by Customer. Any failure by any third party (including End Users) to comply with any applicable law rule or regulation regarding sale or use of the Avaya CPaaS Services shall be attributable to Customer for the purposes of this Agreement. Any resale or sublicense by Customer of the Avaya CPaaS Services shall not relieve Customer of Customer's obligations under this Agreement. Any such third party waives any liability by Avaya in connection therewith.

6.5 Customer represents and warrants that without Avaya's express written consent Customer will not use, and will not authorize any third party to use, any Public Software (as defined below) in connection with the Avaya CPaaS Services in any manner that requires, pursuant to the license applicable to such Public Software, that any Properties or the Avaya CPaaS Services be (i) disclosed or distributed in source code form, (ii) made available free of charge to recipients, or (iii) modifiable without restriction by recipients. Customer represents and warrants that all Feedback and Communications contributed by or through Customer (a) are legally distributable by Customer, either because Customer owns the copyright or because Customer has fully complied with any copyright terms associated with the software or content, (b) contain no third-party software or any software that may be considered Public Software, and (c) do not violate, misappropriate or infringe any intellectual property rights of any third party. **"Public Software"** means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open source software (e.g., Linux or Asterisk) or similar licensing or distribution models, including, but not limited to software, documentation or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (1) GNU Affero General Public License (AGPL), Common Public Attribution License (CPAL), European Public License (EURL), GNU's General Public License (GPL), Lesser/ Library GPL (LGPL), or Free Documentation License, (2) The Artistic License (e.g., PERL), (3) the Mozilla Public License, (4) the Netscape Public License, (5) the Sun Community Source License (SCSL), (6) the Sun Industry Standards License (SISL), (7) the BSD License and (8) the Apache License.

6.6 In addition to the foregoing, Avaya specifically disclaims all liability for, and Customer agrees that Customer shall be solely responsible for:

- the development, operation, and maintenance of Customer's Application, all related equipment, and all materials that appear on or within Customer's Application and Customer's Content;
- the accuracy and appropriateness of any materials posted on or within Customer's Application or Customer's Content (including, among other things, any product-related materials);
- ensuring that any materials posted on Customer's site or within Customer's Application do not violate Avaya's AUP, are not illegal and do not promote illegal activities, including any activities that might be libelous or defamatory or otherwise malicious, illegal or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age;

- ensuring that Customer's Application accurately and adequately discloses, either through a privacy policy or otherwise, how Customer collects, uses, stores, and discloses data collected from visitors, including, where applicable, that third parties (including advertisers) may serve content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers; and
- any of Customer's End Users' claims relating to Customer's Application or Customer's Content or the Avaya CPaaS Services utilized in connection with Customer's Application.

7. LIABILITY FOR EMERGENCY CALLING

TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, AVAYA AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, LICENSORS, SUPPLIERS, AND RESELLERS ("EMERGENCY SERVICES INDEMNIFIED PARTIES") WILL HAVE NO LIABILITY TO CUSTOMER, CUSTOMER'S USERS, OR ANY THIRD PARTY, AND CUSTOMER WAIVES ALL CLAIMS AND CAUSES OF ACTION, ARISING OUT OF OR RELATED TO CUSTOMER'S, CUSTOMER'S USERS, OR ANY THIRD PARTY'S INABILITY TO DIAL LOCAL EMERGENCY NUMBERS (SUCH AS 112, 911, 999) OR ANY OTHER EMERGENCY TELEPHONE NUMBER OR TO ACCESS AN EMERGENCY SERVICE OPERATOR OR EMERGENCY SERVICES. CUSTOMER HEREBY RELEASES AND AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE EMERGENCY SERVICES INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS, LIABILITY, DAMAGES, LOSSES, EXPENSES, AND/OR COSTS (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COST OF SUIT) BY OR ON BEHALF OF CUSTOMER OR ANY THIRD PARTY OR USER ARISING FROM OR RELATED TO THE FAILURE OF EMERGENCY SERVICES TO FUNCTION OR FUNCTION PROPERLY OR AVAYA'S PROVISION OF EMERGENCY SERVICES OR FAILURE TO PROVIDE ACCESS TO EMERGENCY SERVICES.

ATTACHMENT E2

MASTER TERMS

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ATTACHMENT E3

PRICING



Section Nine: Pricing

Pricing associated with the Bid shall be inserted in this section and shall be in the required structure set forth above in Subsection 8.1, if any.

AVAYA RESPONSE:

Avaya is pleased to provide its suite of SaaS communications solutions and products to the State of Oklahoma and its eligible customers. The table below and also included in Appendix I – Pricing, Exhibit 1: Price provides a summary of the discounts by Avaya Material Group. Appendix I provides the details of Exhibit 1 and Exhibit 2.

Exhibit 1: Price Avaya State of Oklahoma (RFP 0900000556) Avaya Discount Summary		
Material Product Group (MPG)	Group / Description	State of Oklahoma Discount off Avaya Price List
5P	Software Contact Center – Heritage Nortel	20%
7P	OEM	12%
8P	Video	32%
9P	SMEC	20%
1R	Avaya Cloud Office / SIP	0.0%
8S	Contact Center Subscription Services	0.5%
9S	Unified Communications Subscription Services	0.5%
1T	Cloud Offers	0.5%
2R	Alliances	0.0%

Cost Savings

The Bidder will work in the best interest of the state and its customers to leverage volume or enterprise license agreements and maximize cost savings through better pricing, publisher's promotions, or other savings opportunities.



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BID RESPONSE PACKET

AVAYA

ATTACHMENT E4
VALUE ADD SERVICES



Section Ten: Offer of Value-Added Products and/or Services

If a Bid includes an offer of value-added products and/or services, such offer shall be inserted in this section and include associated pricing and any other information relevant to such value-added offer. However, the State is not obligated to purchase value-added products or services.

AVAYA RESPONSE:

10.0 Introduction

Avaya's approach to value-added services is more than a marketing slogan; value permeates how we build solutions, transact business and interact with customers. State customers will benefit from a range of value-added services, including:

- Flexible procurement options
- Scalable and modular solutions with an open architecture
- Design review solution ROI assessments
 - Help determine the impact of a total solution on the organization
- State customer campaigns and promotions
 - Try it before you buy it
 - Trade-in / Trade up incentives
 - Software/licensing credits
 - Solutions with features such as training, reporting, and management built-in' not added on

Bidder should provide information on value-add services that include but are not limited to product installation, maintenance and support, managed services, professional services and product training. Any Bidder offering product-related services must submit a description of those services and the related pricing in the Excel spreadsheet attached as Exhibit 2.

AVAYA RESPONSE:

Avaya is the only major communications and collaboration solution provider that can offer public, private, or hybrid cloud at enterprise scale to customers of all kinds – this is a true differentiator. In addition, our expertise in building open, converged, and innovative solutions to enhance and simplify communications and collaboration in the cloud, on-premise, or a hybrid of both. Avaya provides Oklahoma with the complete catalog of our products and services to allow for the selection of the right solution at a competitive price. Our experienced team delivers award-winning services including, initial planning and design, seamless implementation and integration, ongoing managed operations, optimization, training, and support.

Highlighted below are examples of additional Avaya offerings that enhance and augment Avaya's SaaS solutions.

10.1 Communications Platform as a Service (CPaaS)

Elastic SIP: The Avaya cloud SIP trunking offers a flexible and pure consumption-based voice service. Avaya’s CPaaS enables our customers and partners to integrate a wide range of features, including SIP Trunking, global DID and 800 services, voice notification messaging, and API workflows into a new cloud or even their current premise-based communications systems – the latter two previously highlighted. Avaya CPaaS can be used in support of both cloud and premises solutions.

The Avaya Elastic SIP services offer is typically a lower-cost alternative to traditional digital trunking, such as PRI, T1/E1, FT1/FE1, as well as Analog Trunks. A simpler, more affordable solution does not mean lower service quality or fewer options. Avaya’s cloud-based Elastic SIP services no longer require PRI, legacy SIP trunks, etc., and it is now connected via existing customer Internet services. The customer is responsible to provide sufficient internet connectivity to use the Services. Our Elastic SIP services will make the State’s communications architecture more flexible and resilient.

There are multiple components to Avaya’s elastic SIP services offer:

- Local inbound & outbound voice calling
- International Long-Distance calling
- Toll-Free Service
- Local Number (DID)
- Emergency Services (E911)
- Number Porting

Key Features

Exhibit 10-1: Avaya Elastic SIP Service Key Features



*International long-distance calling billed in 1-minute increments

**CPaaS solutions are provided by Avaya Cloud Inc., a wholly-owned subsidiary of Avaya Inc, and will be separately contracted and invoiced through Avaya Cloud Inc.*

The table below provides a comparison of traditional Telco SIP Trunking vs. Avaya’s cloud-based Elastic SIP Services.



Traditional Telco SIP Trunking		Avaya Cloud Elastic SIP
Service Availability	Customers should consider the limitation of region-based numbers of Telco and the long process of porting over numbers.	Generally quicker with provisioning and porting phone numbers. Wider reach in regions including providing in-country local voice services in US, Canada, UK, and Ireland.
Pricing	Charge for usage minutes as well as a monthly capacity fee for each trunk.	Only charge on usage.
Service Provisioning	Weeks	Minutes
Scalability	Fixed capacity - customers must plan for their peak periods up-front.	On-demand capacity – elasticity allows customers to be covered during peak periods without planning ahead.

Local and Domestic Inbound and Outbound Calling

Two Options are available to the Customers:

Per-Seat

- Each seat can receive inbound calls and place outbound calls and includes one DID.
- Includes an “unlimited” number of Local and Domestic Long Distance Inbound and Outbound minutes, subject to Avaya Cloud Inc.’s Fair Usage Policy of a combined 1000 minutes of calling traffic per month per seat.

A la Carte

- Select for SIP Trunking purely based on minutes and billed at the end of each month for minutes used.

International Long Distance

Avaya supports calling-to approximately 200 destinations worldwide. The international long-distance bundle is available to be purchased only with any of the other bundles. It includes 1000 minutes of calling per month to the indicated countries.

International long-distance rates for all other countries are charged by the minute specific to the country called. All billing is calculated in 1-minute increments.

Toll-Free Service

Toll-Free/Free-Phone Service allows the customer to receive calls without Long Distance charges incurred by their customers.

Local Number (DID)

Additional DID/DDI numbers may be purchased for those choosing the Per Trunk service

Emergency Services (E911)

Emergency Services are supported subject to certain limitations and require phone and softphone registration. Customers must read and understand their service agreement.

Number Porting



Avaya lets Customers keep their current phone number and incorporate it into the new Avaya elastic SIP service. Transferring an existing number into a new service requires the Customer's permission and is called porting. Porting times vary and are dependent on the Customer's current provider.

The Customer's current number will continue to work until the provider processes the request. Since there is no way to predict when that will occur, Avaya will provide the Customer with a temporary number until the porting is completed. This temporary number is automatically attached to the Service and will work with all telephones and softphones connected to the Service. Once the existing number has been successfully ported, it will be added to the Customer's Service, and the temporary number will be removed.

In addition to the Value Added services OMES directly associated with the sales of software, such as related maintenance and support agreements for new and previously purchased software, the Bidder would provide, at no additional cost, management services to include, but not be limited to, providing price quotes, tracking licenses (new and existing), management of licenses, monitoring volume levels and opportunities for cost savings, training, installation/de-installation/implementation support, and software advisement to OMES and/or OMES Customers.

Bidders would be expected to provide, at no additional cost, assistive and support services regarding the software that is representative of the State's interest and best value.

AVAYA RESPONSE:

10.2 Avaya OneCloud Private and OneCloud for Government Implementation Team

Included with Avaya cloud implementations, a team of subject matter experts (SMEs) having the following roles and overall responsibilities will be available to the State at no extra charge:

Team Member Role	Overall Responsibility
Program Manager:	Overall project success.
Enterprise Architect:	Cloud architecting and design.
Project Coordinator:	Serves as a deputy to the Program Manager.
Transition Coordinator:	Manages transition and onboarding.
Business Integration Manager:	All application integration.
Service Delivery Manager:	Change management.

10.3 Investment Protection Program

Avaya values its loyal customers and offers Investment Protection Program discounts which are applied to the first term of the Avaya Subscription contract as follows:

- Licenses surrendered under current Support + Upgrade Subscription contracts are eligible for 40% credit at the initial first contract term.
- Licenses surrendered under current Support contracts are eligible for 20% credit at the initial first contract term.



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& Enterprise Services

BID RESPONSE PACKET



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- In cases where there is a mix of coverage levels across a product category Investment Protection Credits will be determined based on the coverage level associated with the majority of the licenses.
 - Investment Protection Credits will be calculated as a percentage off the List Price.

ATTACHMENT E5

THIRD PARTY TERMS

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ATTACHMENT F

Any requested exceptions not listed below are declined.

All requested exceptions are declined by the State of Oklahoma.

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ATTACHMENT F1
STATE OF OKLAHOMA CONTRACT WITH AVAYA INC.
RESULTING FROM SOLICITATION NO. 0900000556

Template for Contract Modifications for Quotes, Statements of
Work, or other Ordering Documents

The parties agree to use this template as the process to formally approve any terms, conditions or clauses that are to supersede the terms and Conditions in the Contract for purposes of the applicable quote, statement of work or other ordering document.

Contract Modifications for Quote, Statement of Work, or other Ordering Document

Solely for purposes of this ordering document, the terms and conditions of the Contract are hereby amended as set forth below. This amendment is considered an Addendum.

RFP Section	Exception/Additional Terms

STATE OF OKLAHOMA
by and through the
OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES

AVAYA INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

The [INSERT AGENCY NAME] is additionally executing this document to memorialize its involvement in negotiation of and its agreement with the terms of this document.

By: _____

Name: _____

Title: _____

Date: _____









Final Contract

Final Audit Report

2023-12-22

Created:	2023-12-21
By:	Beth Vincent (beth.vincent@omes.ok.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAArRg6u35403Sj07GVSzT6T2RM24WVKYKB

"Final Contract" History

-  Document created by Beth Vincent (beth.vincent@omes.ok.gov)
2023-12-21 - 9:34:31 PM GMT
-  Document emailed to jeniferbond@avaya.com for signature
2023-12-21 - 9:35:50 PM GMT
-  Email viewed by jeniferbond@avaya.com
2023-12-21 - 11:02:47 PM GMT
-  Signer jeniferbond@avaya.com entered name at signing as Jenifer Bond
2023-12-21 - 11:26:42 PM GMT
-  Document e-signed by Jenifer Bond (jeniferbond@avaya.com)
Signature Date: 2023-12-21 - 11:26:44 PM GMT - Time Source: server
-  Document emailed to Joe McIntosh (joe.mcintosh@omes.ok.gov) for signature
2023-12-21 - 11:26:46 PM GMT
-  Document e-signed by Joe McIntosh (joe.mcintosh@omes.ok.gov)
Signature Date: 2023-12-22 - 4:09:29 PM GMT - Time Source: server
-  Agreement completed.
2023-12-22 - 4:09:29 PM GMT



Experiences That Matter

Request for Proposal (RFP) Response for:

Software as a Service



OKLAHOMA
Office of Management
& Enterprise Services

RFP No:

0900000556

Due Date:

10/12/2022

Submitted to:

OMESCPeBID@omes.ok.gov
Mark Brown
marc.brown@omes.gov
Phone No. 405-521-6669

Submitted by:

Colette Buxton
SLED Account Manager
Office: 972-745-5021
Mobile: 405-641-6024
Email: cbuxton@avaya.com

Exhibit 1: Price Avaya State of Oklahoma (RFP 0900000556) Avaya Discount Summary		
Material Product Group (MPG)	Group / Description	State of Oklahoma Discount off Avaya Price List
5P	Software Contact Center – Heritage Nortel	20%
7P	OEM	12%
8P	Video	32%
9P	SMEC	20%
1R	Avaya Cloud Office / SIP	0.0%
8S	Contact Center Subscription Services	0.5%
9S	Unified Communications Subscription Services	0.5%
1T	Cloud Offers	0.5%
2R	Alliances	0.0%

Exhibit 2: Value Added Services State of Oklahoma (RFP 0900000556) Avaya Discount Summary		
Material Product Group (MPG)	Group / Description	State of Oklahoma Discount off Avaya Price List
1P	Hardware – Heritage Avaya	28%
2P	Software UC – Heritage Avaya	32%
3P	Peripheral Equipment	32%
4P	HW2 – Heritage Nortel	20%
1Z	Non-Discountable	0.0%
1C	Support Services	0.5%
1N	Support Services	0.5%
1S	Maintenance Services	0.5%
2S	Technical Services	0.5%
3S	Avaya Prof Cloud Services	0.5%
5S	Support Services	0.5%
6S	Maintenance Services	0.5%
7S	Maintenance Services	0.5%

Professional Services (Hourly Not To Exceed Rates) State of Oklahoma (RFP 0900000556) Avaya Discount Summary		
Description	List Rate	Discounted Hourly Rate
Technical Project Manager	\$225	\$ 223.88
Advanced Solutions Architect	\$300	\$ 298.50
Technician	\$205	\$ 203.98
Software Associate	\$175	\$ 174.13
Software Specialist	\$225	\$ 223.88

Pricing Notes:

1. Greater discounts may be available provided one of the following conditions are met:

(i) Multi-year Maintenance Commitment: Avaya's acceptance and fulfillment of any order to which the Discounts apply is contingent upon the purchase by Customer of a minimum of two years Maintenance Service on each of the Products referenced on the order. Such purchase of maintenance shall be made coincident with the purchase of Product.

(ii) Pre-Paid Maintenance Commitment: Avaya's acceptance and fulfillment of any order to which the Discounts apply is contingent upon the Customer's advanced payment, in full, for one year of Maintenance Service on each of the Products referenced on the order

(iii) Multi-Year Subscription Commitment: Avaya's acceptance and fulfillment of any order to which the Discounts apply is contingent upon the purchase by Customer of a minimum of a three year Subscription License Term on each of the Software and Products referenced on the order with early termination penalty fees. Such purchase of Subscription License shall be made coincident with the purchase of Product and any Maintenance for said product.

(iv) Pre-paid Subscription Commitment: Avaya's acceptance and fulfillment of any order to which the Discounts apply is contingent upon the Customer's advanced payment, in full, for the term of the Subscription.

(v) Sole Source Commitment : Avaya's acceptance and fulfillment of any order to which the Discounts apply is contingent upon Customer agreeing to purchase all its requirements for Products and new equipment comparable to the Products providing materially the same features and functionality ("Sole Sourced Equipment") from Avaya for the period of this Agreement.

2. Professional Services rates do not include travel and living expenses

3. Professional Services engagements require a Scope of Work.

Avaya SIP Services Rate Card Summary (US Calling)

Exhibit 2: Value Added Services State of Oklahoma (RFP 0900000556) Avaya Discount Summary

Service Type	USA	
Phone Numbers	Material Code	Rate per Unit
		(USD)
Local Number / month	407965	\$ 1.00
Toll Free Number / month	407966	\$ 1.00
Toll Free Number Setup One time	407967	\$ -
DDI Setup Fee One time	407968	\$ -
DDI Porting Out Fee One time	407954	\$ 2.75
Emergency Services / month	407970	\$ 0.50
Per User Bundle / Per month Pricing (includes 1000 US/Canada minutes, DID, Emergency Services) (Note: User bundle is not applicable for CC user case)	407976	\$ 7.00
International Calling Bundle (includes 1000 minutes inbound/outbound) Per month / per user (Note: User bundle not is applicable for CC use case)	407979	\$ 21.00
Service Description / Call Type (Usage based pricing)	Material Code	Usage Based Minutes (and overage for per user bundle)
Local Inbound Calling /min	407971	\$ 0.0080
Local Outbound calling /min	407972	See Outbound Rate Card
Toll Free Inbound Calling / min	407974	\$ 0.0200
International Outbound Calling	410546	See Outbound Rate Card

Pricing Notes:

1. See you Avaya Account Manager for most current rate card
2. Services contracted and invoiced by Avaya Cloud Inc.
3. Pricing excludes taxes, fees, and surcharges.



This addendum is added to and is to be considered part of the subject contract.

Statewide Contract #: SW1041C

PeopleSoft Contract ID: 7137

Contract Title: Software Value Added Reseller

Contract Issuance Date: 10/25/2023

Contract Supplier: Carahsoft

Addendum # 1

Addendum Date: 03/12/2024

OMES Point of Contact:

Contracting Officer: Marc Brown

Phone Number: 405-521-6669

E-mail address: Marc.brown@omes.ok.gov

Addendum Information: _____

Addendum #1 is issued for term renewal for Carahsoft per the original T&C's.

Contract Period: 03/14/2024 – 03/13/2025

Agreement Period: 03/14/2024 – 03/13/2028



State of Oklahoma

Contract ID				Page
000000000000000000007137				1 of 3
Contract Dates	Currency	Rate Type	Rate Date	
10/30/2023 to 03/13/2025	USD	CRRNT	PO Date	
Description:	Contract Maximum			
SW1041C - Carahsoft	0.00			
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order		Maximum / Open	
			Qty	Amt	Qty	Amt
1	43231500 / Business Function Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0001		
2	43231600 / Finance Accounting and Enterprise Resource Planning ERP Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0001		
3	43232000 / Computer Game or Entertainment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0001		
4	43232100 / Content Authoring and Editing Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0001		
5	43232200 / Content Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0001		
6	43232300 / Data Management and Query Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0001		
7	43232400 / Development Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0001		
8	43232500 / Education or Reference Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0001		

Final = The price is final after adjustments
Hard = Apply adjustments regardless of other adjustments
Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



State of Oklahoma

Contract ID 000000000000000000000007137			Page 2 of 3	
Contract Dates 10/30/2023 to 03/13/2025		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041C - Carahsoft			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order		Maximum / Open	
			Qty	Amt	Qty	Amt
9	43232600 / Industry Specific Software	EA	0.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
10	43232700 / Network Applications Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
11	43232800 / Network Management Software	EA	0.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
12	43232900 / Networking Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
13	43233000 / Operating Environment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
14	43233000 / Security and Protection Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
15	43233400 / Utility and Device Driver Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
16	43233500 / Information Exchange Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
17	43233600 / Electrical Equipment Software	EA	1.00	0.00	0.00	0.00

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State of Oklahoma

Contract ID				Page
000000000000000000007137				3 of 3
Contract Dates	Currency	Rate Type	Rate Date	
10/30/2023 to 03/13/2025	USD	CRRNT	PO Date	
Description:	Contract Maximum			
SW1041C - Carahsoft	0.00			
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Order Amt	Maximum / Open Qty	Open Amt
	Contract Base Pricing	0.00000	EA		0001	
18	43233700 / System Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA		0001	
19	43233700 / Software Maintenance and Support	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA		0001	
20	81112000 / Data Services (SaaS)	EA	0.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA		0001	
21	81112000 / Software Implementation Services	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA		0001	

POC: Kristina Smith - Contracts Director
kristina.smith@carahsoft.com

Authorized Signature



Official signed contract documents are on file with OMES Central Purchasing.

Contract title: Software Value Added Reseller

Contract Number: SW1041C - Carahsoft

Date of Contract issuance: 10.25.2023

Contract period: 10.25.2023 through 03.13.2024

Agreement period: 10.25.2023 through 03.13.2028

Type of contract: Mandatory ☐ Non-Mandatory ☒

OMES POC Skyler J. Greco

Title: SW Contracting Officer

Phone: (405) - 521 - 2174

Email: skyler.greco@omes.ok.gov

Vendor POC

POC: Kristina Smith - Contracts Director
kristina.smith@carahsoft.com

Supplier ID:

Supplier 0000241742
CARAHSOFT TECHNOLOGY CORP
11493 SUNSET HILLS RD STE 100
RESTON VA 20190-5230
USA

Contract ID: 0000000000000000000007137

Please verify that the software item being purchased is not available on existing mandatory statewide contracts. (i.e. SW1010, SW1079, etc.) This statewide contract is for software, software maintenance, software as a service (SaaS), and software implementation services.

Contract Overview: Value-Added Software

Authorized Users: All state departments, boards, commissions, agencies, and institutions, in Addition to counties, school districts and municipalities which may avail themselves of this contract.

How to order:

Contact POC listed above

Ensure quote references SW1041C

.

Available Brands:

See pricing attachment.

Available Products and Services:

Software, Value-Added

Authorized Dealer/Reseller(s): N/A



State of Oklahoma

Contract ID				Page
000000000000000000007137				1 of 3
Contract Dates	Currency	Rate Type	Rate Date	
10/30/2023 to	USD	CRRNT	PO Date	
Description:		Contract Maximum		
SW1041C - Carahsoft		0.00		
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order		Maximum / Open	
			Qty	Amt	Qty	Amt
1	43231500 / Business Function Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
2	43231600 / Finance Accounting and Enterprise Resource Planning ERP Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
3	43232000 / Computer Game or Entertainment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
4	43232100 / Content Authoring and Editing Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
5	43232200 / Content Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
6	43232300 / Data Management and Query Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
7	43232400 / Development Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
8	43232500 / Education or Reference Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		

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State of Oklahoma

Contract ID				Page
000000000000000000007137				2 of 3
Contract Dates	Currency	Rate Type	Rate Date	
10/30/2023 to	USD	CRRNT	PO Date	
Description:	Contract Maximum			
SW1041C - Carahsoft	0.00			
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order		Maximum / Open	
			Qty	Amt	Qty	Amt
9	43232600 / Industry Specific Software	EA	0.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
10	43232700 / Network Applications Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
11	43232800 / Network Management Software	EA	0.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
12	43232900 / Networking Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
13	43233000 / Operating Environment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
14	43233000 / Security and Protection Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
15	43233400 / Utility and Device Driver Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
16	43233500 / Information Exchange Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000			
		EA		0001		
17	43233600 / Electrical Equipment Software	EA	1.00	0.00	0.00	0.00

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Authorized Signature



Dispatch via Print

Contract ID 0000000000000000000000007137			Page 3 of 3	
Contract Dates 10/30/2023 to		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041C - Carahsoft			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Authorized Signature



**SECOND AMENDMENT TO STATEWIDE
CONTRACT NO. 1041 WITH CARAHSOFT
TECHNOLOGY CORP.**

This Second Amendment to Oklahoma Statewide Contract No. 1041 (the “Second Amendment”) is effective as of the date of the last signature below, between the State of Oklahoma by and through the Office of Management and Enterprise Services (“State”) and Carahsoft Technology Corp. (“Supplier”). This Second Amendment supplements and amends the Statewide Contract No. 1041 (“SW1041”) with Carahsoft Technology Corp. entered into by the parties and effective on October 26, 2023, (the “Contract”), including all supplements and amendments thereto. Unless otherwise indicated, capitalized terms used in this Second Amendment without definition shall have the respective meanings specified in the Contract.

For good and valuable consideration, the parties agree as follows:

1. Supplier and State desire to amend the Contract to amend Section E3 – Pricing. This Second Amendment incorporates the following attachment:
 - a. Attachment A – Updated Carahsoft Pricing
2. The parties agree the attached “Attachment A” updating Carahsoft’s pricing and service offerings serves to memorizes changes to pricing and services offered by Supplier.
3. Except as expressly modified by this Second Amendment, all terms or provisions of the Contract not addressed herein remain as executed by the parties and in full force and effect.
4. This Second Amendment may be executed in multiple counterparts, each of which will be an original and together will constitute the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



SIGNATURES

The undersigned represent and warrant that they are authorized, as representatives of the Party on whose behalf they are signing, to sign this Second Amendment and to bind their respective Party thereto.

STATE:

Joe McIntosh
Joe McIntosh (Mar 8, 2024 13:26 CST)

Authorized Signature

Joe McIntosh

Printed Name

CIO

Title

Mar 8, 2024

Date

SUPPLIER:

Madeline Hall
Madeline Hall (Mar 6, 2024 11:34 EST)

Authorized Signature

Madeline Hall

Printed Name

Contracts Manager

Title

Mar 6, 2024

Date

Vendor	Discount %
10ZIG TECHNOLOGY	2.00%
1Kosmos	2.00%
3CLogic	2.00%
443 Technologies	2.00%
7SIGNAL Solutions, Inc	2.00%
Aavenir	2.00%
ABBYY USA Software House, Inc.	2.00%
Abnormal Security	2.00%
Absolute Software Inc.	2.00%
Acalvio Technologies	2.00%
Accuvant Inc.	2.00%
Achievelt	2.00%
Achievelt Online, LLC	2.00%
Acis Tek Corporation	2.00%
Aclima	2.00%
Acquia	2.00%
Actsoft	2.00%
Acuity Risk Management	2.00%
Adaptus	2.00%
ADF Solutions	2.00%
Adlumin	2.00%
Adobe	2.00%
Adobe Cegis	2.00%
Advologix	0.50%
AECOM	2.00%
AeroCloud Systems	2.00%
Agate Software	2.00%
Agilet Solutions	2.00%
Aisera	0.50%
Akamai	
Akatia	2.00%
AlertEnterprise	2.00%
Alfresco	2.00%
Alteryx	2.00%
ALTR Solutions Inc	2.00%
AMIICUSS LLC	2.00%
amp Tech	2.00%
AmpliFund	2.00%
Anaconda	2.00%
Analytics Quotient	2.00%
Anaplan	2.00%
ANCHORE	2.00%
Anjuna	2.00%
ANOMALI	2.00%
Aperio	2.00%
APIsec.ai	2.00%

Apollo Information Systems	2.00%
AppBuddy	2.00%
Appian Corporation	2.00%
Appinium	2.00%
Applied Buisness Software	2.00%
Applied Frameworks	2.00%
AppOmni	2.00%
Apporto	2.00%
APPTIO	0.90%
APPVIEWX	1.70%
AQUA SECURITY SOFTWARE LTD	3.00%
Aquera	2.00%
Aquifer	2.00%
Arbola, Inc.	2.00%
Arcadus	2.00%
Archer	2.00%
Archive360, Inc	2.00%
archTIS	2.00%
Arctic Wolf	2.00%
Ardoq, Inc	2.00%
Ardoq, Inc.	2.00%
Area 1 Security	2.00%
ARInspect	2.00%
Arista	2.00%
Armada	2.00%
Armis, Inc.	2.00%
Armored Things	2.00%
ArmorText	2.00%
Arqit Quantum	2.00%
Arria NLG (USA) Inc	2.00%
Asana	2.00%
Ascent Solutions	0.50%
ASG Technologies	2.00%
Asite	2.00%
AspireHR	2.00%
AssetOptics	2.00%
Assima	2.00%
Assured Data Protection, Inc.	2.00%
Astronomer	2.00%
Attestiv	2.00%
Attivo Networks, Inc.	2.00%
Authenticiti	2.00%
Autodesk	2.00%
Automated Office Solutions	2.00%
Automize A/S	2.00%
Automox	2.00%
Automox, Inc.	2.00%

AutoRabit	2.00%
AutoReturn	2.00%
Avaap USA LLC	2.00%
Avela, Inc	2.00%
Avenue Insights & Analytics	2.00%
AvePoint Public Sector, Inc.	2.00%
Aviatrix	2.00%
Avisare	2.00%
AXON ENTERPRISE, INC.	1.00%
Axonius	2.00%
AXWAY	2.00%
Babel Street	2.00%
Backblaze	2.00%
Bamboo Health	2.00%
BASIS TECHNOLOGY	2.00%
BASTILLE	2.00%
Bay-InfoTech	2.00%
Beaufort 12 Ltd	0.50%
BEINCOURT	2.00%
BEM Systems	2.00%
Benefitfocus.com, Inc.	2.00%
Bentley	2.00%
Bentley Systems	2.00%
Bentley Systems Inc	2.00%
Bento Biology Platforms	2.00%
BetterUp	2.00%
BeyondTrust	2.00%
Big Compass	2.00%
BigID	2.00%
BigPanda	2.00%
Biniti,Inc	2.00%
Binti	2.00%
BishopFox	2.00%
Blackberry	2.00%
Blackthorn	0.50%
Blancco Technology Group	2%
Bloc Power	2%
Blocksi, Inc	2%
Blue Fusion Technologies	2%
Bluescape Software	2%
BlueVector	2%
BlueVoyant	2%
Blynco, Inc.	2%
Bonfire	0.50%
Bonterra Tech	2%
Boomi	2.00%
BotCopy	2%

Box	14.95%
Brainstorm	2.00%
Bravium Consulting Inc.	2.00%
Brazen Technologies, Inc.	2.00%
BridgeCare	2.00%
BroadbandLab	2.00%
Bromium	2.00%
Bryq	2.00%
Bucher+Suter	2.00%
BurstIQ	2.00%
Buurst, Inc.	2.00%
Byos	2.00%
C2 Labs Inc.	2.00%
C3.ai, Inc	2.00%
CA Technologies	2.00%
Call Tower	2.00%
Callinize, INC. dba Tenfold	2.00%
CallTower	2.00%
CalypsoAI Corp.	2.00%
Campus Kaizen	2.00%
Canto	2.00%
Cardinal Path LLC	2.00%
Cardinality AI	2.00%
Care Systems Inc	2.00%
CareAR	2.00%
CarePortal LLC	2.00%
CARTO	2.00%
Cascade Strategy	2.00%
Casebook PBC	2.00%
Caspoint	2.00%
Catch Intelligence	2.00%
CBI Secure	2.00%
Cellebrite	2.00%
Celonis	2.00%
CelWell Services	2.00%
Censys	2.00%
Center for Internet Security	2.00%
Centrics IT	2.00%
CEPTES Software	2.00%
Cerna Solutions	2.00%
Certes Networks	2.00%
Certifical	2.00%
CERTIPATH	2.00%
Certus Group	2.00%
Chainalysis	2.00%
Change and Innovation Agency	2.00%
ChargePoint, Inc.	2.00%

Check Point Software Technologies	2.00%
Checkpoint Services Inc.	2.00%
Chooch Intelligence Technologies Co.	2.00%
Chorus Intelligence	2.00%
Chronicle	2.00%
Ciena	2.00%
Circle Systems	2.00%
CIS	2.00%
Cision	2.00%
Citibot	2.00%
Citrix	2.00%
City Innovate	2.00%
CityBase	0.50%
Clango	2.00%
Clarifai	2.00%
Clariti Cloud, Inc.	0.50%
Claroty	2.00%
Class Technologies, Inc	2.00%
Clear Skye	2.00%
ClearCube	2.00%
Cloud Academy, Inc.	2.00%
Cloud Range	2.00%
Cloud SynApps Inc.	2.00%
Cloud Warriors	2.00%
CloudBees, Inc.	2.00%
Cloudbolt	2.00%
CloudBudget	2.00%
CloudBurst	2.00%
CloudCover	2.00%
CloudCheckr LLC	2.00%
Cloudera Government Solutions Inc.	2.00%
Cloudframe	2.00%
Cloudnine	2.00%
Cloudnomics	2.00%
CloudPareto LLC dba Bidscale	2.00%
cloudPWR	2.00%
CloudSaver	2.00%
CMA Technology Solutions	2.00%
Cobwebs	2.00%
Code 42	2.00%
CodeLock	2.00%
Codescience, Inc.	2.00%
Codoxo	2.00%
Cofense	2.00%
CogAbility, Inc.	2.00%
COLLABNET	2.00%
CollabraLink Technologies DBA Groundswe	2.00%

Collabware	2.00%
Collibra Inc	2.00%
Community Connect Labs	2.00%
CommunityCX	2.00%
Compart	2.00%
CompassCom	2.00%
ComplianceQuest	0.50%
CompuNet Inc.	2.00%
ConcernCenter	2.00%
CONFLUENT, INC.	1.75%
Conga	2.00%
Connecting Point	2.00%
Connecting Software	2.00%
Contraforce	2.00%
CONTRAST SECURITY	2.00%
Conveyal LLC	2.00%
Copado	0.50%
CORAScloud	2.00%
Corelight	2.00%
Corellium, Inc.	2.00%
CoreView USA	2.00%
Cornea	2.00%
Cosi Consulting	2.00%
CostQuest Associates Inc.	2.00%
CounterCraft	2.00%
Coursera	2.00%
Crashplan group	2.00%
Crave.io	2.00%
Crayon Software Experts LLC	2.00%
CrisisGo	2.00%
CriticalStart	2.00%
Cronos Consulting Group	2.00%
CrowdAI	2.00%
Culture Partners	2.00%
Custom Computer Specialists	2.00%
Customertimes Corp.	2.00%
Cvent Inc.	2.00%
CyanGate	2.00%
Cyara	2.00%
Cyber-Ark	2.00%
Cyberbit	2.00%
CyberReef	2.00%
CyberSixGill	2.00%
Cybrary	2.00%
Cycognito	2.00%
CyGlass	2.00%
Cylance	2.00%

Cynerio	2.00%
Cytellix	2.00%
D2L	2.00%
Dantex	2.00%
Daric	2.00%
DartPoints	2.00%
Darzin Software	2.00%
Databricks Inc.	2.00%
Datadog	2.00%
DataLocker	2.00%
Datalogz	2.00%
Dataminr	2.00%
DataRobot	2.00%
DataShapes	2.00%
Datumatic	2.00%
Decision Lens, Inc.	2.00%
Deep Instinct	2.00%
Defend3D	2.00%
Delasoft	2.00%
Delinea Inc.	2.00%
Dell	2.00%
Deloitte	2.00%
Deloitte Transactions and Business Analytics	2.00%
Delphix	2.00%
Delteck	2.00%
Denodo	2.00%
DigEplan	2.00%
DIGITAL MAP PRODUCTS	1.70%
Digital Quotient	2.00%
DigitalBlue Software	2.00%
DigitalXForce	2.00%
DigitSec Inc.	2.00%
Diona	2.00%
DISCOVER TECHNOLOGIES LLC	3.00%
Do Process	2.00%
Docebo	2.00%
Doctums	2.00%
Dragos Inc	2.00%
Drawloop	2.00%
Dremio Corporation	2.00%
Druva	2.00%
DSA Technologies	2.00%
Dun & Bradstreet, Inc.	2.00%
Dynatrace LLC	2.00%
Easyvista	2.00%
eCivis	0.50%
Eclipsium, Inc.	2.00%

EcoInteractive	2.00%
Edbrix	2.00%
Edge Systems	2.00%
Eduworks Corporation	2.00%
Edvera	2.00%
eHawk Solutions	2.00%
Elastic	2.00%
Elasticsearch Inc.	2.00%
ElectrifAi	2.00%
Element34	2.00%
Elemental Cognition	2.00%
Elements	2.00%
Ellucian Company L.P.	2.00%
e-Magic	2.00%
EMC	2.00%
EMS LINQ	2.00%
Enhanced Voting	2.00%
Entara Corporation	2.00%
ENTERPRISEDB	2.00%
Entrust Corporation	2.00%
Envisio	2.00%
EPAY	2.00%
e-PlanSoft	2.00%
Equinix	2.00%
Ernst & Young	2.00%
Esper Regulatory Technologies	2.00%
EVAN360	2.00%
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Everlaw	2.00%
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Optum	1.00%
Oracle	2.00%
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Orijin	1.00%
Otava	1.00%
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OutSystems	1.00%
oVIO	1.00%
Own Company	0.50%
OxBow	1.00%
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Procore Technologies Inc	1.00%
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Questica	0.50%
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Quova, Inc.	1.00%
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Quzara	1.00%
R2 Unified Technologies	1.00%
R4	2.00%
Radiant Logic, Inc.	1.00%
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RangeForce	1.00%
Rapid7	1.00%
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Readspeaker	2.00%
Ready.net	2.00%
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Remix Technologies	1.00%
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ResourceX	1.00%
RESTNSX	2.00%
Reva	1.00%
Reva Solutions	1.00%
Revir Technologies, Inc.	1.00%
Rhino Health	1.00%
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RideAmigos	1.00%
Right-Hand Cybersecurity	1.00%
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Riverbed Technology	1.00%
R-MOR LLC	1.00%
Rocket Software	1.00%
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ROK Technologies	1.00%
Roundtrip	1.00%
RSA	2.00%
RSA Archer	2.00%
RSA NetWitness	2.00%
Rubrik	2.00%
Ruckus Wireless	1.00%
Run Consultants	1.00%
Run:AI	1.00%
runZero	1.00%
R-Zero Systems	1.00%
S Nimbus, LLC	1.00%
Saasyan	1.00%
SaferWatch, LLC	1.00%
sailpoint	1.00%
SAINAPSE Inc	1.00%
SalesIntel	1.00%
Salty Cloud, PBC	1.00%
Samsara	1.00%
Sanborn Map Company	1.00%
SandboxAQ	1.00%
SAP	1.00%
SAP NS2	1.00%
SaraWorks	1.00%
Saviynt	1.00%
Scale AI	1.00%
SchoolBanks, Inc	1.00%
SDGblue, LLC	1.00%
S-Docs	2.00%
Secured Communications	1.00%
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Security Scorecard	1.00%
SecZetta	1.00%
Selfhelp Community Services	1.00%
Semarchy, Inc.	1.00%
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ShadowDragon Federal	1.00%
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Spare Labs	2.00%
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Sphere Technology Solutions	2.00%
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Sprinklr	2.00%
Stage2Data	2.00%

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Steady Platform	2.00%
SteadyIQ	2.00%
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Stony Point	2.00%
Stralto Inc.	2.00%
StrongDM	2.00%
Submittable	2.00%
SuccessKPI Inc.	2.00%
Suggestion Ox	2.00%
Sumo Logic	5.00%
Sun Management	2.00%
SurePassID	2.00%
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Sylabs	2.00%
Symantec	2.00%
Symmetry Systems	2.00%
Syncsort	2.00%
Synergist Technologies	2.00%
Synergy SKY	2.00%
Syntasa	2.00%
Synthesis	2.00%
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TAG Infosphere	2.00%
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Talon Tactical	2.00%
TAMR	2.00%
Tanium Inc.	2.00%
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Tricentis Americas, Inc.	2.00%
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True Zero Technologies Inc.	2.00%
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TrustLayer	2.00%
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Tyler Technologies, Inc.	2.00%
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Varuna	2.00%
VAST Data	2.00%
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Voyager Analytics Inc	2.00%
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WalkMe	0.50%
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WithSecure	2.00%
Wiz	2.00%
WizeHive, Inc.	2.00%
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Workfront, Inc.	2.00%
Workiva	2.00%
XeoMatrix	2.00%
Yansa Labs	2.00%
Yarnlab	2.00%
YellowSchedule	2.00%
Yext, Inc	1.00%
Yubico, Inc.	2.00%
ZenCase	2.00%
ZenCity	0.50%
ZenLedger	2.00%
Zentera	2.00%
Zeroeyes	2.00%
Zerto	2.00%
Zimperium	2.00%
Zoobean, Inc.	2.00%



EXECUTION VERSION Carahsoft SW1041 Amendment Two Pricing

Final Audit Report

2024-03-08

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**STATE OF OKLAHOMA STATEWIDE CONTRACT WITH
CARAHSOFT TECHNOLOGY CORP.**

This State of Oklahoma Statewide Contract No. **1041** (“Contract”) is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services and **Carahsoft Technology Corp.** (“Supplier”) and is effective as of the date of last signature to this Contract. The initial Contract term, which begins on the effective date of the Contract, is one year and there are four (4) one-year options to renew the Contract.

Purpose

The State is awarding this Contract to Supplier for software and services to support State agencies and other eligible Oklahoma Interlocal Entities. This Supplier will provide software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration, as more particularly described in certain Contract Documents. Supplier submitted a proposal which did contain exceptions to the Solicitation and a best and final offer. This Contract memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation No. 0900000556, Attachment A;
 - 2.2. State of Oklahoma General Terms, Attachment B;
 - 2.3. Oklahoma Statewide Contract Terms, Attachment C;
 - 2.4. State of Oklahoma Information Technology terms, Attachment D;
 - 2.5. Information Security Requirements, Attachment D-1;
 - 2.6. Pricing & Value Add, Attachment E-1;

- 2.7. Cloud Service Offerings, Attachment E-2;
- 2.8. Sample Statement of Work Template, E-3;
- 2.9. Negotiated Exceptions to Contract, Attachment F; and
- 2.10. Template for Contract Modifications for Quotes, Statements of Work, or other Ordering Documents, Attachment F-1.

3. The parties additionally agree:


- 3.1. Unless mutually agreed to in writing by the Chief Information Officer utilizing Attachment F-1, no Contract Document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State. If Supplier is acting as a reseller, any third-party terms provided are also subject to the foregoing.
- 3.2. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.
- 3.3. In the event of any conflict in terms, or inconsistencies, between Attachment E-1 through E-3, and the States terms in Attachments A-D, the State's terms in Attachments A-D shall Prevail. The State does not agree to any additional duties, obligations, or liabilities, other than the negotiated exceptions outlined in Attachment F.

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

- 4. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

STATE OF OKLAHOMA
by and through the
OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES

CARAHSOFT TECHNOLOGY CORP.

By: 
Joe McIntosh (Oct 26, 2023 11:48 CDT)

By: 

Name: Joe McIntosh

Name: Robert Moore

Title: CIO

Title: Vice President

Date: 10/26/2023

Date: 10/25/2023

ATTACHMENT A
SOLICITATION NO. 0900000556

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded by the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract Document.

PURPOSE

The Contract is awarded as a statewide contract on behalf of the Office of Management and Enterprise Services for software and services to support State agencies and other eligible Oklahoma Interlocal Entities. This Supplier will provide software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration.

1. Contract Term and Renewal Options

The initial Contract term, which begins on the effective date of the Contract, is one year and there are [4] one-year options to renew the Contract.

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

This State of Oklahoma General Terms (“General Terms”) is a Contract Document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract Document, Supplier and State agree to the following General Terms:

1 Scope and Contract Renewal

- 1.1** Supplier may not add products or services to its offerings under the Contract without the State’s prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier’s performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract Documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Addendum. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4** The State may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the State

exercises such option to extend ninety (90) days, the State shall notify the Supplier in writing prior to Contract end date. The State, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

- 1.5** Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

2 Contract Effectiveness and Order of Priority

- 2.1** Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until the Contract is effective.
- 2.2** Contract Documents shall be read to be consistent and complementary. Any conflict among the Contract Documents shall be resolved by giving priority to Contract Documents in the following order of precedence:
- A.** any Addendum;
 - B.** any applicable Solicitation;
 - C.** any Contract-specific State terms contained in a Contract Document including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
 - D.** the terms contained in this Contract Document;
 - E.** any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation or applicable law;
 - F.** any statement of work, work order, or other similar ordering document as applicable; and
 - G.** other mutually agreed Contract Documents.
- 2.3** If there is a conflict between the terms contained in this Contract Document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms

provided by Supplier shall not take priority over this Contract Document or Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Addendum.

- 2.4 Any Contract Document shall be legibly written in ink or typed. All Contract transactions, and any Contract Document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

3 **Modification of Contract Terms and Contract Documents**

- 3.1 The Contract may only be modified, amended, or expanded by an Addendum. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.
- 3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.

4 **Definitions**

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 4.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 4.2 **Addendum** means a mutually executed, written modification to a Contract Document.
- 4.3 **Amendment** means a written change, addition, correction or revision to the Solicitation.
- 4.4 **Bid** means an offer a Bidder submits in response to the Solicitation.

- 4.5 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.6 **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract Documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 4.7 **Contract Document** means this document; any master or enterprise agreement terms entered into between the parties that are mutually agreed to be applicable to the Contract; any Solicitation; any Contract-specific terms; any Supplier's Bid as may be negotiated; any statement of work, work order, or other similar mutually executed ordering document; other mutually executed documents and any Addendum.
- 4.8 **Customer** means the entity receiving goods or services contemplated by the Contract.
- 4.9 **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 4.10 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.
- 4.11 **Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 4.12 **Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.13 **Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 4.14 **OAC** means the Oklahoma Administrative Code.
- 4.15 **OMES** means the Office of Management and Enterprise Services.

- 4.16 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.17 State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 4.18 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 4.19 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 4.20 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 4.21 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract Document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created,

prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5 Pricing

- 5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 5.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

6 Ordering, Inspection, and Acceptance

- 6.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.
- 6.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-5, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 6.3 Supplier shall deliver products and services on or before the required date specified in a Contract Document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract Document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.
- 6.4 Product warranty and return policies and terms provided under any Contract Document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

7 Invoices and Payment

- 7.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.
- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F.** Supplier shall have no right of setoff.
- G.** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.
- H.** The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.

8 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

- 8.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set

forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a thirty (30) day notice of cancellation and name the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$5,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$5,000,000 combined single limit each accident;
- D.** Directors and Officers Insurance which shall include Employment Practices Liability as well as Consultant's Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than \$5,000,000 per occurrence;
- E.** Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and
- F.** Additional coverage required in writing in connection with a particular Acquisition.

- 8.2** Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.
- 8.3** Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

9 Compliance with Applicable Laws

- 9.1** As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:
- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
 - B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
 - C.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;
 - D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
 - E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;

- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
 - G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
 - H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify;
 - I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
 - J.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- 9.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at https://omes.ok.gov/sites/g/files/gmc316/f/InfoSecPPG_0.pdf. Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 9.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.4** In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory

contract provisions required in connection with the receipt of federal funds or other funding source.

- 9.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 9.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.
- 9.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 9.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.
- 9.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 9.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format

usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

10 Audits and Records Clause

- 10.1** As used in this clause and pursuant to 67 O.S. §203, “record” includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 10.2** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
- 10.3** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

11 Confidentiality

- 11.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer’s prior express written

permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.

- 11.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 11.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll free telephone call center services.
- 11.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 11.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents,

representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.

11.6 The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

11.7 Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) résumé, pricing or marketing materials provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

12 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is

related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

13 Assignment and Permitted Subcontractors

- 13.1** Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.
- 13.2** Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.
- 13.3** If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to

the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

13.4 All payments under the Contract shall be made directly to the Supplier, except as provided in subsection A above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.

13.5 Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

14 Background Checks and Criminal History Investigations

Prior to the commencement of any services, background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to the State in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or services.

15 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property,

copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

16 Indemnification

16.1 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.
- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

16.2 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

16.3 Notice and Cooperation

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

16.4 Coordination of Defense

In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally

participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

16.5 Limitation of Liability

- A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.
- B.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- C.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

17 Termination for Funding Insufficiency

- 17.1** Notwithstanding anything to the contrary in any Contract Document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

- 17.2** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.
- 17.3** The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

18 Termination for Cause

- 18.1** Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.
- 18.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.
- 18.3** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence

of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

- 18.4** The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-9 is an example.

19 Termination for Convenience

- 19.1** The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.
- 19.2** Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but

there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

20 Suspension of Supplier

- 20.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.
- 20.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.
- 20.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract.

A determination that Supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

22 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

23 Force Majeure

23.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

23.2 Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

23.3 Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay

or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

24 Security of Property and Personnel

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

25 Notices

All notices, approvals or requests allowed or required by the terms of any Contract Document shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the physical address set forth below. Notice information may be updated in writing to the other party as necessary. Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall not be delivered solely via e-mail.

If sent to the State:

State Purchasing Director
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

With a copy, which shall not constitute notice, to:

Purchasing Division Deputy General Counsel
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

26 Miscellaneous

26.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract Documents, in the singular or in the aggregate, shall be governed by the laws of the State without regard to application of choice of law principles. Pursuant to 74 O.S. §85.14, where federal granted funds are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents, shall be in Oklahoma County, Oklahoma.

26.2 No Guarantee of Products or Services Required

The State shall not guarantee any minimum or maximum amount of Supplier products or services required under the Contract.

26.3 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

26.4 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

26.5 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

26.6 Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 *et seq.* Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required.

26.7 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

26.8 Mutual Responsibilities

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

26.9 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or

condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

26.10 Severability

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

26.11 Section Headings

The headings used in any Contract Document are for convenience only and do not constitute terms of the Contract.

26.12 Sovereign Immunity

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State.

26.13 Survival

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract Documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

26.14 Entire Agreement

The Contract Documents taken together as a whole constitute the entire agreement between the parties. No statement, promise, condition,

understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract Document shall be binding or valid. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

26.15 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent, or another representative violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

26.16 Import/Export Controls

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

ATTACHMENT C

OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

- 1.1** The Contract is a non-mandatory statewide contract for use by State agencies. Additionally, the Contract may be used by any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department or other entity designated to act on behalf of the political subdivision; a state, county or local governmental entity in its state of origin; and entities authorized to utilize contracts by the State via a multistate or multigovernmental contract.
- 1.2** The Contract is a firm, fixed price contract for indefinite delivery and quantity for the Acquisitions available under the Contract.

2. Orders and Addendums

- 2.1** Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations may be required.
- 2.2** Any ordering document shall be effective between Supplier and the Customer only and shall not be an Addendum to the Contract in its entirety or apply to any Acquisition by another Customer.
- 2.3** Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Addendum to the Contract shall be signed by the State Purchasing Director or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.

3. Termination for Funding Insufficiency

In addition to Contract terms relating to termination due to insufficient funding, a Customer may terminate any purchase order or other payment mechanism if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. The determination by the Customer of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

4. Termination for Cause

In addition to Contract terms relating to termination for cause, a customer may terminate its obligations, in whole or in part, to Supplier if it has provided Supplier with written notice of material breach and Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. The Customer may also terminate a purchase order or other payment mechanism or Supplier's activities under the Contract immediately without a thirty (30) day written notice to Supplier, if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements if such non-compliance relates or may relate to Supplier provision of products or services to the Customer or if Supplier's material breach is reasonably determined (i) to be an impediment to the function of the Customer and detrimental to the Customer, or (ii) when conditions preclude the thirty (30) day notice.

5. Termination for Convenience

In addition to any termination for convenience provisions in the Contract, a Customer may terminate a purchase order or other payment mechanism for convenience if it is determined that termination is in the Customer's best interest. Supplier will be provided at least thirty (30) days' written notice of termination.

6. Contract Management Fee and Usage Report

6.1 Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the

right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

6.2 While Supplier is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

6.3 All Contract Usage Reports shall meet the following criteria:

- i.** Electronic submission in Microsoft Excel format to strategic.sourcing@omes.ok.gov;
- ii.** Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;
- iii.** Submission no later than forty-five (45) days following the end of each calendar quarter;
- iv.** Contract quarterly reporting periods shall be as follows:
 - a.** January 01 through March 31;
 - b.** April 01 through June 30;
 - c.** July 01 through September 30; and
 - d.** October 01 through December 31.
- v.** Reports must include the following information:
 - a.** Procuring entity;
 - b.** Order date;

- c. Purchase Order number or note that the transaction was paid by Purchase Card;
- d. City in which products or services were received or specific office or subdivision title;
- e. Product manufacturer or type of service;
- f. Manufacturer item number, if applicable;
- g. Product description;
- h. General product category, if applicable;
- i. Quantity;
- j. Unit list price or MSRP, as applicable;
- k. Unit price charged to the purchasing entity; and
- l. Other Contract usage information requested by the State.

6.4 Payment of the contract management fee shall be delivered to the following address within forty-five (45) calendar days after the end of each quarterly reporting period:

State of Oklahoma
Office of Management and Enterprise Services, Central Purchasing
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

To ensure payment is properly accounted for, Supplier shall provide the following information with payment: (i) reference to the applicable Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s) and the amount of the contract management fee being paid for each contract number.

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, OMES-Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

1 Definitions

- 1.1 **COTS** means software that is commercial off the shelf.
- 1.2 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier.
- 1.3 **Data Breach** means the unauthorized access by an unauthorized person that results in the use, disclosure or theft of Customer Data.
- 1.4 **Host** includes the terms **Hosted** or **Hosting** and means the accessing, processing or storing of Customer Data.
- 1.5 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.6 **Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 1.7 **Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential

by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.

- 1.8 Personal Data** means Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.
- 1.9 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.10 State CIO** means the State Chief Information Officer or authorized designee.
- 1.11 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 1.12 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.
- 1.13 Work Product** means any and all deliverables produced by Supplier for Customer under a statement of work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (i) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts,

personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or statement of work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or a statement of work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Supplier personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2 Termination of Maintenance and Support Services

Customer may terminate maintenance or support services without an adjustment charge, provided any of the following circumstances occur:

- 2.1** Customer removes the product for which the services are provided, from productive use or;
- 2.2** The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).

If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 Compliance and Electronic and Information Technology Accessibility

State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at <https://omes.ok.gov/services/information-services/accessibility-standards>. Supplier shall provide a Voluntary Product Accessibility Template ("VPAT") describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.

4 Media Ownership (Disk Drive and/or Memory Chip Ownership)

- 4.1** Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the property of the Customer.
- 4.2** Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime (repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 Offshore Services

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 Compliance with Technology Policies

- 6.1** The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at https://omes.ok.gov/s/g/files/gmc316/f/InfoSecPPG_0.pdf.

Supplier's employees and subcontractors shall adhere to the applicable State IT Standard Methodologies and Templates including but not limited to Project Management, Business Analysis, System Analysis, Enterprise and IT Architecture, Quality, Application and Security Methodologies and Templates as set forth at <http://eclipse.omes.ok.gov>.

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

- 6.3** Supplier shall comply with the CJIS Security Policy as more particularly described at Appendix 2 attached hereto and incorporated herein.

7 Emerging Technologies

The State of Oklahoma reserves the right to enter into an Addendum to the Contract at any time to allow for emerging technologies not identified elsewhere in the Contract Documents if there are repeated requests for such emerging technology or the State determines it is warranted to add such technology.

8 Extension Right

In addition to extension rights of the State set forth in the Contract, the State CIO reserves the right to extend any Contract if the State CIO determines such extension to be in the best interest of the State.

9 Source Code Escrow

Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- 9.4** The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5** The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6** The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7** Supplier's ceasing of maintenance and support of the software; or
- 9.8** Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 Commercial Off The Shelf Software

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail.

11 Ownership Rights

Any software developed by the Supplier under the terms of the Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as “Work for Hire”, Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be

shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 Intellectual Property Ownership

The following terms apply to ownership and rights related to Intellectual Property:

- 12.1** As between Supplier and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier hereby agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is hereby effectively transferred, granted, conveyed, assigned and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.
- 12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier’s signature due to the dissolution of Supplier or Supplier’s failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier’s agent and Supplier’s attorney-in-fact to act for and in Supplier’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer’s sole expense, in the preparation and

prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or

necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

- 12.9** Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.
- 12.10** To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.
- 12.11** If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 Hosting Services

- 13.1** If Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract Hosts Customer Data in connection with an Acquisition, the provisions of Appendix 1, attached hereto and incorporated herein, apply to such Acquisition.

13.2 If the Hosting of Customer Data by Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract contributes to or directly causes a Data Breach, Supplier shall be responsible for the obligations set forth in Appendix 1 related to breach reporting requirements and associated costs. Likewise if such Hosting contributes to or directly causes a Security Incident, Supplier shall be responsible for the obligations set forth in Appendix 1, as applicable.

14 Change Management

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon renewal or if future bids submitted by Supplier are evaluated by the State.

15 Service Level Deficiency

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

16 Notices

In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

With a copy, which shall not constitute notice, to:

Information Services Deputy Counsel
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Appendix 1 to State of Oklahoma Information Technology Terms

The parties agree to the following provisions in connection with any Customer Data accessed, processed or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract

A. Customer Data

1. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).
2. Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
3. Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

B. Data Security

1. Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public

Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

2. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data.
3. Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
4. Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
5. Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.
6. Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
7. Any remedies provided in this Appendix are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

C. Security Assessment

1. The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards

during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.

2. Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

D. Security Incident or Data Breach Notification: Supplier shall inform Customer of any Security Incident or Data Breach.

1. Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
2. Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).
3. Supplier shall:
 - a. Maintain processes and procedures to identify, respond to and analyze Security Incidents;
 - b. Make summary information regarding such procedures available to Customer at Customer's request;
 - c. Mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Supplier; and

d. Document all Security Incidents and their outcomes.

4. If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

E. **Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Supplier.

1. Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
2. Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.
3. If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

F. **Notices**

In addition to notice requirements under the terms of the Contract and those set forth above, a request, an approval or a notice in connection with this Appendix provided by Supplier shall be provided to:

Chief Information Security Officer

3115 N. Lincoln Blvd

Oklahoma City, OK 73105

and

servicedesk@omes.ok.gov.

G. Supplier Representations and Warranties

Supplier represents and warrants the following:

1. The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
2. Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.
3. The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.
4. Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

H. Indemnity

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier's breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party's patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier's

opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

I. Termination, Expiration and Suspension of Service

1. During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.

2. In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;

b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or

c. a combination of the two immediately preceding options.

3. Supplier shall not take any action to intentionally erase any Customer Data for a period of:

a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;

b. 30 days after the effective date of termination, if the termination is for convenience; or

c. 60 days after the effective date of termination, if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

4. The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

5. Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

Appendix 2 to State of Oklahoma Information Technology Terms

INTRODUCTION

The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation (“FBI”), Criminal Justice Information Services (CJIS) Division’s CJIS Security Policy (“CJIS Security Policy” or “Security Policy” herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer (“CSO”) and the FBI CJIS Division’s Audit Staff.

CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. **Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”**

DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI and CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy **plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.**

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at: <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

Policy Requirement Checklist		Compliance checklist –
Policy Area 1	Information Exchange Agreements	
Policy Area 2	Security Awareness Training	
Policy Area 3	Incident Response	
Policy Area 4	Auditing and Accountability	
Policy Area 5	Access Control	
Policy Area 6	Identification and Authentication	
Policy Area 7	Configuration Management	
Policy Area 8	Media Protection	
Policy Area 9	Physical Protection	
Policy Area 10	Systems and Communications Protection and Information Integrity	
Policy Area 11	Formal Audits	
Policy Area 12	Personnel Security	

Attachment D-1

Information Security Requirements

1. General Information Security Requirements

- a. No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.
- b. Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.
- c. Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.
- d. Contractor or its subcontractors agree to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

2. HIPAA Requirements

- a. Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).
- b. If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse, and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor's security compliance as it pertains to this contract.
- c. Business Associate Terms Definitions:
 - i. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that "PHI" and "ePHI" shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. "Administrative Safeguards" shall have the same meaning as the term "administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business

Associate's workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.

- ii. Business Associate. "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
 - iii. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 C.F.R. 160.103.
 - iv. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
 - v. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.
- d. Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, "PHI") solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:
- i. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
 - ii. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
 - iii. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
 - iv. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
 - v. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA's compliance and the Secretary of the Department of Health and Human Services (HHS);
 - vi. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
 - vii. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the

form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;

- viii. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- ix. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- x. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual who's Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;
- xi. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
- xii. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
- xiii. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
- xiv. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to

- respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- xv. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and
 - xvi. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.
- e. Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:
- i. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
 - ii. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
 - iii. disclose PHI to report violations of law to appropriate federal and state authorities; or
 - iv. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;

- v. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
 - vi. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § (d)(1)].
- f. Obligations of Covered Entity
- i. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
 - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.
 - iii. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
 - iv. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
 - v. Covered Entity shall provide the minimum necessary PHI to Business Associate.
- g. Term and Termination:
- i. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
 - (1) retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
 - (3) continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - (4) not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under "Permitted Uses and Disclosures By Business Associate" that applied prior to termination; and
 - (5) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- ii. All other applicable obligations of Business Associate under this Agreement shall survive termination.
 - iii. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D).
- h. Miscellaneous Provisions:
- i. No Third Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
 - ii. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
 - iii. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
 - iv. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
 - v. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
 - vi. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
 - vii. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s)

to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

3. 42 C.F.R. Part 2 Related Provisions

- a. Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:
 - i. Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
 - ii. Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of any kind;
 - iii. Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
 - iv. Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).

- v. Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
- vi. Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
- vii. Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
- viii. Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;
- ix. Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.
- b. Data Security. The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.
- c. Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.
- d. Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.
- e. Redisclosure of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

4. Federal Tax Information Requirements IRS Publication 1075 (If Applicable)

- a. **PERFORMANCE:** If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent

within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

- i. All work will be performed under the supervision of the State of Oklahoma.
- ii. The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- iii. FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- iv. FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- v. The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- vi. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- vii. All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- viii. No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- ix. Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- x. To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

- xi. In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- xii. For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- xiii. The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

b. CRIMINAL/CIVIL SANCTIONS

- i. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- ii. Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- iii. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- iv. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material

in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- v. Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c. INSPECTION: The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

5. SSA Requirements (If applicable)

- a. PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
 - i. All work will be done under the supervision of the State of Oklahoma.
 - ii. Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
 - iii. All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

- iv. No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- v. The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- vi. Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- vii. Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful assess and/or disclosure.
- viii. Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.
- ix. The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- x. Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- xi. SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- xii. SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.

- xiii. If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
 - xiv. In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
 - xv. The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.
- b. **CRIMINAL/CIVIL SANCTIONS:** The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.
- i. **Civil Remedies.**
 - (1) In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of —
 - (a) actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
 - (b) the costs of the action together with reasonable attorney fees as determined by the court.
 - (2) An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where

parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

ii. Criminal Penalties

- (1) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).
- (2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- (3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

6. Child Support FPLS Requirements (If applicable)

- a. Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.

- i. This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- ii. This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

7. FERPA Requirements (If applicable)

- a. If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

8. CJIS Requirements (If applicable)

a. INTRODUCTION

This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.

b. CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”

c. DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI AND CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at:
<https://www.fbi.gov/services/cjis/cjissecurity-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

SW1041 Software

Exhibit 1

[illegible]

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D.1.7. Cost Savings - The Bidder will work in the best interest of the state and its customers to leverage volume or enterprise license agreements and maximize cost savings through better pricing, publisher's promotions, or other savings opportunities.

Carahsoft guarantees that we will work with our vendors to provide the lowest pricing and discounts available and to identify when enterprise or volume license agreements would be more beneficial to the purchasing agency. Additionally, Carahsoft will proactively notify all OK agencies when discounts and promotional offerings are available.

E. As referenced in subsection 8.2.H, a VPAT; Security Certification and Accreditation Assessment; service level agreements and proposed first draft of Statement of Work, are requested to be included in the Bid.

Please reference our response under Section 8, question II.

F. As referenced in subsection 8.2.I, pricing shall be proposed using the Exhibit 1 titled Price.

Carahsoft has provided Exhibit 1 with our submission.

G. As referenced in subsection 8.2.J, value-added products and/or services within scope of the Acquisition may be included in the Bid.

G.1. Bidder should provide information on value-add services that include but are not limited to product installation, maintenance and support, managed services, professional services and product training. Any Bidder offering product-related services must submit a description of those services and the related pricing in the Excel spreadsheet attached as Exhibit 2.

Carahsoft currently manages numerous contracts and is uniquely qualified to meet all of OMES' needs. To assist OMES in managing all of the purchases through this contract, Carahsoft will offer the following additional value-added services at no additional cost to the State.

- Dedicated Account Manager
- Program Management
- Dedicated Contract Website

The following is an in-depth description of the bulleted list above:

Dedicated Account Management

In support of the contract, Carahsoft will provide a team of sales representatives, technical resources, and management who will be dedicated to supporting your requirements and this contract. This team will be responsible for all aspects of contract management and is fully trained in the sales and configuration of all Adobe Products. Sales, order management, and contracting functions will be overseen by the Carahsoft Adobe management team and includes the following:

- Assistance with the license distribution procedures established by the contract
- Product expertise/assistance
- Configuration assistance

- Support for downloads
- Support for customers migrating from existing license contracts
- On demand historical download reports
- Contracts questions
- Assistance with product version, updates and upgrade questions
- Ensure timely delivery of Evidence of Entitlement (or related)
- Evidence of Entitlement (or related) supported by matching receipt
- Co-terming maintenance renewals and existing agreements

Name	Title	Years of Experience
Robert R. Moore	Vice President	25 years
Karina Woods	Operations Director	25 years
Julie Denworth	Marketing Director	20 years
Kristina Smith	Contracts Director	20 years
Tim Boltz	Sales Director	13 years
Bethany Blackwell	Sales Director	12 years
Mark Davis	Sales Manager	8 years
Stephen Dickerson	Sales Manager	8 years
Nate Pavlot	Sales Manager	8 years
Colby Bender	Contracts Manager	5 years

Program Management

Carahsoft will assign a Program Manager for this contract who will provide strategic leadership and vision while executing the contract. The Program Manager's responsibilities will include quality assurance, progress/status reporting, schedule, risk identification/handling/mitigation strategy and program reviews.

Dedicated Contract Website

Carahsoft will create and maintain an OMES website in accordance with this RFO. An example of what this website may look like may be found here:

<https://www.carahsoft.com/buy/slg-contracts/oklahoma-state-contracts/oklahoma-SW1056A> which is dedicated to OMES Contract # SW1056A for Software Products and Related Services.

Oklahoma OMES Contract # SW1056A

General Information	Products	Ordering
<p>Authorized Users:</p> <p>This contract is available for use by all Oklahoma customers, defined as the State of Oklahoma and any agencies and affiliates.</p> <p>DIR Cooperative Purchasing:</p> <p>The state of Oklahoma has entered into an agreement with the Texas Department of Information Resources (DIR) which authorizes them to access the terms and conditions of multiple DIR contracts. Oklahoma has used this authority to create contract number SW1056A, which is based off of DIR contract number DIR-TSO-4288. Terms of DIR Contract No. DIR-TSO-4288, as amended by the Vendor and DIR and including Appendices, are incorporated herein. Such terms not modified herein and terms of this Contract shall apply only to procurement transactions of Oklahoma customers under the IPPA.</p> <p>DIR Co-op Contract Program Review</p> <p>DIR Website for Contract DIR-TSO-4288</p> <p>Vendors</p>		<p>Mahlet Sergis Contracts Specialist (703) 581-6632 Mahlet.Sergis@carahsoft.com</p> <p>If you would like further information regarding our products, need a quote, or don't see what you need to purchase listed please email: SLEDcontracts@carahsoft.com</p> <p>Carahsoft Technology Corp. 11493 Sunset Hills Road Suite 100 Reston, VA 20190 Attn: Contracts Department</p>

The website that will be created for the contract shall include materials such as:

- Overview of services provided
- Contract Information
- Contract FAQ Document
- Product Information
- Catalog/ Pricelist Information
- Purchasing information
- Additional Contractual Information including warranties and OMES information

G.2. In addition to the Value Added services OMES directly associated with the sales of software, such as related maintenance and support agreements for new and previously purchased software, the Bidder would provide, at no additional cost, management services to include, but not be limited to, providing price quotes, tracking licenses (new and existing), management of licenses, monitoring volume levels and opportunities for cost savings, training, installation/de-installation/implementation support, and software advisement to OMES and/or OMES Customers.

Bidders would be expected to provide, at no additional cost, assistive and support services regarding the software that is representative of the State's interest and best value.

For the duration of this contract, Carahsoft will provide the services and functions required to assist in the management of all products provided under this contract, as they relate to purchasing, receiving, and tracking of software and media, and will perform the following functions:

- a. **License and Software Media Tracking.** Provide precise and complete records to OK customers, with each delivery order, a License Confirmation Certificate or other form of proof of licensing (e.g., invoice) and rights to use for specified software products by edition and version, and reflecting Software Assurance when purchased with annotated expiration date or term.
- b. **Version/Patch Alerts.** Carahsoft will provide alerts to new versions and patches available for the products covered under this contract.
- c. **Beta Versions of Software.** Carahsoft will provide OK OMES access to early release versions of Adobe software when available so that configuration/change, patch and asset management test engineering activities can become familiar with the product before it is publicly released.
- d. **Monthly Status/Progress Reviews.** Carahsoft will participate in quarterly status/progress reviews with Government representatives, as designated by the contracting officer, and will provide a consolidated quarterly report.

Reporting

In managing similar Enterprise-wide Software contracts with other government agencies, Carahsoft has developed best practices and provides quarterly or monthly usage reports to several customers. As part of this contract, Carahsoft will provide monthly license distribution reports to include the following:

- Dates licenses were downloaded
- Dates licenses were shipped
- Ship to Point of Contact
- Number of Licenses
- Version numbers
- Deliver to address
- Current price of the software

This report will differentiate between existing licenses being rolled into the contract, and new licenses deployed under this agreement.

Appendix 2: Carahsoft Cloud Service Offerings

The following table contains a list of cloud service offerings within Carahsoft's portfolio that are FedRAMP and/or StateRAMP Authorized.

Company	Cloud Computing Service	Category
AchieveIt Online, LLC	AchieveIt	SaaS
Acquia Inc.	Acquia Cloud	PaaS
Adobe	Adobe - Adobe Document Cloud	SaaS
Adobe	Adobe Sign	SaaS
Adobe	Adobe Acrobat Sign for Government	SaaS
Adobe	Adobe Connect Managed Services (ACMS-GC)	SaaS
Adobe	Adobe Experience Manager Managed Services (AEMMS-GC)	SaaS
Akamai	Content Delivery Services	IaaS
Amazon Web Services, Inc.	Caliber Records Management System	SaaS
Amazon Web Services, Inc.	Migration Evaluator	SaaS
Amazon Web Services, Inc.	AWS GovCloud	SaaS, PaaS, IaaS
Amazon Web Services, Inc.	AWS US East/West	SaaS, PaaS, IaaS
Anaplan	Anaplan	SaaS
Apptio	Cloudability	SaaS
Apptio	The Apptio Technology Business Management (TBM)	SaaS
Armedia, LLC	Armedia Content Cloud	SaaS
Armis	Armis FedRAMP Edition (AFE)	SaaS
Atlassian	Atlassian Confluence	SaaS
Atlassian	Jira Service Desk	SaaS
Atlassian	Trello	SaaS
Autodesk	Autodesk Build, Autodesk Docs, BIM360 Ops	SaaS
Autodesk	Autodesk for Government	SaaS
Automox	Automox	SaaS
AvePoint Inc.	AvePoint Online Services for US Government (AOS-USG)	SaaS
Axon	US Axon FedCloud	SaaS

Company	Cloud Computing Service	Category
Axon	US Axon FedCloud - High	SaaS
BlackBerry	BlackBerry Cloud - AtHoc Services for Government (ACSforGov)	SaaS
BlackBerry	BlackBerry CylanceProtect & CylanceOptics	SaaS
BlackBerry	BlackBerry Government Mobility Suite	SaaS
Boomi	Boomi Flow	SaaS
Boomi	AtomSphere	SaaS
Box Inc.	Box Enterprise Cloud Content Collaboration Platform	SaaS
Box Inc.	Box Enterprise Cloud Content Collaboration Platform - High	SaaS
Broadcom	Clarity PPM	SaaS
Broadcom	General Support Systems (GSS)	PaaS
Broadcom	Rally	SaaS
C3.ai	C3 AI Suite	SaaS
Centrify	Centrify Privileged Access Service	SaaS
Code42 Software Inc.	CrashPlan Cloud	SaaS
Code42 Software Inc.	Incydr Gov	SaaS
Cofense	Cofense PhishMe	SaaS
Colibra	Colibra Data Intelligence Cloud (CDIC)	SaaS
Commvault Systems, Inc.	Metallic Government Cloud	SaaS
Coupa Software Inc	Business Spend Management (BSM) Platform	SaaS
Coupa Software Inc	Coupa Spend Management for Federal	SaaS
CrowdStrike, Inc.	Falcon Complete: Managed EndPoint Security	SaaS
CrowdStrike, Inc.	Falcon Platform	SaaS
CyberArk	Cyberark Privileged Access Manager	SaaS
CyberArk	Privilege Cloud - Commercial	SaaS
CyberArk	CyberArk Endpoint Privilege Manager for Government	SaaS
CyberArk	CyberArk Identity for Government	SaaS
Databricks, Inc.	Databricks	SaaS, PaaS
Datadog	Datadog for Government	SaaS
Decision Lens Inc.	Decision Lens Software	SaaS

Company	Cloud Computing Service	Category
DocuSign	DocuSign Cloud	SaaS
DocuSign	Electronic Signature	SaaS
DocuSign	DocuSign CLM	SaaS
DocuSign	DocuSign Federal (eSignature, Gen, Negotiate)	SaaS
Druva, Inc.	Druva Hybrid Workloads	SaaS
Druva, Inc.	Druva inSync	SaaS
Eightfold AI Inc.	Eightfold Talent Intelligence Platform (TIP)	SaaS
Elastic	Elastic Cloud (non-gov)	SaaS
Elastic	Elastic Cloud on GovCloud	SaaS
Equifax	Affordable Care Act Management Program (ACAMP)	SaaS
Equifax	Graduate Outcomes	SaaS
Equifax	I-9 Management	SaaS
Equifax	Equifax Government Data Exchange (EGDE)	PaaS
Experian Information Solutions, Inc.	Identity Management	SaaS
Experian Information Solutions, Inc.	uConfirm	PaaS
Exterro, Inc.	Exterro E-Discovery and Legal Software Platform	SaaS
ExtraHop Networks	ExtraHop Networks Inc.	SaaS
FireEye, Inc.	FireEye Email Security GovCloud	SaaS
Forcepoint	Bitglass SSE	SaaS
Genesys	Genesys Cloud CX	SaaS
Genesys	Genesys Cloud CX	SaaS
Google	Google Services (Google Cloud Platform Products and underlying Infrastructure)	SaaS, PaaS, IaaS
Google	Google Workspace	SaaS
Granicus	Exchange Platform	SaaS
Granicus	GovDelivery Communications Cloud	SaaS
Hyland Software, Inc.	OnBase	SaaS
iboss	iboss Government Cloud Platform (IGCP)	SaaS
Identity Automation, LP	RapidIdentity Cloud	SaaS
Infoblox	Infoblox NIOS DDI	IaaS

Company	Cloud Computing Service	Category
Infoblox	BloxOne Threat Defense Federal Cloud	SaaS
Informatica	Informatica Master Data Management	SaaS, IaaS
Informatica	Informatica Intelligent Cloud Services (IICS)	SaaS
Ivanti	Ivanti Neurons for MDM (Formerly MobileIron Government Cloud)	SaaS
Ivanti	Ivanti Service Manager	SaaS
Juniper Networks (US), Inc.	MIST AI & CLOUD	SaaS
Keeper Security	Keeper Security Government Cloud (KSGC)	SaaS
KnowBe4, Inc.	KnowBe4 Platform (KMSAT + PhishER)	SaaS
Lookout, Inc.	Lookout Security Platform	SaaS
Mandiant, Inc.	Mandiant Advantage Services (MAS)	SaaS
McAfee Enterprise	MVISION for Endpoint (ePO, EDR)	SaaS
MicroFocus	ALM Octane	SaaS
MicroFocus	ALM Quality Center	SaaS
MicroFocus	Load Runner Cloud (LRC)	SaaS
MicroFocus	Load Runner Enterprise (LRE)	SaaS
MicroFocus	Product and Portfolio Management (PPM)	SaaS
MicroFocus	Unified Functional Testing (UFT)	SaaS
MicroFocus	Fortify on Demand	SaaS
Microsoft	Microsoft Defender for Endpoint Server	SaaS, PaaS, IaaS
Microsoft	Microsoft Azure Commercial Cloud (includes Dynamics 365)	SaaS, PaaS, IaaS
Microsoft	Microsoft Azure Government (includes Dynamics 365 US Government)	SaaS, PaaS, IaaS
Microsoft	Microsoft Dynamics 365 -duplicate	SaaS
Microsoft	Microsoft Dynamics 365 US Government -duplicate	SaaS
Microsoft	Microsoft Office 365 GCC High	SaaS
Microsoft	Microsoft Office 365 Government Community Cloud (GCC)-dup	SaaS, PaaS, IaaS
Microsoft	Office 365 Multi-Tenant & Supporting Services	SaaS
Mimecast	Mimecast Email Security	SaaS
MongoDB	MongoDB Atlas for Government	SaaS
MuleSoft	Mulesoft Cloudhub	SaaS, PaaS

Company	Cloud Computing Service	Category
MuleSoft	MuleSoft Government Cloud	PaaS
Netskope, Inc.	Netskope OneCloud Government	SaaS
Netskope, Inc.	Netskope Security Cloud	SaaS
New Relic	New Relic	SaaS
Nintex	Nintex Drawloop DocGen	SaaS
Nintex	Nintex Workflow Cloud for Government (NWC-G)	SaaS
Nuance	Dragon Medical One	SaaS
Nuance	Nuance Dragon Medical One	SaaS
Nutanix	Nutanix Government Cloud Services	SaaS, PaaS
Okta	Okta IDaaS Government High Cloud (GHC)	IaaS
Okta	Okta IDaaS Regulated Cloud	SaaS
OnSolve LLC	OnSolve Platform for Critical Event Management	SaaS
Oracle	Oracle Taleo (Recruit Project)	SaaS
Oracle	NetSuite	SaaS
Oracle	Oracle Cloud Infrastructure	PaaS, IaaS
Oracle	Aconex for Defense	SaaS
Oracle	Federal Managed Cloud Services	IaaS
Oracle	Fusion Cloud	SaaS
Oracle	Government Cloud - Common Controls	IaaS
Oracle	Oracle Cloud Infrastructure-Government Cloud	PaaS, IaaS
Oracle	Oracle Enterprise Performance Management (EPM)	SaaS
Oracle	Oracle Enterprise Performance Management (EPM) - Moderate	SaaS
Oracle	Oracle Service Cloud	SaaS
Oracle	Oracle Service Cloud (DOD)	SaaS
Oracle	Taleo Cloud - U.S. Government Cloud	SaaS
ORock Technologies, Inc.	ORockCloud	PaaS, IaaS
PagerDuty	PagerDuty Incident Response	SaaS
Palantir Technologies Inc.	Palantir Federal Cloud Service	SaaS
Palo Alto Networks, Inc.	IoT Security (Formerly ZingBox)	SaaS

Company	Cloud Computing Service	Category
Palo Alto Networks, Inc.	Palo Alto Networks Government Cloud Services - Prisma Access	SaaS
Palo Alto Networks, Inc.	Palo Alto Networks Government Cloud Services - WildFire	SaaS
Palo Alto Networks, Inc.	Palo Alto Networks Government Cloud Services (now including Prisma Access and WildFire)	SaaS
PaymentWorks	PaymentWorks	SaaS
Ping Identity Corporation	PingOne for Government	SaaS
Proofpoint, Inc.	Cloud Access Security Broker (CASB)	SaaS
Proofpoint, Inc.	Proofpoint Email and Information Protection Service	SaaS
Proofpoint, Inc.	Proofpoint Email Archive	SaaS
Proofpoint, Inc.	Proofpoint Security Awareness Training	SaaS
Proofpoint, Inc.	Proofpoint Targeted Attack Protection	SaaS
Qualtrics	Qualtrics XM Platform - Commercial	SaaS
Qualtrics	Qualtrics XM Platform - GovCloud	SaaS
Qualys	Qualys Cloud Platform	SaaS
Rackspace Government Solutions	Rackspace Government Cloud	PaaS
Red Hat	Red Hat OpenShift Service on AWS (ROSA)	PaaS
RSA	Archer Integrated Risk Management (Hosted)	SaaS
RSA	Archer Integrated Risk Management (SaaS)	SaaS
RSA	RSA SecurID Federal	SaaS
RSA	SecurID – Federal Edition - JAB	SaaS
Rubrik	Rubrik	SaaS
SailPoint Technologies, Inc.	IdentityNow	SaaS
SailPoint Technologies, Inc.	Identity Security	PaaS
SailPoint Technologies, Inc.	Identity Security - SaaS	SaaS
Salesforce	Salesforce for Higher Education Suite	SaaS
Salesforce	Salesforce Marketing Cloud	SaaS
Salesforce	Salesforce Service Cloud	SaaS
Salesforce	Salesforce Government Cloud	SaaS, PaaS
Salesforce	Salesforce Government Cloud Plus	SaaS, PaaS

Company	Cloud Computing Service	Category
SAP Concur	SAP Concur	SaaS
SAP National Security Services Inc.	SAP NS2 Cloud Intelligent Enterprise	SaaS, PaaS
SAP National Security Services Inc.	SAP NS2 Secure Node with SuccessFactors Suite - DoD	SaaS
SAS Institute, Inc.	SAS Cloud for Government	PaaS
SAS Institute, Inc.	SAS Intelligent Analytics Cloud	SaaS
Saviynt, Inc.	Saviynt Security Manager	SaaS
Securonix, Inc.	Securonix Security Operations and Analytics Platform	SaaS
Sentinel Labs, Inc.	SentinelOne Singularity Platform	SaaS
Sentinel Labs, Inc.	SentinelOne Endpoint Protection Platform	SaaS
ServiceNow	ServiceNow - Ticketing System	SaaS
ServiceNow	ServiceNow Government Community Cloud	SaaS, PaaS
Skyhigh Security	Security Service Edge (Formerly McAfee MVISION)	SaaS
Slack Technologies	Slack	SaaS
Smartsheet	SmartSheet Platform	SaaS
Smartsheet	Smartsheet Gov	SaaS
Snowflake Inc.	The Data Cloud on AWS GovCloud	SaaS
Snowflake Inc.	The Data Cloud on AWS US East/West	SaaS
Snowflake Inc.	The Data Cloud on Azure Government	SaaS
Social Solutions	Apricot 360	SaaS
Social Solutions	Apricot Core	SaaS
Software AG Government Solutions	Software AG Government Cloud	PaaS
SolarWinds	IT Service Desk (ITSM)	SaaS
Splunk	Splunk Cloud - Commercial	SaaS
Splunk	Splunk Cloud	SaaS
Sprinklr, Inc.	Sprinklr CXM for Government (CXM)	SaaS
Talkdesk	CX Cloud	SaaS

Company	Cloud Computing Service	Category
Tanium	Tanium Cloud for US Government (TC-USG)	SaaS
Tenable	Tenable.ep	SaaS, PaaS
Tenable Public Sector (TPS)	Tenable.io - FedRAMP / StateRAMP	SaaS
TIBCO Software	TIBCO Spotfire Cloud Enterprise	SaaS
TIBCO Software	TIBCO WebFOCUS	SaaS
Trustwave Government Solutions	Trustwave Fusion	IaaS
Twilio	Messaging	SaaS
Tyler Federal, LLC	Tyler Federal Product Suite	SaaS, PaaS
Tyler Technologies, Inc.	Tyler Data Platform, powered by Socrata	SaaS
UiPath	Automation Cloud Public Sector	SaaS
Veracode	Veracode Online Application Security Scanning Platform for Government	SaaS
Virtru	Virtru Data Protection Platform	SaaS
VMware, Inc.	vRealize Log Insight Cloud and Operations Cloud	SaaS
VMware, Inc.	VMware Cloud on AWS GovCloud (VMC)	IaaS
VMware, Inc.	VMware Government Services (VGS)	IaaS
VMware, Inc.	Workspace ONE	SaaS
Wasabi	Wasabi Cloud Object Storage	IaaS
Wickr	Wickr for Government (WickrGov)	SaaS
Zoom Video Communications, LLC	Zoom Unified Communications Platform	SaaS
Zoom Video Communications, LLC	Zoom for Government	SaaS
Zoom Video Communications, LLC	Zoom for Government - JAB	SaaS
Zscaler	Zscaler Internet Access – Government (Secure Web Gateway – vTIC)	SaaS
Zscaler	Zscaler Internet Access – Government (Secure Web Gateway – vTIC) - High	SaaS
Zscaler	Zscaler Internet Access – Government (Secure Web Gateway – vTIC) - High	SaaS
Zscaler	Zscaler Private Access – Government (Zero Trust Exchange – VPN Replacement)	SaaS
Zscaler	Zscaler Private Access – Government (Zero Trust Networking – VPN Replacement)	SaaS

Carahsoft's Example Statement of Work for the

Oklahoma Office of Management and Enterprise Services



OKLAHOMA
Office of Management
& Enterprise Services

Request for Proposal

Software Value-Added Resellers

Solicitation Number: 0900000556

Wednesday,
October 12th, 2022

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1. OVERVIEW

1.1. Revision History

Date	Version

1.2. Statement of Work

This statement of work (“**Statement of Work**”) is issued under and incorporates the terms of Master Services Agreement between Carahsoft Technology Corp. (“**Carahsoft**”) and [Organization.Name] (“**Client**”) dated X.

Carahsoft shall provide and deliver to Client Deliverables and Services on behalf of [Vendor Name], (“**Vendor**”) as set out in this Statement of Work hereafter referred to as “SOW”. Client acknowledges that Vendor may incorporate pre-built components and pre-existing software packages into Deliverables to be developed under this SOW.

This SOW represents the complete baseline for scope, services, service deliverables, and acceptance applicable to this project. All changes to this document will be managed in accordance with the Change Control process described in Section Change Control.

1.3. Overview

Client has engaged Carahsoft to provide its Vendor Cloud Software-as-a-Service Product (“Vendor Cloud”). Vendor will provide Vendor Cloud configured in accordance with industry best practices as an implementation project.

Vendor Cloud provides a set of product features that can be configured or customized to provide Client specific business rules, workflows, forms, data types, permissions and other configuration options. The services described in this SOW will cover the implementation phase of the Vendor Cloud.

Vendor Cloud allows Client to manage licensee information through an administrative workbench (the “Workbench”), allow prospective licensees to apply and update their information through a licensee module, allow approved licensees to self-serve many key functions and provide public access to public information about licensees through the public register / license verification system consistent with legislative authority.

1.4 Success Criteria

The objectives of this project include:

- Implementation of Vendor Cloud configured to meet Client requirements
- Migration of existing Client data into Vendor Cloud
- Training of Client staff
- Transition to ongoing Support and connecting Client to Customer Success Team and Service Desk

The expected benefits are as follows:

- Improved reporting
- Improved data integrity
- Paper process reduction/elimination
- Automate processes where sensible and impactful to a material threshold of the licensee base (e.g. initial registration, exam registration, renewal of license, submission of complaints, change of status)
- An intuitive system for applicants, members, and staff.

2 PRICING

Active Licenses	Price Per Active License Per Month	Annual Price
[Deal.Number_of_Active_Licensees]	\$(Deal.Price Per Active Licensee (Per Month).Value]	\$(AnnualContractCost]

Professional Services / Project Fees	One-Time Cost
Professional Services / Project Fees	\$(project.fees]

One-Time Cost	One-Time Cost
Support Services	\$(professional.services]

3 SCOPE OF PROJECT

Vendor Cloud provides a number of features that can be enabled for Clients as needed to meet their specific requirements. The following are the product features that will be provided as part of the implementation.

Product Feature	Included/Excluded
Applicant Module The web module used by applicants to establish an account with the regulatory body and apply for a license.	Configuration of the Applicant Module to support the following types of applicants. Individuals: Application Type <ul style="list-style-type: none"> License Type Application Type <ul style="list-style-type: none"> License Type
Licensee Module The web module used by existing licensees/registrants to view and update their profile, register and report on continuing education activities, make payments, renew their license and download wallet cards.	Configuration of the Applicant Module to support the following types of licensees/registrants. Individuals: Application Type <ul style="list-style-type: none"> License Type Application Type <ul style="list-style-type: none"> License Type
Public Register Module The public-facing licensee/registant database with searchable records displaying the licensee's profile including authorizations, public notices and any other information required by legislation. Public Register Module allows to check the public to search for status of the licensee or business and displays disciplinary actions and licensee history.	<ul style="list-style-type: none"> Configuration of Module Included.
Inspections Module Case management solution to accommodate site assessors, designed to accommodate the process of scheduling inspections, collaborating, and collecting data on subjects.	<ul style="list-style-type: none"> Configuration of facility-based inspections for the following processes: <ul style="list-style-type: none"> Initial Inspection Re-Inspection Unscheduled Inspection Configuration of an inspection associated with an entity/facility application
Online Complaints Module Members of the public can submit a complaint against a licensee and detail specific information related to the complaint in support of any investigatory needs.	<ul style="list-style-type: none"> Configuration of an online complaint intake form for complaints against a licensed licensee or entity

Product Feature	Included/Excluded
Business Application Module	Configuration of the Business Application Module to support the following types of licensees/registrants. Business Application Type <ul style="list-style-type: none"> License Type Application Type <ul style="list-style-type: none"> License Type
Business License Module	Configuration of the Business License Module to support the following types of licenses/registrants. Business Application Type <ul style="list-style-type: none"> License Type Application Type <ul style="list-style-type: none"> License Type
Workbench Staff Module The administrative back-office used by Client staff to manage licensees and configuration of Vendor Cloud.	<ul style="list-style-type: none"> Provisioning of administrative users and configuration of permissions Configuration and maintenance of workflows, forms, rules and processes related to all the other module provided. Uploading content such as text, images, certificates, etc. This includes managing records and processes related to registrations and renewals, tracking continuing competence activities and certifications, issuing invoices, processing payments, tracking complaints and disciplinary procedures/enforcement activities and reporting analytics. Complaints and discipline can track and manage all incoming complaints, evidence, witnesses, investigators, statutory dates, and correspondence. From the investigation stage, through to various levels of hearings, along with the tracking of respective outcomes.
Messaging Ability to send mass emails to customizable lists of licensees	<ul style="list-style-type: none"> Our team can configure bulk transaction emails. Client to provide one email template per transaction scenario.

Product Feature	Included/Excluded
Integrations Ability to send messages (API Calls) based on triggered events within the system to an external API and/or receive messages from external systems.	<ul style="list-style-type: none"> ▪ Payment processor – Included <ul style="list-style-type: none"> ▪ Assumes payment processor is one of the following payment providers: [Payment.Processor] ▪ Integrations with System X to facilitate data extract to an external receipt for regulatory reporting – Not Included ▪ X – Not Included
Data Extracts	Custom reports not included in the out-of-the-box Analytics Modules, including regular (i.e. daily, weekly, monthly, annual) data extracts, such as; <ul style="list-style-type: none"> ▪ CIHI ▪ eHealth reporting ▪ Regulatory reports for external stakeholders

Product Feature	Included/Excluded
Reports <ul style="list-style-type: none"> ▪ Predefined reports provided as part of the product 	<ul style="list-style-type: none"> ▪ Count of Licensees by Type with Total ▪ Count of Licensees by Type and Status ▪ Count of Licensees by State/Province and City ▪ Count of Licensees by Type and Location ▪ Count of Registrations (initial registration date) by Type and Period (Today, This Week, This Month, This Year) ▪ Count of Registrations by Year and Type (for the past ten (10) years) - low ▪ Name of Registrants with Count of Bad Declarations ▪ Count of Applications by Type and Submission Date (Today, This week, This Month, This Year) ▪ Count of Applications received per year and type (last ten (10) years) ▪ Counts of Open Application (started but not submitted) by Type and Period (today, this week, this month, this year) ▪ Count of denied application in the past one year ▪ Total Payment Amounts received by period (today, this week, this month, this quarter, thus year) ▪ Total Payment amounts by Invoice Item by period (as above) ▪ Total Amounts owing by Invoice Item by Period (as above) ▪ Complaints/Reports by category of allegation (lifetime) ▪ Count of Complaints received by License Type ▪ Counts of complaints per Licensee ▪ Counts of Licensees by Complaint outcomes ▪ Counts of Licensees with complaints in the same category of allegation ▪ Counts of Complaints by Age of Licensee ▪ Counts of complaints by years in profession (based on initial registration date) ▪ Counts of complaints by licensee gender ▪ Counts of complaints/investigations referred for disciplinary action

Product features that are currently not in scope can be added as a Change Request or separate project and are not included in the scope of this project.

Additional features may be added as part of the ongoing enhancement and management of the Vendor Cloud product. As features come available, additional services may be required to configure and/or customize each to meet Client requirements. These additional services can be added as a Change Request or a separate SOW and are not included in the scope of this project.

3.1 Additional Product Assumptions

The following are additional product assumptions that impact the implementation of features:

Accessibility

- Must meet compliance standards including but not limited to WCAG Level A, and WCAG Level AA

Browser Support

- All applications must run on modern W3C compliant browsers, including tablet and mobile device platforms such as Apple and Android. These browsers include, but are not limited to, current and the three last versions of Firefox, Opera, Google Chrome, Microsoft Edge and Safari and the most recent version of Internet Explorer (IE11).

3.2 Project Completion

The project will be considered complete when any of the following are met:

1. All of the service deliverables identified as in-scope within this SOW have been completed, delivered and accepted or deemed accepted, including approved Change Request Forms; or
2. A signed Project Completion Form has been received from the Client; or
3. All Level 1 and 2 application defects discovered during the User Acceptance Testing (UAT) phase have been fixed during the UAT phase and code delivery has been validated by the Client within ten (10) days of delivery; or
4. The project (application or web site) is in functional use either internally or externally; or
5. This agreement is terminated pursuant to the provisions of the agreement.

4 PROJECT ACTIVITIES

The following describes the activities that will be performed and the deliverables provided as part of the project.

4.1 Project Description

Vendor will onboard and collaborate with Client to initialize, configure and launch Vendor Cloud for the designated Client organization. As part of the project, Vendor will migrate Client's data and provide training services to prepare Client for launch. Vendor will also provide transition to post-launch maintenance and ongoing Client support services provided by the Vendor Service Desk and Vendor Customer Success Team.

The project will be managed based on industry standard project management and software delivery methods as described in section 5 below.

4.2 Project Team and Stakeholders Responsibilities

Stakeholder	Role	Responsibilities
Agency Sponsor	Project Sponsor	<ul style="list-style-type: none">▪ Reviews and approves documents and deliverables▪ Participates in review sessions to collect and document the business requirements▪ Participates in meetings when required▪ Participates in the training and data conversion activities▪ Serves as a subject matter expert for requirements
Agency Staff	Subject Matter Experts	<ul style="list-style-type: none">▪ Participates in meetings when required▪ Participates in design of business process definitions.▪ Provides a list of all data required to load into the new system.▪ Conducts data clean-up to ensure the data is accurate and up to date.▪ Conducts User Acceptance Testing (UAT)

Stakeholder	Role	Responsibilities
Vendor Project Manager	Project Manager	<ul style="list-style-type: none"> Actively manages, communicates, and mitigates project risks and issues and escalates when necessary Manages sponsor, stakeholder, and team expectations throughout the project Provides detailed project planning documentation <ul style="list-style-type: none"> (Statement of Work, Risk Management Log, Status Reports, Schedule, etc.) Responsible for managing the execution of all project milestones/deliverables Provides leadership and actively manages the project team resources within the confines of the project Organizes Inter-Departmental work groups and team meetings, when necessary Monitors project progress; individual and team performance against work estimates and assists when necessary to ensure that the project stays on schedule, cost, scope and quality Manages project scope and escalates issues where necessary Provides project updates and status reports to all project stakeholders Resolves cross-functional issues at project level, escalates where necessary
Vendor Project Coordinator	Project Coordinator	<ul style="list-style-type: none"> Assists the Project Manager with the coordination of resources, meetings, and information
Project Team	Regulatory Consultant	<ul style="list-style-type: none"> Provides subject matter expertise on regulation and/or regulatory agency processes
Project Team	Analyst	<ul style="list-style-type: none"> Assist in defining the project Gather requirements from business units or users Works closely with the onboarding configuration team to ensure data is mapped and loaded in the new system correctly. Works closely with Client to ensure the project meets business needs. Test solutions to validate objectives

Stakeholder	Role	Responsibilities
		<ul style="list-style-type: none"> Configures the system from requirement specifications and any related documentation.
Project Team	Trainer	<ul style="list-style-type: none"> Analysis of training needs with client Coordinate with client to schedule training Conduct required training on product solution Create document training summaries and evaluation Evaluate training requirement post launch
Project Team	Technical Architect	<ul style="list-style-type: none"> Provide enterprise integration with external systems Custom architecture and design of technical solutions
Project Team	QA	<ul style="list-style-type: none"> Functional Testing Regression Testing Payment Testing

4.3 Project Phases, Activities and Deliverables

Activities	Details	Key Activities
Phase 1: Planning and Initiation		
Kick-Off Meeting	Project Manager will schedule a Kick-off meeting that accommodates the Agency, and Project Team members. The purpose of the meeting is to facilitate introductions and review the Scope of Work.	<ul style="list-style-type: none"> ▪ Introductions ▪ Review Scope of Work ▪ Review implantation approach ▪ Next Steps
Collecting Information	<p>After the meeting, the Project Manager will send a follow up email to collect additional information and let Agency know where to store information.</p> <p>Vendor will provide links to secure folders where Agency can upload:</p> <ul style="list-style-type: none"> ▪ Relevant documentation regarding current applications, workflows, etc. ▪ Data: anything with private information will be uploaded here, as this ensures the data is kept secure. Data Sample and Final Data is also stored in this secure location, as is payment processor information. ▪ Templates for certificates and wallet cards. Agency will need to review and make desired updates 	<ul style="list-style-type: none"> ▪ Collect Agency documentation, data, and template updates
Solution Package	Vendor will create a solution document ("Solution Package") that fully outlines the scope (user stories) and the third party integrations that will be delivered this documents is signed off by the Agency before configuration begins.	<ul style="list-style-type: none"> ▪ Deliverable - Solutions Package ▪ Requires Agency sign-off

Activities	Details	Key Activities
Milestones and Timeline Review	Milestones and timeline will be reviewed once Agency has signed off on the Solutions Package.	<ul style="list-style-type: none"> ▪ Deliverable – Implementation schedule ▪ Re-estimated schedule and cost based on any new requirements identified – this will follow the Change Control process outlined in section 5.6 ▪ Formal sign-off of any change requests to update budget and timelines, if required
Phase 2: Execution		
Configuration	Configuration of the environment is completed using a module-based agile approach. Agency collaboration during the configuration process is critical for implementation success.	<ul style="list-style-type: none"> ▪ Solution configuration based on user stories – This will be a series of workshops requiring Agency collaboration ▪ Corrected data / data mapping uploaded ▪ Agency provides documents for email and letter templates ▪ Analyst transfers data to modules, subject to receipt from Agency (refer to Data Migration activity) ▪ Payment processor integration if applicable <ul style="list-style-type: none"> ○ Deliverable – configured system ready for Testing
Data Migration	Data Migration is to be provided by the Agency in CSV format based upon Vendor's standard data dictionary and Excel templates.	<ul style="list-style-type: none"> ▪ Data mapping ▪ Convert Agency provided data

Activities	Details	Key Activities
Testing	<p>After configuration is complete, Agency will have the opportunity to complete User Acceptance Tests. Our agile approach includes multiple test cycles as the modules are configured. This allows agencies to engage with the solution much earlier in the implementation process. Participants will have access to a test environment and training materials will be provided. Vendor will complete the following testing:</p> <ul style="list-style-type: none"> Pre-launch QA test – This test is to assure that modules are working Smoke test – This test occurs after Vendor loads the Agency provided data. The QA Team will test the functionality and ensure all is functioning properly. If no blockers are found, the process can continue to the next step. Penny test – A penny test is conducted to test the connection between Vendor Cloud and the payment processor. The transaction is submitted for a penny. 	<ul style="list-style-type: none"> Pre-Launch QA test Smoke Test Penny Test User Acceptance Testing - Requires Agency sign-off
Training	Please see the training section. This will happen in conjunction with implementation for each module as they are configured.	<ul style="list-style-type: none"> Training needs analysis Training facilitation Training evaluation Post-launch training need analysis
Deployment	Preparing to deploy to the Production environment	<ul style="list-style-type: none"> Deployment Plan
Go Live	Configured system will be launched to production.	<ul style="list-style-type: none"> Production Deployment
Phase 3: Project Closure		

Activities	Details	Key Activities
Post Go Live / Support Transition	<p>Vendor's project team will be providing support for four (4) weeks following go- live.</p> <p>Please note that after two (2) weeks, the primary point of contact will move to your Customer Success Manager (CSM).</p>	<ul style="list-style-type: none"> ▪ Week 1 original team is checking in daily ▪ Week 2 original team is supporting, with external/ internal hand offs to support team ▪ Week 3 Customer Success Manager is now the point of contact, original team moves into the background but supports at 25% ▪ Week 4 same as week 3 ▪ Full transition to Support team after Week 4.
Project Closure	<p>Original team closes the Project and transitions to support team (Service Desk and Customer Success Manager).</p> <p>Customer Success Manager becomes the Agency contact for all enhancements or support moving forward. Project is formally closed.</p>	<ul style="list-style-type: none"> ▪ Project closure and Agency sign- off ▪ Transition to Support Team

4.4 Support During Onboarding

For any questions, comments, concerns during the project, please reach out to your Project Manager or Program Manager. Vendor will be available to help address all items during onboarding; Vendor's primary goal is to ensure your onboarding is smooth and efficient.

4.5 Post Onboarding Support

The project team will provide post-onboarding support for a period of four (4) weeks from the day the new system has been successfully deployed to production. During this period, the onboarding team will resolve outstanding bugs/defects and address any questions related to the onboarding.

After the initial two (2) weeks of the post-onboarding support period, the new system will be transitioned to the customer service desk. The customer service desk will continue to provide Client support moving forward. The project team resources will be available to support the customer service desk.

All requests for changes outside the original scope for the newly launched system will be required to follow the change request process, this is initiated by creating a request for change ticket through the customer service desk.

4.6 Exclusions

The following are not included in the scope of this project:

- Updates to the Client's public facing website or other websites not part of the Vendor Cloud product.
- Ongoing training and change management after the launch of the Vendor Cloud product.
- General I.T. consulting services, cloud migration, analytics-as-a-service
- Implementation of custom reports
- Adding, configuring and/or changing user permissions and access rules
- Cleaning up or correcting data to be migrated
- Any item not specifically listed as in-scope

4.7 Project Schedule

The project is estimated to take TBD weeks in duration.

NOTE: The Vendor Project team is engaged to start Project activities once payment is received from Client for the first invoice. The Project start date will be mutually agreed upon receipt of Client payment.

Project Phase/Deliverable	Duration
Phase 1: Planning and Initiation	TBD
Phase 2: Execution	TBD
Phase 3: Project Closure	4 weeks

If there are any delays in the sign-off of the project (e.g., the project start date is delayed), the remaining deliverable dates will be shifted in accordance with the delay. Changes to the duration of the project will be handled through the Change Control process.

4.7.1 Client Responsibilities

The following is a list of Client responsibilities necessary for the successful completion of this effort. Vendor has established the schedule and pricing for services by thoughtfully considering the items below. If an item identified below does not occur in the expected manner or within reasonable time frames, such circumstance may constitute a change that will require an adjustment to the schedule and/or price.

- Procurement of software licenses as required
- Participation of stakeholders in scheduled workshops, training sessions, etc.
- Providing data dictionaries and sample data exports from current systems to be migrated
- Participation in User Acceptance Testing

4.8 Assumptions

- Vendor uses an agile implementation approach. Successful implementation assumes active Client participation for user stories and configuration workshops, as well as during module-based training and UAT.
- Resources will be available by both Client and Vendor to adequately implement the product within the mutually agreed timelines.
- New requirements identified during Phase 1 and Phase 2 will result in re-estimated project scope, budget and timeline. Changes to the original SOW will be reflected in Change Requests provided for sign-off by the Client.
- The estimate presented in this SOW is based on an optimal development schedule with software modules configured in the most efficient order to allow for the best staffing of the project. Different phasing / configuration orders may be requested by the Client, and such changes will be addressed through the Change Management Process.
- Vendor and Client will work together to prioritize all test cases. Priority levels will be mutually agreed upon in accordance with the project schedule.
- The Client will follow Vendor guidelines for documenting issues during the User Acceptance Testing (UAT) phase of the project in order to ensure that issues are clearly documented for resolution by Vendor developers.
- It is expected that there will be a timely delivery of any dependent material from the Client in accordance with the project schedule. Any delays resulting from waiting for delivery of dependent material may impact the project timeline and require revisions to estimates.
- Vendor Cloud product functionality is available at the time configuration activities start. If there are any product features that are yet to be released that Board is dependent upon, the schedule will be updated to reflect this product release dependency.
- Documentation will adhere to Vendor documentation templates and standards
- Coding Standards applied will adhere to Vendor Coding Standards
- The following will have an impact on the project schedule and could potentially delay the launch date and result in additional costs or scope:
 - Incomplete or inaccurate details provided in the Technical Questionnaire.
 - Delay in sign-off on the Solution Requirement Package
 - Data Migration - poor data / missing information may require additional time to address / resolve
 - Unreasonable delays in providing necessary information - Delays in responses, cancellation of scheduled meetings, user acceptance testing and other related feedback/information.
 - Integration - unexpected delays or non-cooperation by 3rd party stakeholders or vendors

5 FINANCIALS

The performance of services described in this SOW will be provided on a Fixed Cost basis, for the price of **\$[project.fees] US plus applicable taxes.**

5.1 Payment Schedule

Date	Milestone/Deliverable	Payment Amount
TBD	Upon signing of the agreement	35% of total project fee
TBD	End of Phase 2	35% of total project fee
TBD + 4 weeks	End of Phase 3	30% of total project fee
Total Amount		\$ [project.fees]

5.2 Rates

Vendor will provide implementation configuration and customization up to a maximum of TBD hours at no charge. Any hours in addition of the TBD hours shall be billed at rates prescribed below. This includes enhancements to existing capabilities and new capabilities, if necessary.

Vendor resources are billable according to the following rates:

Role	Hourly Rate (USD)
Program Manager / Project Director	TBD
Project Manager	TBD
QA Analyst	TBD
Analyst / Implementation Specialist	TBD
Trainer	TBD
Instructional Designer	TBD
Technical Director / Solution Architect	TBD
Senior Developer	TBD
Front End Developer	TBD

Role	Hourly Rate (USD)
Graphic Designer	TBD
Regulatory Consultant	TBD

Vendor rates are re-evaluated yearly and published. It is assumed that rates will be adjusted and current rates will be used for new work.

5.3 Termination Charges

Vendor reserves the right to terminate this project due to Client material breach or default, or Client terminates this SOW without cause, the Client is obligated to pay Vendor for services performed, expenses incurred prior to termination, and shall include the following:

1. All amounts previously invoiced but unpaid; and
2. Fees for services performed through the termination date which have not been invoiced at the then current published hourly rate(s); and
3. Any and all subcontract cancellation and/or termination charges incurred by Vendor, including the cost of third-party products and services furnished to Vendor but not delivered to Client as of the date of termination; and
4. Costs associated with relocating Carahsoft and/or subcontractor employees to and from Client work site; and
5. Full hourly rates for Vendor and/or subcontractor personnel for sixty (60) days following the effective date of termination; provided, however, if Vendor reassigns the employees during the sixty (60) - day period the amount owed by Client shall be reduced by a pro rata amount.

6 PROJECT MANAGEMENT AND SOFTWARE DELIVERY METHODOLOGY

6.1 Communications

The following are the types of communications provided by the Vendor Project Team.

Communication	Frequency	Goal	Owner	Audience
Kick-Off Meeting	Once	Introduce the Program Manager and Onboarding team. Review Objectives	Program Manager	<ul style="list-style-type: none"> Project Sponsor Project Team Stakeholders
Onboarding Status Report	Bi-Weekly	Review implementation status and discuss any potential issues, delays or risks.	Program Manager	<ul style="list-style-type: none"> Project Sponsor Project Team Stakeholders
Project Evaluation	Post-Go-Live	Gather feedback and discuss next steps for success check-ins	Customer Success Manager	<ul style="list-style-type: none"> Project Sponsor Project Team Stakeholders

6.2 Quality Assurance

Vendor adopts an iterative approach to ensure a high level of quality during the configuration, testing and final delivery of its service.

6.2.1 Testing Approach

Onboarding Configuration Team

- Configures each module in accordance with the business requirements
- Conduct unit, regression and system test
- Resolve variances as needed

QA Team

- The QA Team will execute test scenarios using test cases, recording the results 'Pass or Fail'
- If the test fails, a 'Bug' ticket is created and assigned to the configuration team
- Re-test defects, re-assigns to the configuration team if not resolved
- QA continues with the testing until each test scenario has achieved a score of 'Pass'

User Acceptance Testing (UAT)

- Client will have access to a UAT environment to perform user acceptance testing.
- Client provides the test results to the implementation specialist who reviews and adjusts the configuration as needed.
- Client continues testing until all test scenarios are completed and defects have been resolved.

6.2.2 Defect Management

When a defect is identified during QA testing or during the user acceptance product review a 'Bug' ticket is created and assigned to the onboarding configuration team to resolve. Once this is completed, the 'Bug' ticket is re-assigned to the QA team and/or the UAT team for further testing. This process is repeated until the defects are resolved.

6.3 Data Migration

Data migration is the process of moving data from its current source to Vendor Cloud. The process involves cleaning up the data, assessing the data quality, mapping the source to the target, loading the data into Vendor Cloud and performing verification procedures to ensure data has transferred correctly in to Vendor Cloud.

Vendor will conduct an initial assessment of the data identifying inconsistencies (duplicates, missing data, etc.) and provide feedback as needed. Client will send Vendor an Excel spreadsheet in Vendor's standard format (CSV) for review by secure data transfer:

The following is a summary of events to ensure the quality of data:

- Client to update the Excel spreadsheet (CSV) files and correct the data where applicable and send the files to Vendor by secure transfer
- The Onboarding team will load the data into Vendor Cloud, validate and identify any data issues
- Discuss and review any data issues found with Client for resolution
- Repeat steps one (1) through three (3) until all the data is accurate and loaded successfully
- Client will have access to the new system to conduct additional testing to validate the data
- Client owns the data. Vendor will make data formatting changes for operability within Vendor Cloud. No data changes will be made by Vendor without Client's approval. If the data quality is poor (i.e., data is missing values or information is incorrect) during the data migration, it will impact the project schedule and potentially alter or delay the launch date.

The following table outlines the responsibilities for completing each activity.

Migration Activity	Vendor Project Team Responsibilities	Client Responsibilities
Cleaning and preparing source data		<ul style="list-style-type: none"> ▪ Clean-up of the source data (i.e. duplicate email or home addresses) ▪ Send copy of the existing data (the source) in the format of Excel (CSV).
Data Assessment	<ul style="list-style-type: none"> ▪ Assess the source data, looking for data inconsistencies, incorrect or duplicate data (i.e., duplicate e-mail address, multiple home addresses with variations of the same street / city, etc. 	<ul style="list-style-type: none"> ▪ Assess the source data, looking for data inconsistencies, incorrect or duplicate data (i.e. duplicate email address, multiple home addresses with variations of the same street / city, etc.) ▪ Additional data clean-up may

Migration Activity	Vendor Project Team Responsibilities	Client Responsibilities
		be required
Data Mapping	<ul style="list-style-type: none"> Map the source data to the target data workbook provided by Vendor 	<ul style="list-style-type: none"> Provide clarification if needed, mapping the source data to the target data. Define business rules, if applicable
Load the Data and Test	<ul style="list-style-type: none"> Load the data into the new system, identify any data inconsistencies, verify data conforms to the business rules Update data mapping, if required 	<ul style="list-style-type: none"> Clean-up the data, if required Review and update business rules, if required Assist in resolving data inconsistencies
User Acceptance Testing (UAT)		<ul style="list-style-type: none"> Conduct smoke test to ensure the data loaded meets the business requirements Feedback must be provided by the target deadline which will be communicated prior to commencing the user acceptance product review

6.4 Training

Vendor's approach to training for the Vendor Cloud platform is it should be easy to access and easy to understand. We recognize that implementing system and process changes can be stressful and hectic. With that in mind, Vendor's goals for product training are to provide users with just-in-time learning, so information learned is applied almost immediately. Reference materials are provided to assist users as they work in the platform.

When and Where: For Train-The-Super-User, training will start ~three (3) weeks before go-live. For Train-the-Trainer, training typically starts five to seven (5-7) weeks before your set go live date and occurs online. When safe to do so (after the pandemic), Vendor can offer training both in-person and online. Please note that in-person training will require additional fees not included in this Scope of Work.

Training sessions are between 1-1.5 hours each, with the core functionality totaling about six (6) hours. If there are additional modules configured (inspections, schools), Vendor will provide 1-1.5 hours of training per module.

Schedule: A schedule will be completed once a trainer is assigned. Vendor will work with Client to ensure training sessions are offered at a time when most users can attend. Please note trainings will also be recorded and subsequently provided to Client.

Additional Materials: All training sessions are recorded and provided to Client for continued use. Client will also receive quick- reference guides, access to how-to videos, FAQ sheets, and copies of the training presentations as educational materials.

Who: Vendor can deliver training to the audiences of your choice. Vendor can offer training in the form of Train-the-Trainer or Train- the-Role-Based-Super-User.

Agenda: The agenda will be determined according to Client preference between Train-the-Role-Based-Super-User or Train-the- Trainer approach. An overview of the agenda for each form of training is below.

6.4.1 Train-The-Super-Role-Based-User Sample Agenda (typically recommended for smaller customers)

This training is delivered by Vendor and provides all users with basic foundational system knowledge followed by additional module/topic training based on role/job function. This allows users to concentrate on the areas of the system that will be used most often day-to-day staff responsibilities.

Training included in pricing accounts for the training of four (4) distinct roles. Each role will receive 1.5-3 hours of training specific to their role in addition to the general overview for “all” outlined in the table. Vendor will also provide 1-1.5 hours of training per module. If Client would like Vendor to train additional roles, the rate will be \$1,000/per additional role; each role added will also receive 1.5-3 hours of training specific to the role.

The following table provides a sample role-based training curriculum. Please note the role-based training curriculum will be catered to your agency and provided separately.

Role	Topics
All	<ul style="list-style-type: none"> Overview Login Process Navigation and Common Elements
Administrator	<ul style="list-style-type: none"> All topics
Accounting	<ul style="list-style-type: none"> Invoicing Payments Financial Reports
Licensing	<ul style="list-style-type: none"> Applications Renewals Continuing Education Document Requests Name Change Requests

Role	Topics
Compliance	<ul style="list-style-type: none"> Online Complaints Case Management Public Notes

6.4.2 Train-the-Trainer Sample Agenda (typically recommended for Enterprise Customers)

Week 1 - Product training instruction by Vendor trainer: trainers receive instruction on system functionality, tips, best practices, and review available materials.

Week 2 - Self-preparation and practice: trainers practice what they learned in a training environment and prep for upcoming teach-back sessions.

Week 3 - Teach-back certification sessions: trainers are asked to teach one or more topics in a mock training session to a Vendor trainer. Each teach-back is evaluated, and feedback is provided at the end of the teach-back.

Week 4 - Trainer internal prep time for training delivery: Certified trainers begin preparations for user training. Preparations may include training schedule creation, training communications, custom material creation, securing rooms for in-person classroom sessions, additional trainer prep and practice, etc.

Week 5 - Continued trainer internal prep time for training delivery: Continued prep activities from Week 4.

Week 6 - Conduct user training: End user sessions begin

Week 7 - Conduct user training: End user sessions continue

Note: Certified Client trainers are required to renew certification yearly to ensure trainers remain current on the Vendor Cloud platform. The re-certification process includes reviewing new functionality and teach-back and assessments as needed. This is not included as part of scope of this Statement of Work.

6.5 Support

Vendor offers customer support via the Portal, Email, and phone. The Portal will be the main source of support; all items logged over phone and email will be converted to a task ticket. The Client will be able to track the progress and communication around task tickets via the portal.

Portal: <https://support.vendor.com>

Email: support@vendor.com* Phone Number: 1 800 961 1549*

* Notes: Phone support is in the rare occurrence of system-down situations and will be converted to a ticket. Additionally, we require Clients to file tickets via the portal as email can be marked as a phishing scam at the mailing server. Standard support hours are Monday through Friday 9:00 a.m. to 8:00 p.m. EST, excluding national holidays. For calls, emails, and task tickets logged outside of support hours, Client can expect a response the next day.

Support options within the Portal are categorized in the portal as “Bugs/Maintenance,” “Support and Question,” “Request for Change/Feature Request.” An overview of each is below.

- Reporting a Bug / Maintenance Support – Maintaining functionality of the current system is free of charge. This is limited to troubleshooting and service restoration only. For this, select “Report a bug or **Maintenance Support**” in task ticket portal.
- Questions, Training, Clarifications – For questions and clarifications (training), Vendor offers up to 20 hours of training, clarification, and education per calendar year through the portal. For this, select “Support and **Questions**.” Additional support hours for questions, training, and clarifications will be offered at the rates below.
- Change Request / New Feature Request - Features and enhancements including adding additional portals, 3rd party integrations, and changes to existing licenses/portals constitute as a Change Request or a New Feature Request. This requires additional fees. To log a Change Request or New Feature request, please select “Change Request / New Feature Request” in the support portal.

Only the Client’s designated staff trained on Vendor software will have access to Vendor Support portal and be able to log a task ticket.

Support services cover only products purchased from Vendor Cloud. Vendor Cloud is not responsible in any case when service interruption results from the failure of products not delivered by Vendor Cloud. This includes but is not limited to network infrastructure, interfaced legacy systems, monitors and other display devices, accessories, etc.

6.6 Change Control

During the project either party may request in writing additions, deletions, or modifications to the services described in this SOW (“change”). Vendor will have no obligation to commence work in connection with any change until the estimated fee and schedule impact of the change is agreed upon in a written Change Request Form signed by the designated Project Manager(s) from both parties.

Change Requests can include any new feature, integration, custom report, or request that is not specifically provided as a product feature or as an implementation deliverable in section three (3) of this SOW. Change Requests can also include schedule and budget changes.

Change Requests and New Feature Requests require a minimum of four (4) hours of total time, to ensure several task tickets can be grouped together prior to approving a change request that is billable.

Only authorized users can submit a Change Request or Feature Request.

The Change Management Process is designed to ensure change details are clearly understood and communicated to both the Vendor and Client team. Additionally, the outcome of the process is to produce a course of action that both teams sign-off on. It is important to identify the Client stakeholders who will sign-off on Change Requests and Vendor will require this information prior to the start of the construction phase. The Change Management Process is as follows:

- A Change Request (CR) is initiated by the Client or Vendor.
- A high-level CR Analysis Form is completed providing an estimate of the time and cost associated with analyzing the impact of the change and submitted by Vendor to the Client for approval.
- The Client approves the undertaking of a CR analysis after reviewing the CR Analysis Form.
- The CR is logged and assigned for analysis.

- The assigned Vendor project team members execute the analysis. Initiating the CR analysis may impact the project schedule as the analysis will be executed by existing team members. The CR Analysis is conducted on a time and materials basis.
- The results of the CR Analysis are provided by Vendor and recorded in the Change Request Form that will be submitted to the Client.
- Within three (3) consecutive business days of receipt of the Change Request Form, the Client shall either indicate acceptance of the proposed change by signing the Change Request Form or advise Vendor formally (via email or other written documentation) the change is not needed. If the Client advises Vendor not to perform the change, then Vendor will proceed only with the original services agreed upon. In the absence of the Client's acceptance or formal rejection, Vendor will not perform the proposed change.

Vendor will use commercially reasonable efforts to minimize the additional cost and time associated with a change.

6.7 Customer Success

On at least monthly basis, Clients can anticipate receiving communications from the Customer Success Manager. Customer Success Manager will set up a series of recurring meetings.

The Customer Success Manager will reply to Client communications in a timely manner via email, phone, or scheduled meeting no later than two (2) business days unless out of office, in which case an out of office message will be automated to inform Clients. Out-of-office messages must include when CSM will return messages and an alternate Vendor contact that may be reached in the meantime.

7 SIGNATURE

[Carahsoft]

BY: _____

NAME: _____

TITLE: _____

[Organization.Name]

BY: _____

NAME: _____

TITLE: _____

**Attachment F to
STATE OF OKLAHOMA CONTRACT WITH CARAHSOFT TECHNOLOGY CORP.
RESULTING FROM SOLICITATION NO. #0900000556**

Negotiated Exceptions to the Solicitation

The Solicitation is hereby amended as set forth below and supersedes all prior Exceptions submitted by **Carahsoft Technology Corp.** or discussed by the parties.

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

RFP Section	Exception
Attachment B. State of Oklahoma General Terms – Section 2, Contract Effectiveness and Order of Priority.	Section 2.2F is hereby deleted and replaced in its entirety by the following: F. any statement of work, work order, End User License Agreement, Master Subscription Agreement, Terms of Service, or other similar ordering document as is applicable to the proposed product, solution, or service to which the state has agreed in writing; and

**Attachment F-1 to
STATE OF OKLAHOMA CONTRACT WITH CARAHSOFT TECHNOLOGY CORP.
RESULTING FROM SOLICITATION NO. 0900000556**

**Template for Contract Modifications for Quotes, Statements of
Work, or other Ordering Documents**

The parties agree to use this template as the process to formally approve any terms, conditions or clauses that are to supersede the terms and Conditions in the Contract for purposes of the applicable quote, statement of work or other ordering document.

Contract Modifications for Quote, Statement of Work, or other Ordering Document

Solely for purposes of this ordering document, the terms and conditions of the Contract are hereby amended as set forth below. This amendment is considered an Addendum.

RFP Section	Exception/Additional Terms

STATE OF OKLAHOMA
by and through the
OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES

CARAHSOFT TECHNOLOGY CORP.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

The [INSERT AGENCY NAME] is additionally executing this document to memorialize its involvement in negotiation of and its agreement with the terms of this document.

By: _____

Name: _____

Title: _____

Date: _____



This addendum is added to and is to be considered part of the subject contract.

Statewide Contract #: SW1041CD

PeopleSoft Contract ID: 7111

Contract Title: Software Value Added Reseller

Contract Issuance Date: 10/23/2023

Contract Supplier: CDW Government

Addendum # 1

Addendum Date: 03/06/2024

OMES Point of Contact:

Contracting Officer: Marc Brown

Phone Number: 405-521-6669

E-mail address: Marc.brown@omes.ok.gov

Addendum Information: _____

Addendum #1 is issued for term renewal for CDWG per the original T&C's.

Contract Period: 03/14/2024 – 03/13/2025

Agreement Period: 03/14/2024 – 03/13/2028



OKLAHOMA

CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000069314
 CDW LLC
 230 N MILWAUKEE AVE
 VERNON HILLS IL 60061-4304
 USA

Contract ID 000000000000000000007111			Page 1 of 3	
Contract Dates 10/23/2023 to 03/13/2025		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041CD Software Value-Added			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1	43231500 / Business Function Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
2	43231600 / Finance Accounting and Enterprise Resource Planning ERP Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
3	43232000 / Computer Game or Entertainment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
4	43232100 / Content Authoring and Editing Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
5	43232200 / Content Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
6	43232300 / Data Management and Query Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
7	43232400 / Development Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
8	43232500 / Educational or Reference Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001

Final = The price is final after adjustments
 Hard = Apply adjustments regardless of other adjustments
 Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



Dispatch via Print

Contract ID				Page
000000000000000000007111				2 of 3
Contract Dates	Currency	Rate Type	Rate Date	
10/23/2023 to 03/13/2025	USD	CRRNT	PO Date	
Description:	Contract Maximum			
SW1041CD Software Value-Added	0.00			
Allow Open Item Reference				
TYPE: STATEWIDE				

Contract Lines:

Final = The price is final after adjustments
 Hard = Apply adjustments regardless of other adjustments
 Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



State of Oklahoma

Contract ID 00000000000000000000000007111			Page 3 of 3	
Contract Dates 10/23/2023 to 03/13/2025		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041CD Software Value-Added			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
	Contract Base Pricing	0.00000	EA	0001		
18	43233700 / System Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		
19	81112200 / Software Maintenance and Support	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		
20	81112000 / Data Services (SaaS)	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		
21	81111508 / Software Implementation Services	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		

Vendor POC: TeamOK@cdwg.com

Authorized Signature



Official signed contract documents are on file with OMES Central Purchasing.

Contract title: Software Value Added Reseller

Contract Number: SW1041S

Date of Contract issuance: 10.04.2023

Contract period: 10.23.2023 through 03.13.2024

Agreement period: 10.23.2023 through 03.14.2028

Type of contract: Mandatory ☐ Non-Mandatory ☒

OMES POC Skyler J. Greco

Title: SW Contracting Officer

Phone: (405) - 521 - 2174

Email: skyler.greco@omes.ok.gov

Vendor POC TeamOK@cdwg.com

Supplier ID:

Supplier 0000069314
CDW LLC
230 N MILWAUKEE AVE
VERNON HILLS IL 60061-4304
USA

Contract ID: 0000000000000000000007111

Please verify that the software item being purchased is not available on existing mandatory statewide contracts. (i.e. SW1010, SW1079, etc.) This statewide contract is for software, software maintenance, software as a service (SaaS), and software implementation services.

Contract Overview: Value-Added Software

Authorized Users: All state departments, boards, commissions, agencies, and institutions, in Addition to counties, school districts and municipalities which may avail themselves of this contract.

How to order:

Contact POC listed above

Ensure quote references SW1041CD

.

Available Brands:

See pricing attachment.

Available Products and Services:

Software, Value-Added

Authorized Dealer/Reseller(s): N/A



OKLAHOMA

CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000069314
 CDW LLC
 230 N MILWAUKEE AVE
 VERNON HILLS IL 60061-4304
 USA

Contract ID 000000000000000000007111			Page 1 of 3	
Contract Dates 10/23/2023 to 03/13/2024		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041CD Software Value-Added			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1	43231500 / Business Function Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
2	43231600 / Finance Accounting and Enterprise Resource Planning ERP Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
3	43232000 / Computer Game or Entertainment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
4	43232100 / Content Authoring and Editing Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
5	43232200 / Content Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
6	43232300 / Data Management and Query Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
7	43232400 / Development Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
8	43232500 / Educational or Reference Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001

Final = The price is final after adjustments
 Hard = Apply adjustments regardless of other adjustments
 Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



Dispatch via Print

Contract ID				Page
000000000000000000007111				2 of 3
Contract Dates	Currency	Rate Type	Rate Date	
10/23/2023 to 03/13/2024	USD	CRRNT	PO Date	
Description:			Contract Maximum	
SW1041CD Software Value-Added			0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Authorized Signature



State of Oklahoma

Contract ID 000000000000000000000007111			Page 3 of 3	
Contract Dates 10/23/2023 to 03/13/2024		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041CD Software Value-Added			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
	Contract Base Pricing	0.00000	EA		0001	
18	43233700 / System Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA		0001	
19	81112200 / Software Maintenance and Support	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA		0001	
20	81112000 / Data Services (SaaS)	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA		0001	
21	81111508 / Software Implementation Services	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA		0001	

Vendor POC: TeamOK@cdwg.com

Authorized Signature



**STATE OF OKLAHOMA STATEWIDE CONTRACT WITH
CDW GOVERNMENT, LLC**

This State of Oklahoma Statewide Contract No. 1041 (“Contract”) is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services and CDW Government, LLC (“Supplier”) and is effective as of the date of last signature to this Contract. The initial Contract term, which begins on the effective date of the Contract, is one year and there are four (4) one-year options to renew the Contract.

Purpose

The State is awarding this Contract to Supplier for the provision of software and services to support State agencies and other eligible Oklahoma Interlocal Entities, including software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration, as more particularly described in certain Contract Documents. Supplier submitted a proposal which contained exceptions to the Solicitation and a best and final offer. This Contract memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation No. 0900000556, Attachment A;
 - 2.2. State of Oklahoma General Terms, Attachment B;
 - 2.3. Oklahoma Statewide Contract Terms, Attachment C;
 - 2.4. State of Oklahoma Information Technology terms, Attachment D;
 - 2.5. Information Security Requirements, Attachment D-1;
 - 2.6. Sample Statement of Work, Attachment E-1;

- 2.7. Pricing List, Attachment E-2;
- 2.8. Negotiated Exceptions to Contract, Attachment F.

3. The parties additionally agree:

- 3.1. Unless mutually agreed to in writing by the Chief Information Officer utilizing Attachment F-1, no Contract Document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State. If Supplier is acting as a reseller, any third-party terms provided are also subject to the foregoing.
- 3.2. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.
- 3.3. Supplier, as a software value added reseller, is required to ensure that any software or information technology resold complies with applicable law and the Compliance and Electronic and Information Technology Accessibility clause in the Contract. This includes providing the State with a Voluntary Product Accessibility Template ("VPAT"). If the software or information technology is not compliant, Supplier holds an affirmative obligation to ensure that the software or information technology becomes compliant or provide notice to the State that the software or information technology cannot be made compliant and why.

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

- 4. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

**STATE OF OKLAHOMA
by and through the
OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES**

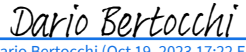
CDW GOVERNMENT, LLC

By: 
Joe McIntosh (Oct 23, 2023 09:56 CDT)

Name: Paul J. McIntosh

Title: Chief Information Officer

Date: Oct 23, 2023

By: 
Dario Bertocchi (Oct 19, 2023 17:22 EDT)

Name: Dario Bertocchi

Title: VP Contracting Operations

Date: Oct 19, 2023

ATTACHMENT A
SOLICITATION NO. 0900000556

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded by the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract Document.

PURPOSE

The Contract is awarded as a statewide contract on behalf of the Office of Management and Enterprise Services for software and services to support State agencies and other eligible Oklahoma Interlocal Entities. This Supplier will provide software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration.

1. Contract Term and Renewal Options

The initial Contract term, which begins on the effective date of the Contract, is one year and there are [4] one-year options to renew the Contract.

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

This State of Oklahoma General Terms (“General Terms”) is a Contract Document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract Document, Supplier and State agree to the following General Terms:

1 Scope and Contract Renewal

- 1.1** Supplier may not add products or services to its offerings under the Contract without the State’s prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier’s performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract Documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Addendum. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4** The State may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the State

exercises such option to extend ninety (90) days, the State shall notify the Supplier in writing prior to Contract end date. The State, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

- 1.5** Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

2 Contract Effectiveness and Order of Priority

- 2.1** Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until the Contract is effective.
- 2.2** Contract Documents shall be read to be consistent and complementary. Any conflict among the Contract Documents shall be resolved by giving priority to Contract Documents in the following order of precedence:
- A.** any Addendum;
 - B.** any applicable Solicitation;
 - C.** any Contract-specific State terms contained in a Contract Document including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
 - D.** the terms contained in this Contract Document;
 - E.** any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation or applicable law;
 - F.** any statement of work, work order, or other similar ordering document as applicable; and
 - G.** other mutually agreed Contract Documents.
- 2.3** If there is a conflict between the terms contained in this Contract Document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms

provided by Supplier shall not take priority over this Contract Document or Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Addendum.

- 2.4 Any Contract Document shall be legibly written in ink or typed. All Contract transactions, and any Contract Document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

3 **Modification of Contract Terms and Contract Documents**

- 3.1 The Contract may only be modified, amended, or expanded by an Addendum. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.
- 3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.

4 **Definitions**

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 4.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 4.2 **Addendum** means a mutually executed, written modification to a Contract Document.
- 4.3 **Amendment** means a written change, addition, correction or revision to the Solicitation.
- 4.4 **Bid** means an offer a Bidder submits in response to the Solicitation.

- 4.5 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.6 **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract Documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 4.7 **Contract Document** means this document; any master or enterprise agreement terms entered into between the parties that are mutually agreed to be applicable to the Contract; any Solicitation; any Contract-specific terms; any Supplier's Bid as may be negotiated; any statement of work, work order, or other similar mutually executed ordering document; other mutually executed documents and any Addendum.
- 4.8 **Customer** means the entity receiving goods or services contemplated by the Contract.
- 4.9 **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 4.10 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.
- 4.11 **Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 4.12 **Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.13 **Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 4.14 **OAC** means the Oklahoma Administrative Code.
- 4.15 **OMES** means the Office of Management and Enterprise Services.

- 4.16 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.17 State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 4.18 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 4.19 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 4.20 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 4.21 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract Document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created,

prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5 Pricing

- 5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 5.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

6 Ordering, Inspection, and Acceptance

- 6.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.
- 6.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-5, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 6.3 Supplier shall deliver products and services on or before the required date specified in a Contract Document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract Document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.
- 6.4 Product warranty and return policies and terms provided under any Contract Document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

7 Invoices and Payment

- 7.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.
- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F.** Supplier shall have no right of setoff.
- G.** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.
- H.** The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.

8 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

- 8.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set

forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a thirty (30) day notice of cancellation and name the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$5,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$5,000,000 combined single limit each accident;
- D.** Directors and Officers Insurance which shall include Employment Practices Liability as well as Consultant's Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than \$5,000,000 per occurrence;
- E.** Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and
- F.** Additional coverage required in writing in connection with a particular Acquisition.

- 8.2** Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.
- 8.3** Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

9 Compliance with Applicable Laws

- 9.1** As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:
- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
 - B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
 - C.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;
 - D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
 - E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;

- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
 - G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
 - H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify;
 - I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
 - J.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- 9.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at https://omes.ok.gov/sites/g/files/gmc316/f/InfoSecPPG_0.pdf. Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 9.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.4** In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory

contract provisions required in connection with the receipt of federal funds or other funding source.

- 9.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 9.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.
- 9.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 9.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.
- 9.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 9.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format

usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

10 Audits and Records Clause

- 10.1** As used in this clause and pursuant to 67 O.S. §203, “record” includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 10.2** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
- 10.3** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

11 Confidentiality

- 11.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer’s prior express written

permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.

- 11.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 11.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll free telephone call center services.
- 11.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 11.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents,

representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.

11.6 The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

11.7 Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) résumé, pricing or marketing materials provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

12 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is

related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

13 Assignment and Permitted Subcontractors

13.1 Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.

13.2 Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

13.3 If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to

the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

13.4 All payments under the Contract shall be made directly to the Supplier, except as provided in subsection A above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.

13.5 Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

14 Background Checks and Criminal History Investigations

Prior to the commencement of any services, background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to the State in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or services.

15 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property,

copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

16 Indemnification

16.1 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.
- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

16.2 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

16.3 Notice and Cooperation

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

16.4 Coordination of Defense

In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally

participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

16.5 Limitation of Liability

- A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.
- B.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- C.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

17 Termination for Funding Insufficiency

- 17.1** Notwithstanding anything to the contrary in any Contract Document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

- 17.2** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.
- 17.3** The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

18 Termination for Cause

- 18.1** Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.
- 18.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.
- 18.3** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence

of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

- 18.4** The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-9 is an example.

19 Termination for Convenience

- 19.1** The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.
- 19.2** Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but

there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

20 Suspension of Supplier

- 20.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.
- 20.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.
- 20.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract.

A determination that Supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

22 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

23 Force Majeure

23.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

23.2 Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

23.3 Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay

or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

24 Security of Property and Personnel

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

25 Notices

All notices, approvals or requests allowed or required by the terms of any Contract Document shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the physical address set forth below. Notice information may be updated in writing to the other party as necessary. Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall not be delivered solely via e-mail.

If sent to the State:

State Purchasing Director
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

With a copy, which shall not constitute notice, to:

Purchasing Division Deputy General Counsel
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

26 Miscellaneous

26.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract Documents, in the singular or in the aggregate, shall be governed by the laws of the State without regard to application of choice of law principles. Pursuant to 74 O.S. §85.14, where federal granted funds are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents, shall be in Oklahoma County, Oklahoma.

26.2 No Guarantee of Products or Services Required

The State shall not guarantee any minimum or maximum amount of Supplier products or services required under the Contract.

26.3 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

26.4 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

26.5 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

26.6 Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 *et seq.* Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required.

26.7 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

26.8 Mutual Responsibilities

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

26.9 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or

condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

26.10 Severability

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

26.11 Section Headings

The headings used in any Contract Document are for convenience only and do not constitute terms of the Contract.

26.12 Sovereign Immunity

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State.

26.13 Survival

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract Documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

26.14 Entire Agreement

The Contract Documents taken together as a whole constitute the entire agreement between the parties. No statement, promise, condition,

understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract Document shall be binding or valid. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

26.15 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent, or another representative violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

26.16 Import/Export Controls

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

ATTACHMENT C

OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

- 1.1** The Contract is a non-mandatory statewide contract for use by State agencies. Additionally, the Contract may be used by any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department or other entity designated to act on behalf of the political subdivision; a state, county or local governmental entity in its state of origin; and entities authorized to utilize contracts by the State via a multistate or multigovernmental contract.
- 1.2** The Contract is a firm, fixed price contract for indefinite delivery and quantity for the Acquisitions available under the Contract.

2. Orders and Addendums

- 2.1** Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations may be required.
- 2.2** Any ordering document shall be effective between Supplier and the Customer only and shall not be an Addendum to the Contract in its entirety or apply to any Acquisition by another Customer.
- 2.3** Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Addendum to the Contract shall be signed by the State Purchasing Director or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.

3. Termination for Funding Insufficiency

In addition to Contract terms relating to termination due to insufficient funding, a Customer may terminate any purchase order or other payment mechanism if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. The determination by the Customer of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

4. Termination for Cause

In addition to Contract terms relating to termination for cause, a customer may terminate its obligations, in whole or in part, to Supplier if it has provided Supplier with written notice of material breach and Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. The Customer may also terminate a purchase order or other payment mechanism or Supplier's activities under the Contract immediately without a thirty (30) day written notice to Supplier, if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements if such non-compliance relates or may relate to Supplier provision of products or services to the Customer or if Supplier's material breach is reasonably determined (i) to be an impediment to the function of the Customer and detrimental to the Customer, or (ii) when conditions preclude the thirty (30) day notice.

5. Termination for Convenience

In addition to any termination for convenience provisions in the Contract, a Customer may terminate a purchase order or other payment mechanism for convenience if it is determined that termination is in the Customer's best interest. Supplier will be provided at least thirty (30) days' written notice of termination.

6. Contract Management Fee and Usage Report

6.1 Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the

right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

6.2 While Supplier is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

6.3 All Contract Usage Reports shall meet the following criteria:

- i. Electronic submission in Microsoft Excel format to strategic.sourcing@omes.ok.gov;
- ii. Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;
- iii. Submission no later than forty-five (45) days following the end of each calendar quarter;
- iv. Contract quarterly reporting periods shall be as follows:
 - a. January 01 through March 31;
 - b. April 01 through June 30;
 - c. July 01 through September 30; and
 - d. October 01 through December 31.
- v. Reports must include the following information:
 - a. Procuring entity;
 - b. Order date;

- c. Purchase Order number or note that the transaction was paid by Purchase Card;
- d. City in which products or services were received or specific office or subdivision title;
- e. Product manufacturer or type of service;
- f. Manufacturer item number, if applicable;
- g. Product description;
- h. General product category, if applicable;
- i. Quantity;
- j. Unit list price or MSRP, as applicable;
- k. Unit price charged to the purchasing entity; and
- l. Other Contract usage information requested by the State.

6.4 Payment of the contract management fee shall be delivered to the following address within forty-five (45) calendar days after the end of each quarterly reporting period:

State of Oklahoma
Office of Management and Enterprise Services, Central Purchasing
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

To ensure payment is properly accounted for, Supplier shall provide the following information with payment: (i) reference to the applicable Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s) and the amount of the contract management fee being paid for each contract number.

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, OMES-Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

1 Definitions

- 1.1 **COTS** means software that is commercial off the shelf.
- 1.2 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier.
- 1.3 **Data Breach** means the unauthorized access by an unauthorized person that results in the use, disclosure or theft of Customer Data.
- 1.4 **Host** includes the terms **Hosted** or **Hosting** and means the accessing, processing or storing of Customer Data.
- 1.5 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.6 **Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 1.7 **Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential

by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.

- 1.8 Personal Data** means Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.
- 1.9 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.10 State CIO** means the State Chief Information Officer or authorized designee.
- 1.11 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 1.12 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.
- 1.13 Work Product** means any and all deliverables produced by Supplier for Customer under a statement of work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (i) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts,

personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or statement of work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or a statement of work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Supplier personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2 Termination of Maintenance and Support Services

Customer may terminate maintenance or support services without an adjustment charge, provided any of the following circumstances occur:

- 2.1** Customer removes the product for which the services are provided, from productive use or;
- 2.2** The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).

If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 Compliance and Electronic and Information Technology Accessibility

State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at <https://omes.ok.gov/services/information-services/accessibility-standards>. Supplier shall provide a Voluntary Product Accessibility Template ("VPAT") describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.

4 Media Ownership (Disk Drive and/or Memory Chip Ownership)

- 4.1** Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the property of the Customer.
- 4.2** Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime (repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 Offshore Services

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 Compliance with Technology Policies

- 6.1** The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at https://omes.ok.gov/s/g/files/gmc316/f/InfoSecPPG_0.pdf.

Supplier's employees and subcontractors shall adhere to the applicable State IT Standard Methodologies and Templates including but not limited to Project Management, Business Analysis, System Analysis, Enterprise and IT Architecture, Quality, Application and Security Methodologies and Templates as set forth at <http://eclipse.omes.ok.gov>.

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

6.3 Supplier shall comply with the CJIS Security Policy as more particularly described at Appendix 2 attached hereto and incorporated herein.

7 Emerging Technologies

The State of Oklahoma reserves the right to enter into an Addendum to the Contract at any time to allow for emerging technologies not identified elsewhere in the Contract Documents if there are repeated requests for such emerging technology or the State determines it is warranted to add such technology.

8 Extension Right

In addition to extension rights of the State set forth in the Contract, the State CIO reserves the right to extend any Contract if the State CIO determines such extension to be in the best interest of the State.

9 Source Code Escrow

Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- 9.4** The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5** The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6** The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7** Supplier's ceasing of maintenance and support of the software; or
- 9.8** Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 Commercial Off The Shelf Software

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail.

11 Ownership Rights

Any software developed by the Supplier under the terms of the Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as “Work for Hire”, Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be

shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 Intellectual Property Ownership

The following terms apply to ownership and rights related to Intellectual Property:

- 12.1** As between Supplier and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier hereby agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is hereby effectively transferred, granted, conveyed, assigned and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.
- 12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier’s signature due to the dissolution of Supplier or Supplier’s failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier’s agent and Supplier’s attorney-in-fact to act for and in Supplier’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer’s sole expense, in the preparation and

prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or

necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

- 12.9** Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.
- 12.10** To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.
- 12.11** If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 Hosting Services

- 13.1** If Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract Hosts Customer Data in connection with an Acquisition, the provisions of Appendix 1, attached hereto and incorporated herein, apply to such Acquisition.

13.2 If the Hosting of Customer Data by Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract contributes to or directly causes a Data Breach, Supplier shall be responsible for the obligations set forth in Appendix 1 related to breach reporting requirements and associated costs. Likewise if such Hosting contributes to or directly causes a Security Incident, Supplier shall be responsible for the obligations set forth in Appendix 1, as applicable.

14 Change Management

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon renewal or if future bids submitted by Supplier are evaluated by the State.

15 Service Level Deficiency

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

16 Notices

In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

With a copy, which shall not constitute notice, to:

Information Services Deputy Counsel
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Appendix 1 to State of Oklahoma Information Technology Terms

The parties agree to the following provisions in connection with any Customer Data accessed, processed or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract

A. Customer Data

1. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).
2. Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
3. Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

B. Data Security

1. Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public

Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

2. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data.
3. Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
4. Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
5. Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.
6. Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
7. Any remedies provided in this Appendix are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

C. Security Assessment

1. The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards

during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.

2. Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

D. Security Incident or Data Breach Notification: Supplier shall inform Customer of any Security Incident or Data Breach.

1. Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
2. Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).
3. Supplier shall:
 - a. Maintain processes and procedures to identify, respond to and analyze Security Incidents;
 - b. Make summary information regarding such procedures available to Customer at Customer's request;
 - c. Mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Supplier; and

d. Document all Security Incidents and their outcomes.

4. If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

E. **Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Supplier.

1. Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
2. Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.
3. If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

F. **Notices**

In addition to notice requirements under the terms of the Contract and those set forth above, a request, an approval or a notice in connection with this Appendix provided by Supplier shall be provided to:

Chief Information Security Officer

3115 N. Lincoln Blvd

Oklahoma City, OK 73105

and

servicedesk@omes.ok.gov.

G. Supplier Representations and Warranties

Supplier represents and warrants the following:

1. The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
2. Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.
3. The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.
4. Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

H. Indemnity

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier's breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party's patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier's

opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

I. Termination, Expiration and Suspension of Service

1. During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.

2. In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;

b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or

c. a combination of the two immediately preceding options.

3. Supplier shall not take any action to intentionally erase any Customer Data for a period of:

a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;

b. 30 days after the effective date of termination, if the termination is for convenience; or

c. 60 days after the effective date of termination, if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

4. The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

5. Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

Appendix 2 to State of Oklahoma Information Technology Terms

INTRODUCTION

The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation (“FBI”), Criminal Justice Information Services (CJIS) Division’s CJIS Security Policy (“CJIS Security Policy” or “Security Policy” herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer (“CSO”) and the FBI CJIS Division’s Audit Staff.

CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. **Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”**

DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI and CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy **plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.**

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at: <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

Policy Requirement Checklist		Compliance checklist –
Policy Area 1	Information Exchange Agreements	
Policy Area 2	Security Awareness Training	
Policy Area 3	Incident Response	
Policy Area 4	Auditing and Accountability	
Policy Area 5	Access Control	
Policy Area 6	Identification and Authentication	
Policy Area 7	Configuration Management	
Policy Area 8	Media Protection	
Policy Area 9	Physical Protection	
Policy Area 10	Systems and Communications Protection and Information Integrity	
Policy Area 11	Formal Audits	
Policy Area 12	Personnel Security	

Attachment D-1

Information Security Requirements

1. General Information Security Requirements

- a. No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.
- b. Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.
- c. Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.
- d. Contractor or its subcontractors agree to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

2. HIPAA Requirements

- a. Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).
- b. If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse, and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor's security compliance as it pertains to this contract.
- c. Business Associate Terms Definitions:
 - i. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that "PHI" and "ePHI" shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. "Administrative Safeguards" shall have the same meaning as the term "administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business

Associate's workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.

- ii. Business Associate. "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
 - iii. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 C.F.R. 160.103.
 - iv. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
 - v. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.
- d. Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, "PHI") solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:
- i. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
 - ii. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
 - iii. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
 - iv. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
 - v. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA's compliance and the Secretary of the Department of Health and Human Services (HHS);
 - vi. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
 - vii. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the

form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;

- viii. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- ix. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- x. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual who's Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;
- xi. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
- xii. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
- xiii. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
- xiv. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to

- respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- xv. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and
 - xvi. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.
- e. Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:
- i. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
 - ii. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
 - iii. disclose PHI to report violations of law to appropriate federal and state authorities; or
 - iv. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;

- v. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
 - vi. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § (d)(1)].
- f. Obligations of Covered Entity
- i. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
 - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.
 - iii. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
 - iv. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
 - v. Covered Entity shall provide the minimum necessary PHI to Business Associate.
- g. Term and Termination:
- i. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
 - (1) retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
 - (3) continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - (4) not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under "Permitted Uses and Disclosures By Business Associate" that applied prior to termination; and
 - (5) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- ii. All other applicable obligations of Business Associate under this Agreement shall survive termination.
- iii. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D).

h. Miscellaneous Provisions:

- i. No Third Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- ii. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
- iii. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
- iv. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
- v. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
- vi. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
- vii. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s)

to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

3. 42 C.F.R. Part 2 Related Provisions

- a. Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:
 - i. Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
 - ii. Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of any kind;
 - iii. Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
 - iv. Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).

- v. Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
- vi. Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
- vii. Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
- viii. Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;
- ix. Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.
- b. Data Security. The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.
- c. Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.
- d. Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.
- e. Redisclosure of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

4. Federal Tax Information Requirements IRS Publication 1075 (If Applicable)

- a. **PERFORMANCE:** If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent

within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

- i. All work will be performed under the supervision of the State of Oklahoma.
- ii. The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- iii. FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- iv. FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- v. The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- vi. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- vii. All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- viii. No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- ix. Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- x. To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

- xi. In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- xii. For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- xiii. The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

b. CRIMINAL/CIVIL SANCTIONS

- i. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- ii. Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- iii. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- iv. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material

in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- v. Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c. INSPECTION: The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

5. SSA Requirements (If applicable)

- a. PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
 - i. All work will be done under the supervision of the State of Oklahoma.
 - ii. Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
 - iii. All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

- iv. No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- v. The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- vi. Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- vii. Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful assess and/or disclosure.
- viii. Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.
- ix. The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- x. Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- xi. SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- xii. SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.

- xiii. If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
 - xiv. In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
 - xv. The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.
- b. **CRIMINAL/CIVIL SANCTIONS:** The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.
- i. **Civil Remedies.**
 - (1) In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of —
 - (a) actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
 - (b) the costs of the action together with reasonable attorney fees as determined by the court.
 - (2) An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where

parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

ii. Criminal Penalties

- (1) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).
- (2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- (3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

6. Child Support FPLS Requirements (If applicable)

- a. Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.

- i. This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- ii. This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

7. FERPA Requirements (If applicable)

- a. If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

8. CJIS Requirements (If applicable)

- a. INTRODUCTION

This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.

b. CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”

c. DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI AND CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at:
<https://www.fbi.gov/services/cjis/cjissecurity-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

The Statement of Work is hereby amended as set forth below and supersedes all prior documents submitted by CDW Government, LLC or discussed by the parties. The parties agree to use this Statement of Work or a document substantially similar in the form of this Statement of Work.

STATEMENT OF WORK

Project Name:	[Project Name]	Seller Representative:
Customer Name:	[Customer Name]	[Seller Name] [Seller Phone] [Seller e-mail]
Provider Name:	[Partner Name]	
CDW	[Partner Name]	Solution Architect:
Date:	[SOW Created Date]	[Solution Architect Name], [Solution Architect Name 2]
Drafted By:	[Services Contract Specialist Name]	

This statement of work (“**Statement of Work**” or “**SOW**”) is made and entered into on the last date that this SOW is fully executed as set forth below (“**SOW Effective Date**”) by and between the undersigned, [CDW Affiliate] (“**Provider,**” and “**Seller,**”) and [Customer Name] (“**Customer,**” and “**Client,**”).

GOVERNING AGREEMENT

This SOW shall be governed by [the terms of Oklahoma Statewide Contract No. 1041](#) that certain [Governing Agreement Name] between [CDW Affiliate] and [Customer Name], dated [Governing Agreement Date] (the “**Agreement**”). If there is a conflict between this SOW and the Agreement, then the Agreement will control, except as expressly amended in this SOW by specific reference to the Agreement. References in the Agreement to a SOW or a Work Order apply to this SOW.

PROJECT SCOPE

SERVICE DESCRIPTION

GENERAL RESPONSIBILITIES AND ASSUMPTIONS

- Customer is responsible for providing all access that is reasonably necessary to assist and accommodate Seller’s performance of the Services.
- Customer will provide in advance and in writing, and Seller will follow, all applicable Customer’s facility’s safety and security rules and procedures.
- Customer is responsible for security at all Customer-Designated Locations; Seller is not responsible for lost or stolen equipment, other than solely as a result of Seller’s gross negligence and willful misconduct.

CONTACT PERSONS

Each Party will appoint a person to act as that Party’s point of contact (“**Contact Person**”) as the time for performance nears and will communicate that person’s name and information to the other Party’s Contact Person.

Customer Contact Person is authorized to approve materials and Services provided by Seller, and Seller may rely on the decisions and approvals made by the Customer Contact Person (except that Seller understands that Customer may require a different person to sign any Change Orders amending this SOW). The Customer Contact Person will manage all communications with Seller, and when Services are performed at a Customer-Designated Location, the Customer Contact Person will be present or available. The Parties' Contact Persons shall be authorized to approve changes in personnel and associated rates for Services under this SOW.

CHANGE MANAGEMENT

This SOW may be modified or amended only in a writing signed by both Customer and Seller, generally in the form provided by Seller ("**Change Order**"). Services not specified in this SOW are considered out of scope and will be addressed with a separate SOW or Change Order.

In the event of a conflict between the terms and conditions set forth in a fully executed Change Order and those set forth in this SOW or a prior fully executed Change Order, the terms and conditions of the most recent fully executed Change Order shall prevail.

PROJECT SCHEDULING

Customer and Seller, who will jointly manage this project, will together develop timelines for an anticipated schedule ("**Anticipated Schedule**") based on Seller's project management methodology. Any dates, deadlines, timelines or schedules contained in the Anticipated Schedule, in this SOW or otherwise, are estimates only, and the Parties will not rely on them for purposes other than initial planning.

The following scheduling scenarios that trigger delays and durations to extend beyond what's been planned may require a change order:

- Site preparation, such as power, cabling, physical access, system access, hardware/software issues, etc. must be completed in a timely manner.
- Project tasks delegated to customer PMs/Engineers/Techs/Management/Resources must be completed in a timely manner. For example, in the event a project's prioritization is demoted, and customer resources are reallocated causing the project's schedule to extend on account of experiencing interruptions to its momentum requiring complete stop(s) and start(s).
- External projects/dependencies that may have significant impact on the timeline, schedule and deliverables. It is our assumption that every reasonable attempt will be made to mitigate such situations.

TOTAL FEES

CUSTOMER DESIGNATED LOCATIONS

Seller will provide Services benefiting the locations specified on the attached Exhibit ("**Customer-Designated Locations**").

PROJECT SPECIFIC TERMS

SIGNATURES

In acknowledgement that the parties below have read and understood this Statement of Work and agree to be bound by it, each party has caused this Statement of Work to be signed and transferred by its respective authorized representative.

This SOW and any Change Order may be signed in separate counterparts, each of which shall be deemed an original and all of which together will be deemed to be one original. Electronic signatures on this SOW or on any Change Order (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.

[CDW Affiliate Name]

[Customer Name]

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Mailing Address:

Mailing Address:

[Affiliate Address line 1]

Street: _____

[Affiliate Address line 2]

City/ST/ZIP: _____

EXHIBIT _

CUSTOMER-DESIGNATED LOCATIONS

Seller will provide Services benefiting the following locations (“Customer-Designated Locations”).

Location(s)

The Statement of Work is hereby amended as set forth below and supersedes all prior documents submitted by CDW Government, LLC or discussed by the parties. The parties agree to use this Statement of Work or a document substantially similar in the form of this Statement of Work.

Pricing

Software Publishers		
Primary Software Publication Brands		
Description	Maximum Cost + % Markup	% off List Price
CROWDSTRIKE	1.50%	Not Offering
PROOFPOINT	1.50%	Not Offering
MICROSOFT	0.50%	Not Offering
ADOBE	1.00%	Not Offering
VMWARE	1.00%	Not Offering
RED HAT	1.00%	Not Offering
MIMECAST	2.20%	Not Offering
CISCO	1.00%	Not Offering
COMMVAULT	1.00%	Not Offering
BARRACUDA NETWORKS	1.50%	Not Offering
All Other OEMs	2.20%	Not Offering

Attachment E-2 to
STATE OF OKLAHOMA CONTRACT WITH CDW Government, LLC
RESULTING FROM SOLICITATION NO. 0900000556

The Statement of Work is hereby amended as set forth below and supersedes all prior documents submitted by CDW Government, LLC or discussed by the parties. The parties agree to use this Statement of Work or a document substantially similar in the form of this Statement of Work.

**Attachment F to
STATE OF OKLAHOMA CONTRACT WITH CDW-G LLC.
RESULTING FROM SOLICITATION NO. #0900000556**

Negotiated Exceptions to the Solicitation

The Solicitation is hereby amended as set forth below and supersedes all prior Exceptions submitted by **CDW-G LLC.** or discussed by the parties.

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

Term & Section	Language
General Terms, Modification of Contract Terms and Contract Documents (Section 3.2, pg. 3)	<p>3.2 Any additional terms on an ordering document provided by either party are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.</p>
General Terms, Ordering, Inspection, and Acceptance (Section 6.2, pg. 6)	<p>6.2 Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer, which shall be provided within ten (10) business days after performance (or such longer period as may be agreed by the parties in an Order Document. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.</p> <p>Supplier represents that a product furnished by or through the Supplier shall be accompanied by the standard warranties offered by the manufacturer. A defect in a product furnished by or through the Supplier shall be repaired or replaced by Supplier, within the first thirty (30) days. After that time, any returns shall be handled in coordination with OEMs.</p> <p>Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer, subject to acceptance which shall be provided within ten (10) business days. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.</p> <p>Supplier warrants that the services and/or deliverables will, for a period of thirty (30) days from the date of acceptance (or such other date as may be agreed in a Contract Document), materially conform to, and operate in accordance with the specifications set out in the relevant Order Document.</p> <p>Pursuant to OAC 260:115-9-5, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.</p>
General Terms, Invoices and Payment (Section 7.1.H, pg. 8)	<p>H. The Supplier shall accept payment by Purchase Card, at the time of order, as allowed by Oklahoma law.</p>

<p>General Terms, Maintenance of Insurance, Payment of Taxes, and Workers' Compensation (Section 8.1, pg. 8-9)</p>	<p>8.1 As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.</p> <p>Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a thirty (30) day notice of cancellation and include the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:</p> <ul style="list-style-type: none"> A. Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law; B. Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$5,000,000 per occurrence; C. Automobile Liability Insurance with limits of liability of not less than \$5,000,000 combined single limit each accident; D. Errors and Omissions Coverage (including Cyber liability), if information technology services are provided under the Contract, with limits not less than \$5,000,000 per occurrence; F. Additional coverage required in writing in connection with a particular Acquisition.
<p>General Terms, Confidentiality (Section 11.3, pg. 14)</p>	<p>11.3 Supplier shall promptly report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. For the avoidance of doubt, protectable information shall not include any information which (a) was rightfully in the possession of Supplier prior to disclosure by Customer; (b) was or is independently developed by Supplier without use of the confidential information; (c) is now or hereafter becomes available to the public other than as a result of disclosure by Supplier in violation of this Contract; or (d) becomes available to Supplier on a non-confidential basis from a source other than Customer and such source was under no obligation to Customer to keep such information confidential. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all legally mandated costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll free telephone call center services.</p>

General Terms, Patents and Copyrights (Section 15, pg. 17-18)	Without exception, a Work Product's price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a Work Product created and provided by Supplier under the Contract infringes that party's U.S. patent, intellectual property, copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the Work Product at issue or replace such potentially infringing Work Product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other Work Product or service rendered materially unusable as intended due to replacement or modification of the Work Product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the Work Product at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned Work Product as well as a refund or reimbursement, if applicable, of the cost of any other Work Product rendered materially unusable as intended due to removal of the portion of Work Product at issue. Any remedy provided under this section is an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies.
General Terms, Limitation of Liability (Section 16.5, pg. 20)	<p>16.5 Limitation of Liability</p> <p>A. With respect to any claim or cause of action arising under or related to the Contract, neither party shall be liable for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages. Supplier's liability, regardless of the form of action, will not exceed the greater of \$10 million or the amount paid to Supplier by State under this Contract in the twelve (12) month period immediately preceding the event giving rise to the claim.</p> <p>B. Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other willful acts for which applicable law does not allow exemption from or limitation of liability of Supplier or its employees, agents or subcontractors.</p> <p>C. The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.</p>
State of Oklahoma Information Technology Terms, Termination of Maintenance and Support Services (Section 2, page 3)	Deleted in its entirety. Maintenance & support services are resold by CDW-G, the OEM terms govern the State's use thereof.
State of Oklahoma Information Technology Terms, Offshore Services (Section 5, page 4)	<p>5 Offshore Services</p> <p>No offshore services are provided by Supplier under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.</p>

State of Oklahoma Information Technology Terms, Compliance with Technology Policies (Section 6, page 4-5)	<p>6 Compliance with Technology Policies</p> <p>To the extent applicable to Supplier's resale of software and relevant services:</p> <p>6.1 The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at https://omes.ok.gov/s/g/files/gmc316/f/InfoSecPPG_0.pdf. Supplier's employees and subcontractors shall adhere to the applicable State IT Standard Methodologies and Templates including but not limited to Project Management, Business Analysis, System Analysis, Enterprise and IT Architecture, Quality, Application and Security Methodologies and Templates as set forth at http://eclipse.omes.ok.gov.</p> <p>6.2 Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.</p> <p>6.3 Supplier shall comply with the CJIS Security Policy as more particularly described at Appendix 2 attached hereto and incorporated herein.</p>
State of Oklahoma Information Technology Terms, Commercial Off the Shelf Software (Section 10, page 6)	<p>10 Commercial Off The Shelf Software</p> <p>Licensor's terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement shall be binding on the State upon acceptance of those separate terms with the applicable licensor.</p>
State of Oklahoma Information Technology Terms, Hosting Services (Section 13.1, page 9)	<p>If Supplier Hosts Customer Data in connection with an Acquisition, the provisions of Appendix 1, attached hereto and incorporated herein, apply to such Acquisition.</p>

Exhibit 1

Software Publishers		
Primary Software Publication Brands		
Description	Maximum Cost + % Markup	% off List Price
CROWDSTRIKE	1.50%	Not Offering
PROOFPOINT	1.50%	Not Offering
MICROSOFT	0.50%	Not Offering
ADOBE	1.00%	Not Offering
VMWARE	1.00%	Not Offering
RED HAT	1.00%	Not Offering
MIMECAST	2.20%	Not Offering
CISCO	1.00%	Not Offering
COMMVAULT	1.00%	Not Offering
BARRACUDA NETWORKS	1.50%	Not Offering
All Other OEMs	2.20%	Not Offering

Other Value-Add Products and Services		
CDW Software Services		
Reseller Hourly Services		
Description	Maximum Cost + % Markup	% off List Price
Inside Solution Architect	Included*	
Field Solution Architect	Included*	
Business Development Manager	Included*	
Field Solution Executive	Included*	
Partner Specialist	Included*	
On-Site OEM Representative	Included*	
Licensing Solutions Executive	Included*	
Software Solutions Advisor	Included*	
Cloud Solutions Architect	Included*	
*Included service related to presales consultative services		
Software Services		
Description	Maximum Cost + % Markup	% off List Price
Total Software Management	Basic Service Included*	
Software Asset Review	Included*	
Software Strategy Validation	Included*	
Effective Software Licensing Management	Included*	
Contract Management Roadmap	Included*	
Software Project Management and Implementations	Customized based on SOW	
IT Asset Management	Basic Service Included*	
Product Training Services	Customized based on SOW	
Maintenance and Support	Customized based on SOW	
CDW Maintenance Agreements	Customized based on SOW	
CDW Technology Support	Customized based on SOW	
Warranties	Basic Service Included*	
Publisher Resold Services		
Description	Maximum Cost + % Markup	% off List Price
Publisher Delivered Services	25.00%	
Third-Party Delivered Services	25.00%	
CDW Managed Services		
Description	Maximum Cost + % Markup	Discount off MSRP
Managed Services	Customized based on SOW	

Professional Services - Hourly Not-to-Exceed Rates		
CDW Professional Services Rates		
Description	List Price	Discounted Hourly Rates
Associate Consulting Engineer	\$180.00	
Consulting Engineer	\$230.00	
Senior Consulting Engineer	\$255.00	
Technical Lead / Principal Consulting Engineer	\$280.00	
Enterprise Consulting Architect	\$280.00	
Business Consulting Analyst	\$280.00	
Project Administrator	\$175.00	
Project Manager	\$225.00	
Senior Project Manager	\$240.00	
Enterprise Project Manager, PMO Lead	\$255.00	
Program Manager	\$255.00	
Technical Architect	\$350.00	
Incident Responder/Forensic Analyst	\$375.00	
IT Asset Management Project-Based Engagement	Custom SOW	
IT Asset Management Maturity Assessment	Custom SOW	
IT Asset Management Technology Solutions	Custom SOW	
IT Asset Management Ongoing Solutions	Custom SOW	
ServiceNow Solutions Rates		
Description	List Price	Discounted Hourly Rates
ServiceNow Engagement Manager	\$275.00	
ServiceNow Program Manager	\$221.00	
ServiceNow Advisory Services	\$234.00	
ServiceNow Principal Consultant	\$276.00	
ServiceNow Organizational Change Management Consultant	\$276.00	
ServiceNow Integration Expert	\$225.00	
ServiceNow Quality Assurance Expert	\$187.00	
ServiceNow Solution Architect	\$225.00	
ServiceNow Technical Consultant	\$200.00	
ServiceNow Trainer	\$225.00	
Digital Velocity Solutions (DVS) Rates		
Description	List Price	Discounted Hourly Rates
DVS F-CTO	\$365.00	
DVS Digital Strategy Consultant	\$320.00	
DVS Digital Product Strategist	\$285.00	
DVS Principal Engineer / Tech. Lead	\$365.00	
DVS Architect	\$315.00	
DVS Senior Engineer	\$265.00	
DVS Engineer	\$240.00	
DVS Associate Engineer	\$225.00	
DVS Program Manager	\$260.00	
DVS Sr. Technical Project Manager	\$240.00	
DVS Technical Project Manager	\$215.00	
DVS Project Coordinator	\$170.00	



This addendum is added to and is to be considered part of the subject contract.

Statewide Contract #: SW1041CY

PeopleSoft Contract ID: 7242

Contract Title: Software Value Added Reseller

Contract Issuance Date: 01/29/2024

Contract Supplier: CyberOne, LLC

Addendum # 1

Addendum Date: 03/06/2024

OMES Point of Contact:

Contracting Officer: Marc Brown

Phone Number: 405-521-6669

E-mail address: Marc.brown@omes.ok.gov

Addendum Information: _____

Addendum #1 is issued for term renewal for CyberOne, LLC per the original T&C's.

Contract Period: 03/14/2024 – 03/13/2025

Agreement Period: 03/14/2024 – 03/13/2028



OKLAHOMA

CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000547869
CYBERONE LLC
6851 COMMUNICATIONS PKWY
PLANO TX 75024-0001
USA

Contract ID 00000000000000000000007242			Page 1 of 3	
Contract Dates 02/12/2024 to 03/13/2025		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041CY Software VAR			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1	43231500 / Business Function Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
2	43231600 / Finance Accounting and Enterprise Resource Planning ERP Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
3	43232000 / Computer Game or Entertainment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
4	43232100 / Content Authoring and Editing Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
5	43232200 / Content Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
6	43232300 / Data Management and Query Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
7	43232400 / Development Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
8	43232500 / Educational or Reference Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	

Final = The price is final after adjustments
Hard = Apply adjustments regardless of other adjustments
Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



CONTRACT

Dispatch via Print

Supplier 0000547869
CYBERONE LLC
6851 COMMUNICATIONS PKWY
PLANO TX 75024-0001
USA

Contract ID 000000000000000000000000007242			Page 2 of 3	
Contract Dates 02/12/2024 to 03/13/2025	Currency USD	Rate Type CRRNT	Rate Date PO Date	
Description: SW1041CY Software VAR		Contract Maximum 0.00		
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order		Maximum / Open	
			Qty	Amt	Qty	Amt
9	43232600 / Industry Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
10	43232700 / Network Applications Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
11	43232800 / Network Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
12	43232900 / Networking Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
13	43233000 / Operating Environment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
14	43233200 / Security and Protection Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
15	43233400 / Utility and Device Driver Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
16	43233500 / Information Exchange Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0001	
17	43233600 / Electrical Equipment Software	EA	1.00	0.00	0.00	0.00

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Contract Dates 02/12/2024 to 03/13/2025		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041CY Software VAR			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Authorized Signature



Official signed contract documents are on file with OMES Central Purchasing.

Contract title: Software VAR

Contract Number: SW1041CY

Date of Contract issuance: 02/12/2024

Contract period: 02/12/2024 through 03/13/2024

Agreement period: 02/12/2024 through 03/13/2028

Type of contract: Mandatory ☐ Non-Mandatory ☒

OMES Central Purchasing contact: Marc Brown **Title:** Statewide Contracting Officer

Phone: 405 - 521-
6669

Email: Marc.brown@omes.ok.gov

Supplier name: CYBERONE LLC

Supplier ID #: 0000547869

Contract ID #: 7242

Supplier Point of Contact: Tera Davis

Supplier address: 6851 Communications PKWY

City: Plano

State: TX

Zip Code: 75024 - 0001

Phone #: 1 - 972 - 333 - 6305

Email: tera@cyberonesecurity.com

Contract Overview:

Software VAR contract for use by all Oklahoma agencies.

Authorized Users: All state departments, boards, commissions, agencies, and institutions, in Addition to counties, school districts and municipalities which may avail themselves of this contract.

How to order:

Request quote from contracted vendor. Please ensure quote references SW1041CY.

Available Brands:

Multiple, See pricing attachment.

Available Products and Services:

Software of multiple categories depending upon agency need.

Authorized Dealer/Reseller(s):

N/A

Please verify that the software item being purchased is not available on existing mandatory statewide contracts. (i.e. SW1010, SW1079, etc.) This statewide contract is for software, software maintenance, software as a service (SaaS), and software implementation services.



OKLAHOMA

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Contract ID 00000000000000000000007242			Page 1 of 3	
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Tax Exempt? Y Tax Exempt ID:736017987

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	Contract Base Pricing		0.00000	EA		0001
2	43231600 / Finance Accounting and Enterprise Resource Planning ERP Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
3	43232000 / Computer Game or Entertainment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
4	43232100 / Content Authoring and Editing Software	EA	1.00	0.00	0.00	0.00
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	Contract Base Pricing		0.00000	EA		0001
6	43232300 / Data Management and Query Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
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	Contract Base Pricing		0.00000	EA		0001
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Contract Lines:

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	Contract Base Pricing		0.00000	EA		0001
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	Contract Base Pricing		0.00000	EA		0001
11	43232800 / Network Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
12	43232900 / Networking Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
13	43233000 / Operating Environment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
14	43233200 / Security and Protection Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
18	43233700 / System Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
15	43233400 / Utility and Device Driver Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
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Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
	Contract Base Pricing	0.00000	EA	0001		
17	43233600 / Electrical Equipment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		
19	81112200 / Software Maintenance and Support	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		
20	81112000 / Data Services (SaaS)	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		
21	81111508 / Software Implementation Services	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		

COMMENTS:

Contract Award from Event ending in 176

Contract period 02/12/2024 - 03/13/2024
Agreement Period 02/12/2024 - 03/13/2028

Vendor Contact: Tera Davis
tera@cyberonesecurity.com

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Authorized Signature



STATE OF OKLAHOMA STATEWIDE CONTRACT WITH CYBERONE, LLC

This State of Oklahoma Statewide Contract #1041 - Software Value Added Reseller (“Contract”) is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services and CyberOne, LLC (“Supplier”) and is effective as of the date of last signature to this Contract. The initial term of the Contract shall be for one (1) year with four (4) one-year options to renew.

Purpose

The State is awarding this Contract to Supplier for the provision of software and services to support State agencies and other eligible Oklahoma Interlocal Entities. This Supplier will provide software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration. This bid supports both SaaS Cloud Based Solutions and On-Prem Software Solutions, as more particularly described in certain Contract Documents. Supplier submitted a proposal with no exceptions, BAFO, vendor documents or confidentiality requests. This Contract memorializes the agreement of the parties with respect to the terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Statewide Contract Terms, Attachment C;
 - 2.4. Information Technology Terms, Attachment D;
 - 2.5. Information Security Requirements, Attachment D-1;
 - 2.6. Pricing, Attachment E-1 and
 - 2.7. Statement of Work, Attachment E-2.

No other terms and conditions shall apply, including terms and conditions listed in the Supplier’s response to the RFP, or terms listed or referenced on the Supplier’s website not otherwise

incorporated into the Contract Documents, in the Supplier quotation/sales order, or in similar documents subsequently provided by the Supplier.

3. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

STATE OF OKLAHOMA
by and through the
OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES

CYBERONE, LLC

By: 
Joe McIntosh (Jan 29, 2024 13:58 CST)

By: 
Tera Davis (Jan 29, 2024 12:26 CST)

Name: Joe McIntosh

Name: Tera Davis

Title: CIO

Title: CEO

Date: Jan 29, 2024

Date: Jan 29, 2024

ATTACHMENT A
EVENT NO. 0000000176

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded by the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract Document.

PURPOSE

The Contract is awarded as a statewide contract on behalf of the Office of Management and Enterprise Services for software and services to support State agencies and other eligible Oklahoma Interlocal Entities. This Supplier will provide software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration. This bid supports both SaaS Cloud Based Solutions and On-Prem Software Solutions.

1. Contract Term and Renewal Options

The initial Contract term, which begins on the effective date of the Contract, will run concurrently with award dated 03/14/2023. There will be four (4) annual renewals remaining.

This RFP is a supplemental solicitation to Solicitation 0900000556 to add additional suppliers within scope.

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

This State of Oklahoma General Terms (“General Terms”) is a Contract Document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract Document, Supplier and State agree to the following General Terms:

1 Scope and Contract Renewal

- 1.1** Supplier may not add products or services to its offerings under the Contract without the State’s prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier’s performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract Documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Addendum. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4** The State may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the State

exercises such option to extend ninety (90) days, the State shall notify the Supplier in writing prior to Contract end date. The State, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

- 1.5** Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

2 Contract Effectiveness and Order of Priority

- 2.1** Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until the Contract is effective.

- 2.2** Contract Documents shall be read to be consistent and complementary. Any conflict among the Contract Documents shall be resolved by giving priority to Contract Documents in the following order of precedence:

- A.** any Addendum;
- B.** any applicable Solicitation;
- C.** any Contract-specific State terms contained in a Contract Document including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
- D.** the terms contained in this Contract Document;
- E.** any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation or applicable law;
- F.** any statement of work, work order, or other similar ordering document as applicable; and
- G.** other mutually agreed Contract Documents.

- 2.3** If there is a conflict between the terms contained in this Contract Document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms

provided by Supplier shall not take priority over this Contract Document or Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Addendum.

- 2.4 Any Contract Document shall be legibly written in ink or typed. All Contract transactions, and any Contract Document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

3 **Modification of Contract Terms and Contract Documents**

- 3.1 The Contract may only be modified, amended, or expanded by an Addendum. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.
- 3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.

4 **Definitions**

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 4.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 4.2 **Addendum** means a mutually executed, written modification to a Contract Document.
- 4.3 **Amendment** means a written change, addition, correction or revision to the Solicitation.
- 4.4 **Bid** means an offer a Bidder submits in response to the Solicitation.

- 4.5 Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.6 Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract Documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 4.7 Contract Document** means this document; any master or enterprise agreement terms entered into between the parties that are mutually agreed to be applicable to the Contract; any Solicitation; any Contract-specific terms; any Supplier's Bid as may be negotiated; any statement of work, work order, or other similar mutually executed ordering document; other mutually executed documents and any Addendum.
- 4.8 Customer** means the entity receiving goods or services contemplated by the Contract.
- 4.9 Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 4.10 Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.
- 4.11 Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 4.12 Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.13 Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 4.14 OAC** means the Oklahoma Administrative Code.
- 4.15 OMES** means the Office of Management and Enterprise Services.

- 4.16 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.17 State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 4.18 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 4.19 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 4.20 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 4.21 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract Document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created,

prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5 Pricing

- 5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 5.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

6 Ordering, Inspection, and Acceptance

- 6.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.
- 6.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-5, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 6.3** Supplier shall deliver products and services on or before the required date specified in a Contract Document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract Document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.
- 6.4** Product warranty and return policies and terms provided under any Contract Document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

7 Invoices and Payment

- 7.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.
- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F.** Supplier shall have no right of setoff.
- G.** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.
- H.** The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.

8 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

- 8.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set

forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a thirty (30) day notice of cancellation and name the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$5,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$5,000,000 combined single limit each accident;
- D.** Directors and Officers Insurance which shall include Employment Practices Liability as well as Consultant's Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than \$5,000,000 per occurrence;
- E.** Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and
- F.** Additional coverage required in writing in connection with a particular Acquisition.

- 8.2** Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.
- 8.3** Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

9 Compliance with Applicable Laws

- 9.1** As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:
- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
 - B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
 - C.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;
 - D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
 - E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;

- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
 - G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
 - H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify;
 - I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
 - J.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- 9.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at [Information Security Policy, Procedures, Guidelines \(oklahoma.gov\)](http://Information%20Security%20Policy,%20Procedures,%20Guidelines%20(oklahoma.gov)). Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 9.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.4** In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory

contract provisions required in connection with the receipt of federal funds or other funding source.

- 9.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 9.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.
- 9.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 9.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.
- 9.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 9.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format

usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

10 Audits and Records Clause

- 10.1** As used in this clause and pursuant to 67 O.S. §203, “record” includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 10.2** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
- 10.3** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

11 Confidentiality

- 11.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer’s prior express written

permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.

- 11.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 11.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll free telephone call center services.
- 11.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 11.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents,

representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.

11.6 The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

11.7 Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) résumé, pricing or marketing materials provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

12 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is

related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

13 Assignment and Permitted Subcontractors

- 13.1** Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.
- 13.2** Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.
- 13.3** If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to

the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

13.4 All payments under the Contract shall be made directly to the Supplier, except as provided in subsection A above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.

13.5 Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

14 Background Checks and Criminal History Investigations

Prior to the commencement of any services, background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to the State in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or services.

15 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property,

copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

16 Indemnification

16.1 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.
- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

16.2 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

16.3 Notice and Cooperation

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

16.4 Coordination of Defense

In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally

participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

16.5 Limitation of Liability

- A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.
- B.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- C.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

17 Termination for Funding Insufficiency

- 17.1** Notwithstanding anything to the contrary in any Contract Document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

17.2 Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.

17.3 The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

18 Termination for Cause

18.1 Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.

18.2 The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.

18.3 Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence

of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

18.4 The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-9 is an example.

19 Termination for Convenience

19.1 The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.

19.2 Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but

there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

20 Suspension of Supplier

20.1 Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.

20.2 Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

20.3 Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract.

A determination that Supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

22 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

23 Force Majeure

23.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

23.2 Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

23.3 Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay

or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

24 Security of Property and Personnel

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

25 Notices

All notices, approvals or requests allowed or required by the terms of any Contract Document shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the physical address set forth below. Notice information may be updated in writing to the other party as necessary. Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall not be delivered solely via e-mail.

If sent to the State:

State Purchasing Director
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

With a copy, which shall not constitute notice, to:

Purchasing Division Deputy General Counsel
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

26 Miscellaneous

26.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract Documents, in the singular or in the aggregate, shall be governed by the laws of the State without regard to application of choice of law principles. Pursuant to 74 O.S. §85.14, where federal granted funds are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents, shall be in Oklahoma County, Oklahoma.

26.2 No Guarantee of Products or Services Required

The State shall not guarantee any minimum or maximum amount of Supplier products or services required under the Contract.

26.3 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

26.4 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

26.5 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

26.6 Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 *et seq.* Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required.

26.7 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

26.8 Mutual Responsibilities

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

26.9 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or

condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

26.10 Severability

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

26.11 Section Headings

The headings used in any Contract Document are for convenience only and do not constitute terms of the Contract.

26.12 Sovereign Immunity

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State.

26.13 Survival

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract Documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

26.14 Entire Agreement

The Contract Documents taken together as a whole constitute the entire agreement between the parties. No statement, promise, condition,

understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract Document shall be binding or valid. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

26.15 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent, or another representative violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

26.16 Import/Export Controls

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

ATTACHMENT C

OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

- 1.1** The Contract is a non-mandatory statewide contract for use by State agencies. Additionally, the Contract may be used by any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department or other entity designated to act on behalf of the political subdivision; a state, county or local governmental entity in its state of origin; and entities authorized to utilize contracts by the State via a multistate or multigovernmental contract.
- 1.2** The Contract is a firm, fixed price contract for indefinite delivery and quantity for the Acquisitions available under the Contract.

2. Orders and Addendums

- 2.1** Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations may be required.
- 2.2** Any ordering document shall be effective between Supplier and the Customer only and shall not be an Addendum to the Contract in its entirety or apply to any Acquisition by another Customer.
- 2.3** Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Addendum to the Contract shall be signed by the State Purchasing Director or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.

3. Termination for Funding Insufficiency

In addition to Contract terms relating to termination due to insufficient funding, a Customer may terminate any purchase order or other payment mechanism if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. The determination by the Customer of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

4. Termination for Cause

In addition to Contract terms relating to termination for cause, a customer may terminate its obligations, in whole or in part, to Supplier if it has provided Supplier with written notice of material breach and Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. The Customer may also terminate a purchase order or other payment mechanism or Supplier's activities under the Contract immediately without a thirty (30) day written notice to Supplier, if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements if such non-compliance relates or may relate to Supplier provision of products or services to the Customer or if Supplier's material breach is reasonably determined (i) to be an impediment to the function of the Customer and detrimental to the Customer, or (ii) when conditions preclude the thirty (30) day notice.

5. Termination for Convenience

In addition to any termination for convenience provisions in the Contract, a Customer may terminate a purchase order or other payment mechanism for convenience if it is determined that termination is in the Customer's best interest. Supplier will be provided at least thirty (30) days' written notice of termination.

6. Contract Management Fee and Usage Report

6.1 Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the

right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

6.2 While Supplier is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

6.3 All Contract Usage Reports shall meet the following criteria:

- i.** Electronic submission in Microsoft Excel format to strategic.sourcing@omes.ok.gov;
- ii.** Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;
- iii.** Submission no later than forty-five (45) days following the end of each calendar quarter;
- iv.** Contract quarterly reporting periods shall be as follows:
 - a.** January 01 through March 31;
 - b.** April 01 through June 30;
 - c.** July 01 through September 30; and
 - d.** October 01 through December 31.
- v.** Reports must include the following information:
 - a.** Procuring entity;
 - b.** Order date;

- c. Purchase Order number or note that the transaction was paid by Purchase Card;
- d. City in which products or services were received or specific office or subdivision title;
- e. Product manufacturer or type of service;
- f. Manufacturer item number, if applicable;
- g. Product description;
- h. General product category, if applicable;
- i. Quantity;
- j. Unit list price or MSRP, as applicable;
- k. Unit price charged to the purchasing entity; and
- l. Other Contract usage information requested by the State.

6.4 Payment of the contract management fee shall be delivered to the following address within forty-five (45) calendar days after the end of each quarterly reporting period:

State of Oklahoma
Office of Management and Enterprise Services, Central Purchasing
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

To ensure payment is properly accounted for, Supplier shall provide the following information with payment: (i) reference to the applicable Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s) and the amount of the contract management fee being paid for each contract number.

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, OMES-Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

1 Definitions

- 1.1 **COTS** means software that is commercial off the shelf.
- 1.2 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier.
- 1.3 **Data Breach** means the unauthorized access by an unauthorized person that results in the use, disclosure or theft of Customer Data.
- 1.4 **Host** includes the terms **Hosted** or **Hosting** and means the accessing, processing or storing of Customer Data.
- 1.5 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.6 **Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 1.7 **Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential

by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.

- 1.8 Personal Data** means Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.
- 1.9 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.10 State CIO** means the State Chief Information Officer or authorized designee.
- 1.11 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 1.12 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.
- 1.13 Work Product** means any and all deliverables produced by Supplier for Customer under a statement of work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (i) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries,

or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or statement of work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or a statement of work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Supplier personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2 Termination of Maintenance and Support Services

Customer may terminate maintenance or support services without an adjustment charge, provided any of the following circumstances occur:

- 2.1** Customer removes the product for which the services are provided, from productive use or;
- 2.2** The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).

If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 Compliance and Electronic and Information Technology Accessibility

State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at <https://oklahoma.gov/omes/services/information-services/is/policies-and-standards/accessibility-standards.html>. Supplier shall provide a Voluntary Product Accessibility Template ("VPAT") describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required, and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.

4 Media Ownership (Disk Drive and/or Memory Chip Ownership)

- 4.1** Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the property of the Customer.
- 4.2** Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime (repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 Offshore Services

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 Compliance with Technology Policies

- 6.1** The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at [Information Security Policy, Procedures, Guidelines \(oklahoma.gov\)](https://oklahoma.gov/omes/services/information-services/is/policies-and-standards.html)

Supplier's employees and subcontractors shall adhere to the applicable State IT Standard Methodologies and Templates including but not limited to Project Management, Business Analysis, System Analysis, Enterprise and IT Architecture, Quality, Application and Security Methodologies and Templates as set forth at <https://oklahoma.gov/omes/services/information-services/is/policies-and-standards.html>

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other

applicable Customer standards.

6.3 Supplier shall comply with the CJIS Security Policy as more particularly described at Appendix 2 attached hereto and incorporated herein.

7 Emerging Technologies

The State of Oklahoma reserves the right to enter into an Addendum to the Contract at any time to allow for emerging technologies not identified elsewhere in the Contract Documents if there are repeated requests for such emerging technology or the State determines it is warranted to add such technology.

8 Extension Right

In addition to extension rights of the State set forth in the Contract, the State CIO reserves the right to extend any Contract if the State CIO determines such extension to be in the best interest of the State.

9 Source Code Escrow

Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third-party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- 9.4** The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5** The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6** The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7** Supplier's ceasing of maintenance and support of the software; or
- 9.8** Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 Commercial Off The Shelf Software

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail.

11 Ownership Rights

Any software developed by the Supplier under the terms of the Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as “Work for Hire”, Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be

shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 Intellectual Property Ownership

The following terms apply to ownership and rights related to Intellectual Property:

- 12.1** As between Supplier and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier hereby agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is hereby effectively transferred, granted, conveyed, assigned and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third-Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.
- 12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier’s signature due to the dissolution of Supplier or Supplier’s failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier’s agent and Supplier’s attorney-in-fact to act for and in Supplier’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer’s sole expense, in the preparation and

prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third-Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or

necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third-Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third-Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third-Party Intellectual Property that may be embodied or reflected in the Work Product.

- 12.9** Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.
- 12.10** To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.
- 12.11** If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 Hosting Services

- 13.1** If Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract Hosts Customer Data in connection with an Acquisition, the provisions of Appendix 1, attached hereto and incorporated herein, apply to such Acquisition.

13.2 If the Hosting of Customer Data by Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract contributes to or directly causes a Data Breach, Supplier shall be responsible for the obligations set forth in Appendix 1 related to breach reporting requirements and associated costs. Likewise if such Hosting contributes to or directly causes a Security Incident, Supplier shall be responsible for the obligations set forth in Appendix 1, as applicable.

14 Change Management

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon renewal or if future bids submitted by Supplier are evaluated by the State.

15 Service Level Deficiency

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

16 Notices

In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

With a copy, which shall not constitute notice, to:

Information Services Deputy Counsel
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Appendix 1 to State of Oklahoma Information Technology Terms

The parties agree to the following provisions in connection with any Customer Data accessed, processed or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract

A. Customer Data

1. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).
2. Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
3. Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

B. Data Security

1. Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public

Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

2. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data.
3. Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
4. Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
5. Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.
6. Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
7. Any remedies provided in this Appendix are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

C. Security Assessment

1. The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards

during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.

2. Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

D. Security Incident or Data Breach Notification: Supplier shall inform Customer of any Security Incident or Data Breach.

1. Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
2. Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).
3. Supplier shall:
 - a. Maintain processes and procedures to identify, respond to and analyze Security Incidents;
 - b. Make summary information regarding such procedures available to Customer at Customer's request;
 - c. Mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Supplier; and

d. Document all Security Incidents and their outcomes.

4. If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

E. Breach Responsibilities: This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Supplier.

1. Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
2. Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.
3. If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

F. Notices

In addition to notice requirements under the terms of the Contract and those set forth above, a request, an approval or a notice in connection with this Appendix provided by Supplier shall be provided to:

Chief Information Security Officer

3115 N. Lincoln Blvd

Oklahoma City, OK 73105

and

servicedesk@omes.ok.gov.

G. Supplier Representations and Warranties

Supplier represents and warrants the following:

1. The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
2. Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.
3. The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.
4. Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

H. Indemnity

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier's breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party's patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier's

opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

I. Termination, Expiration and Suspension of Service

1. During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.

2. In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;

b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or

c. a combination of the two immediately preceding options.

3. Supplier shall not take any action to intentionally erase any Customer Data for a period of:

a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;

b. 30 days after the effective date of termination, if the termination is for convenience; or

c. 60 days after the effective date of termination, if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

4. The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

5. Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

Appendix 2 to State of Oklahoma Information Technology Terms

INTRODUCTION

The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation (“FBI”), Criminal Justice Information Services (CJIS) Division’s CJIS Security Policy (“CJIS Security Policy” or “Security Policy” herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer (“CSO”) and the FBI CJIS Division’s Audit Staff.

CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. **Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”**

DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI and CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy **plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.**

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at: <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

Policy Requirement Checklist		Compliance checklist –
Policy Area 1	Information Exchange Agreements	
Policy Area 2	Security Awareness Training	
Policy Area 3	Incident Response	
Policy Area 4	Auditing and Accountability	
Policy Area 5	Access Control	
Policy Area 6	Identification and Authentication	
Policy Area 7	Configuration Management	
Policy Area 8	Media Protection	
Policy Area 9	Physical Protection	
Policy Area 10	Systems and Communications Protection and Information Integrity	
Policy Area 11	Formal Audits Policy	
Area 12	Personnel Security	

Attachment D-1

Information Security Requirements

1. General Information Security Requirements

- a. No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.
- b. Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.
- c. Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.
- d. Contractor or its subcontractors agree to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

2. HIPAA Requirements

- a. Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).
- b. If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse, and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor's security compliance as it pertains to this contract.
- c. Business Associate Terms Definitions:
 - i. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that "PHI" and "ePHI" shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. "Administrative Safeguards" shall have the same meaning as the term "administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business

Associate's workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.

- ii. Business Associate. "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
 - iii. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 C.F.R. 160.103.
 - iv. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
 - v. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.
- d. Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, "PHI") solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:
- i. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
 - ii. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
 - iii. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
 - iv. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
 - v. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA's compliance and the Secretary of the Department of Health and Human Services (HHS);
 - vi. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
 - vii. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the

form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;

- viii. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- ix. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- x. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual who's Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;
- xi. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
- xii. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
- xiii. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
- xiv. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to

- respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- xv. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and
 - xvi. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.
- e. Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:
- i. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
 - ii. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
 - iii. disclose PHI to report violations of law to appropriate federal and state authorities; or
 - iv. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;

- v. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
 - vi. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § (d)(1)].
- f. Obligations of Covered Entity
- i. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
 - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.
 - iii. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
 - iv. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
 - v. Covered Entity shall provide the minimum necessary PHI to Business Associate.
- g. Term and Termination:
- i. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
 - (1) retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
 - (3) continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - (4) not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under "Permitted Uses and Disclosures By Business Associate" that applied prior to termination; and
 - (5) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- ii. All other applicable obligations of Business Associate under this Agreement shall survive termination.
 - iii. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D).
- h. Miscellaneous Provisions:
- i. No Third Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
 - ii. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
 - iii. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
 - iv. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
 - v. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
 - vi. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
 - vii. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s)

to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

3. 42 C.F.R. Part 2 Related Provisions

- a. Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:
 - i. Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
 - ii. Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of an kind;
 - iii. Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
 - iv. Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).

- v. Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
- vi. Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
- vii. Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
- viii. Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;
- ix. Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.
- b. Data Security. The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.
- c. Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.
- d. Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.
- e. Redisclosure of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

4. Federal Tax Information Requirements IRS Publication 1075 (If Applicable)

- a. **PERFORMANCE:** If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent

within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

- i. All work will be performed under the supervision of the State of Oklahoma.
- ii. The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- iii. FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- iv. FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- v. The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- vi. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- vii. All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- viii. No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- ix. Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- x. To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

- xi. In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- xii. For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- xiii. The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

b. CRIMINAL/CIVIL SANCTIONS

- i. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- ii. Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- iii. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- iv. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material

in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- v. Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c. INSPECTION: The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

5. SSA Requirements (If applicable)

- a. PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
 - i. All work will be done under the supervision of the State of Oklahoma.
 - ii. Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
 - iii. All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

- iv. No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- v. The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- vi. Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- vii. Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful assess and/or disclosure.
- viii. Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.
- ix. The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- x. Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- xi. SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- xii. SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.

- xiii. If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
 - xiv. In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
 - xv. The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.
- b. **CRIMINAL/CIVIL SANCTIONS:** The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.
- i. **Civil Remedies.**
 - (1) In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of —
 - (a) actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
 - (b) the costs of the action together with reasonable attorney fees as determined by the court.
 - (2) An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where

parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

ii. Criminal Penalties

- (1) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).
- (2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- (3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

6. Child Support FPLS Requirements (If applicable)

- a. Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.

- i. This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- ii. This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

7. FERPA Requirements (If applicable)

- a. If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

8. CJIS Requirements (If applicable)

- a. INTRODUCTION

This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.

b. CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”

c. DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI AND CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at:
<https://www.fbi.gov/services/cjis/cjissecurity-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

**Attachment E-1 to
STATE OF OKLAHOMA CONTRACT WITH CYBERONE, LLC
RESULTING FROM SOLICITATION NO. EV0000000176**

CyberOne, LLC - Pricing

Exhibit 1

Software Publishers		
Description	Maximum Cost + % Markup	% off List Price*
Abnormal Security		8%
Anomali		8%
Armis		5%
BeyondTrust		8%
Cisco		5%
CloudFlare		5%
Cribl		5%
Critical Start		10%
CrowdStrike		8%
Cyberark		5%
Blackberry Cylance		5%
Delinea		8%
Fortra		8%
Duo Security (aquired by Cisco)		8%
Exabeam		5%
ExtraHop		5%
Trellix		5%
Gigamon		5%
Island.io		10%
KnowBe4		5%
Mimecast		8%
Netskope		5%
Netwrix		5%
Noetic		5%
Obsidian		5%
Okta		5%
Onapsis		5%
Palo Alto Networks		8%
Picnic Score		5%
Proofpoint		10%
Rapid7		8%
Recorded Future		10%
ReliaQuest		10%
Revelstoke		10%
SailPoint		5%
Saviynt		5%
Semperis		5%

SentinelOne		10%
Fastly		8%
Spirion		5%
Splunk		8%
Tenable		10%
Thycotic		5%
Tines		5%
TokenEx		5%
Varonis		8%
VMware		5%
WIZ		5%
ZeroFOX		5%
Zscaler		5%
		*This is the minimum discount that would be offered from list price.

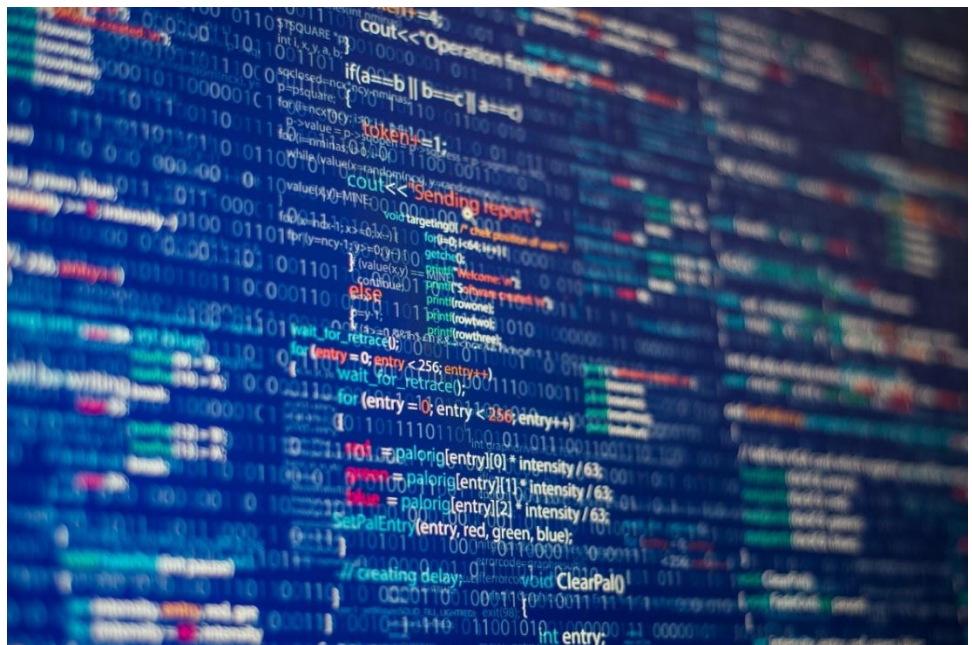
Other Value Add Products and Services		
Description	Maximum Cost + % Markup	% off List Price
Kinney Group Services		2%
IDM Works Services		2%

Professional Services - Hourly Not-to-Exceed Rates		
Description	List Price	Discounted Hourly Rates
Advisory consulting	\$350	\$300
Microsoft consulting (Sentinel)	\$500	\$350
Microsoft consulting	\$350	\$300
Microsoft managed services	\$250	\$250
Exposure Management	\$300	\$200
Network consulting (Palo)	\$350	\$300

The Statement of Work is hereby amended as set forth below and supersedes all prior documents submitted by CyberOne, LLC or discussed by the parties. The parties agree to use this Statement of Work or a document substantially similar in the form of this Statement of Work.



ENTERPRISE SECURITY STAFFING



4/2/2023

Statement of Work

VCISO Services for **CLIENT** by CyberOne Security

Enterprise Security Staffing

STATEMENT OF WORK

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EXECUTIVE SUMMARY

CyberOne Security (CyberOne) is pleased to present this proposal for providing VCISO Services for **CLIENT** ("CLIENT" or "Customer"). The threat landscape is changing where personal information of customers and employees is a key target to hackers. The goal of this program is to assist in security practices and methodology. The Security Staffing Assistance will focus on the attack methods commonly used by malicious actors and assisting in day-to-day security operations. This security program is performed to develop an application security program utilizing methodology to identify risks to the environment, discover vulnerabilities, and to assess the threat of the identified vulnerabilities to your organization.

ABOUT CYBERONE

CyberOne is a Plano, TX based security company that is majority employee-owned with the goal to cost-effectively improve the security and compliance management capabilities of our customers by leveraging deep industry subject matter expertise. While focused on security and compliance services, we also resell a limited set of security products, and assist organizations that are moving from a reactive security to proactive security model, or who are working to address security and compliance challenges.

Our professional services teams provide a compliment of offerings to help organizations develop, maintain, and assess Information Security, Risk, and Compliance Management Programs. Our teams of security analysts, assessors, and engineers deliver top tier real-world expertise regarding building and maintaining world class information security capabilities and governance programs, and have helped numerous organizations in the following markets achieve their security & compliance objectives:

- Retail and E-Commerce
- Banking and Financial Services
- Healthcare and Clinical Services
- State and Local Government
- Public Service and Transportation Organizations
- Technology Products and Services
- Manufacturing and Distribution
- Utilities and Critical Infrastructure

SCOPE

The CyberOne team is committed in supporting the Customer's cybersecurity program and operations. Based on previous discussions with the Customer, there is a need for additional staffing resources identified as a part of the Enterprise Security Program. The goal of this program is to provide staffing resources so that they can assist the Customer in the monitoring, investigation, remediation, and guidance of alert information, acting as a SOC analyst and other tasks/services to help the Customer continue to maintain a secure environment.

CyberOne will provide Security expertise through remote work staff augmentation. In addition to the dedicated staff, CyberOne will provide support and guidance to the team from our team of internal security experts at CyberOne.

These Security resources will be able to provide a wide range of services including but not limited to those tasks/projects assigned by the Customer such as below.

VCISO SCOPE

Project	Components	Tasks
Virtual Chief Information Security Officer (VCISO or Fractional CISO)	Program Development	<p>CyberOne will work with the Customer Team to advise, design, document and implement the Customer's cybersecurity program. This includes involvement in meetings for various projects that have cybersecurity components.</p> <p>The vCISO will request meetings with the Customer stakeholders or SMEs to accomplish the above.</p>
	Security Policies and Procedures	Review/revision/development of existing security policies and procedures and alignment with industry best practices and compliance requirements. (i.e. SOC2)
	Security Risk Assessment	<p>CyberOne along with the Customer Team will perform a high-level security risk assessment to identify any security gaps and risks that may impact the organization. A Risk Register will be provided and maintained to ensure risks are analyzed, prioritized, and mitigated.</p> <ul style="list-style-type: none"> Review of general IT security needs and assistance in setting up Microsoft 365 security
	Cybersecurity Controls	<p>CyberOne will lead the development of the Customers' cybersecurity controls framework that will meet industry best practices and regulatory compliance that the organization needs to meet (i.e. Threat Detection). This includes:</p> <ul style="list-style-type: none"> Review of software development security, and implementation assistance, if necessary Review of mass spectrometer security, and implementation assistance, if necessary Development of annual (and new employee) cybersecurity training
	Incident Response Planning	CyberOne will lead the development, maintenance, and testing of the organization's incident response plan.
	Audits	Respond to internal and external audits including inquiries from 3 rd -parties.
	Cybersecurity Annual Schedule and Road mapping	CyberOne will help develop a list of tasks, projects, initiatives, and milestones the organization can embark on throughout the year (short term) and for the next 2 years.
	Other Tasks as assigned or required	Internal Cybersecurity Communications – Provide the Customer with employee notifications concerning cybersecurity incidents and best practices.

Security Tools and Architecture – CyberOne will help evaluate, review, and provide guidance on selecting/implementing and maintaining security tools.

Security Monitoring – CyberOne will identify how to best collect and review security alerts to assist the Customer team in reducing exposure to threats (may impact additional hours).

Security Operations – CyberOne will review the Customer's day-to-day security operations and will assist in developing automations and reporting. CyberOne will also help with investigating and coordinating security incidents including documentation and process improvements (may impact additional hours).

Periodic Reporting – CyberOne will provide monthly reports and Quarterly Business Reviews to the Customer leadership on the following areas:

- Security Policy/Procedure Updates
- Security Operation Reports – Incidents and Risks
- Security Metrics
- Project/Tasks Updates
- Roadmap/Schedule Reporting

CYBERONE STAFFING RESOURCES

The following resources and their level of security experience are being provided to the Customer. These resources have been vetted internally by CyberOne prior to engagement.

A. Senior Security Analyst

ESCALATION PROCESS

Timely resolution of issues is critical to maintaining project control and customer satisfaction. The escalation process helps ensure issues are identified and resolved quickly. The escalation process provides a mechanism to alert CyberOne to issues not being resolved in a timely manner by the CyberOne resources including:

1. Raising the issue initially to the CyberOne Project Manager or Account Manager.
2. If not resolved at this level, an issue report will be generated, and the issue will be escalated to the Project Sponsor.

CERTAIN INTERNAL CYBERONE ISSUES MAY NEED TO BE ESCALATED TO THE CYBERONE VP OR MANAGING PARTNER FOR RESOLUTION.

ORDER AND PAYMENT INFORMATION

CyberOne proposes to provide the Services and Deliverables at a Time and Materials basis not including travel expenses.

Table 1. Combined Project Cost

Type	Description	Hourly	QTY	
Staffing Services	C1-PROSRV-ADVISORY-HOURLY	Advisory Services		\$xxxxx.xx
	Estimated Expenses			TBD
		Total Price		

Payment Terms

CyberOne will invoice the Customer upon execution of this Statement of Work. The CyberOne invoice is payable with net 45 terms.

Expenses

Portions of this engagement are performed remotely, and no travel expenses or licensing fees are required. Other portions can be performed on site with proper Customer approval. If the Customer requests services that require travel, such as in-person debriefs or presentations outside of the DFW area, travel and incidentals will be billed according to MSA terms.

Project Responsibilities

CUSTOMER RESPONSIBILITIES

- Assign a Project Sponsor who:
 - Is available to CyberOne personnel throughout the life of the project.
 - Acts as an escalation point when conflicts cannot be resolved by the Project Manager.
- Assign a Project Manager who is:
 - Responsible for all the Customer aspects of this Project.
 - Authorized to make all decisions relative to the Project, including identification and assignment of the Customer resources.
 - Available to CyberOne consulting personnel throughout the Project's life.
 - Is authorized to sign Status Reports, approve consultant hours, and approve project changes.
 - Will coordinate all interviews or meeting schedules.
 - Responsible for acceptance of engagement report.
 - Authorized to approve Project changes.
- Maintain scope of the identified applications for this assessment and communicate platform changes in a reasonable timeframe.
- Assign managers and other personnel, as appropriate, to work with CyberOne throughout the project's life. The Customer is expected to engage and participate throughout the project lifecycle phases, e.g., analysis and design, implementation, and testing. Project performance is predicated on the Customer

staff. Delays in providing this staffing may lead to a Change Order and result in additional cost and/or delay in completing the Services.

CYBERONE RESPONSIBILITIES

In addition to the Services defined throughout this SOW, CyberOne shall:

- Provide a single point of contact to the Customer for the duration of the project for coordination and scheduling of project tasks, documentation, and any changes to scope requiring a change order.
- Coordinate activities of all CyberOne resources.

Billing Contact

Customer	
Contact Name:	
CyberOne	
Address:	6851 Communications Parkway
City, State, Zip (Country):	Plano, TX 75024
Senior Account Manager:	
Phone No.:	
E-mail:	
Professional Services Project Manager:	
Mobile No.:	
E-mail:	
Prepared By:	
SOW Number:	
Issuance Date:	
Version:	

Agreement

In addition to the Customer's execution of this SOW, CyberOne shall require a valid acceptable purchase order referencing this SOW in order to begin to provide the Services hereunder and the signature represents that their execution of this SOW is a binding commitment to purchase the Services described herein. However, in the event that the Customer does not issue purchase orders as a matter of business practice, the Customer hereby warrants and represents that: i) its signature on this SOW authorizes CyberOne to provide the Services hereunder, and ii) that Customer shall pay for Services provided to the Customer without the necessity of a purchase order, and iii) the Customer will not contest payment for the provision of Services hereunder due to the fact that no purchase order was issued. Professional Services Terms and Conditions are located on the CyberOne website at <https://www.cyberonesecurity.com/psa>.

Effective Date:

XXXX

CyberOne Security

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Date

Date

Please fax your documents to:

CyberOne Security

ATTN: Sales Operations

Email: operations@cyberonesecurity.com

SW1041 Software-Supplemental

Exhibit 1

Software Publishers		
Description	Maximum Cost + % Markup	% off List Price*
Abnormal Security		8%
Anomali		8%
Armis		5%
BeyondTrust		8%
Cisco		5%
CloudFlare		5%
Cribl		5%
Critical Start		10%
CrowdStrike		8%
Cyberark		5%
Blackberry Cylance		5%
Delinea		8%
Fortra		8%
Duo Security (aquired by Cisco)		8%
Exabeam		5%
ExtraHop		5%
Trellix		5%
Gigamon		5%
Island.io		10%
KnowBe4		5%
Mimecast		8%
Netskope		5%
Netwrix		5%
Noetic		5%
Obsidian		5%
Okta		5%
Onapsis		5%
Palo Alto Networks		8%
Picnic Score		5%
Proofpoint		10%
Rapid7		8%
Recorded Future		10%
ReliaQuest		10%
Revelstoke		10%
SailPoint		5%
Saviynt		5%
Semperis		5%
SentinelOne		10%
Fastly		8%
Spirion		5%
Splunk		8%

Tenable		10%
Thycotic		5%
Tines		5%
TokenEx		5%
Varonis		8%
VMware		5%
WIZ		5%
ZeroFOX		5%
Zscaler		5%
		*This is the minimum discount that would be offered from list price.

Other Value Add Products and Services		
Description	Maximum Cost + % Markup	% off List Price
Kinney Group Services		2%
IDM Works Services		2%

Professional Services - Hourly Not-to-Exceed Rates		
Description	List Price	Discounted Hourly Rates
Pen testing	\$400	\$325
Advisory consulting	\$350	\$300
Risk Assessments (gap, certification, etc.)	\$350	\$300
Microsoft consulting (Sentinel)	\$500	\$350
Microsoft consulting	\$350	\$300
Microsoft managed services	\$250	\$250
Exposure Management	\$300	\$200
Network consulting (Palo)	\$350	\$300



This addendum is added to and is to be considered part of the subject contract.

Statewide Contract #: SW1041IN

PeopleSoft Contract ID: 7112

Contract Title: Software Value Added Reseller

Contract Issuance Date: 10/23/2023

Contract Supplier: Insight Public Sector

Addendum # 1

Addendum Date: 03/06/2024

OMES Point of Contact:

Contracting Officer: Marc Brown

Phone Number: 405-521-6669

E-mail address: Marc.brown@omes.ok.gov

Addendum Information: _____

Addendum #1 is issued for term renewal for Insight per the original T&C's.

Contract Period: 03/14/2024 – 03/13/2025

Agreement Period: 03/14/2024 – 03/13/2028



State of Oklahoma

Contract ID 00000000000000000000000007112			Page 1 of 3	
Contract Dates 10/23/2023 to 03/13/2025		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041N Software VAR			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order		Maximum / Open	
			Qty	Amt	Qty	Amt
1	43231500 / Business Function Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0003		
2	43231600 / Finance Accounting and Enterprise Resource Planning ERP Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0003		
3	43232000 / Computer Game or Entertainment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0003		
4	43232100 / Content Authoring and Editing Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0003		
5	43232200 / Content Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0003		
6	43232300 / Data Management and Query Software=	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0003		
7	43232400 / Development Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0003		
8	43232500 / Education or Reference Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing 0.00000	EA		0003		

Final = The price is final after adjustments
 Hard = Apply adjustments regardless of other adjustments
 Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



OKLAHOMA

CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000069371
INSIGHT PUBLIC SECTOR INC
6820 S HARL AVE
TEMPE AZ 85283-4318
USA

Contract ID 0000000000000000000007112			Page 2 of 3	
Contract Dates 10/23/2023 to 03/13/2025		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041N Software VAR			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
9	43232600 / Industry Specific Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0003	
10	43232700 / Network Applications Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0003	
11	43232800 / Network Management Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0003	
12	43232900 / Networking Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0003	
13	43233000 / Operating Environment Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0003	
14	43233200 / Security and Protection Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0003	
15	43233400 / Utility and Device Driver Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0003	
16	43233500 / Information Exchange Software	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA	0003	
17	43233600 / Electrical Equipment Software	EA	1.00	0.00	0.00	0.00

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Authorized Signature



Dispatch via Print

Contract ID 0000000000000000000000007112			Page 3 of 3	
Contract Dates 10/23/2023 to 03/13/2025		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW1041N Software VAR			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Authorized Signature

Official signed contract documents are on file with OMES Central Purchasing.

Contract title: Software Value Added Reseller

Contract Number: SW1041IN

Date of Contract issuance: 10.23.2023

Contract period: 10.23.2023 through 03.13.2024

Agreement period: 10.23.2023 through 03.14.2028

Type of contract: Mandatory ☐ Non-Mandatory ☒

OMES POC Skyler J. Greco

Title: SW Contracting Officer

Phone: (405) - 521 - 2174

Email: skyler.greco@omes.ok.gov

Vendor POC



MARK LAUVER | Senior SLED Account Executive | Insight
d. 480.333.3286 | t. 800.467.4448, ext 3286 | mlauver@insight.com | insight.com

Supplier ID:

Supplier 0000069371
INSIGHT PUBLIC SECTOR INC
6820 S HARL AVE
TEMPE AZ 85283-4318
USA

Contract ID: 0000000000000000000007112

Please verify that the software item being purchased is not available on existing mandatory statewide contracts. (i.e. SW1010, SW1079, etc.) This statewide contract is for software, software maintenance, software as a service (SaaS), and software implementation services.

Contract Overview: Value-Added Software

Authorized Users: All state departments, boards, commissions, agencies, and institutions, in Addition to counties, school districts and municipalities which may avail themselves of this contract.

How to order:

Contact POC listed above

Ensure quote references SW1041IN

.

Available Brands:

See pricing attachment.

Available Products and Services:

Software, Value-Added

Authorized Dealer/Reseller(s): N/A



State of Oklahoma

Contract ID				Page
000000000000000000007112				1 of 3
Contract Dates	Currency	Rate Type	Rate Date	
10/23/2023 to 03/13/2024	USD	CRRNT	PO Date	
Description:	Contract Maximum			
	0.00			
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order		Maximum / Open	
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Contract ID 0000000000000000000000007112			Page 2 of 3	
Contract Dates 10/23/2023 to 03/13/2024		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description:			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Contract Lines:

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Authorized Signature



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Contract ID 0000000000000000000000007112			Page 3 of 3	
Contract Dates 10/23/2023 to 03/13/2024	Currency USD	Rate Type CRRNT	Rate Date PO Date	
Description:		Contract Maximum 0.00		
Allow Open Item Reference				
TYPE: STATEWIDE				

Authorized Signature



STATE OF OKLAHOMA STATEWIDE CONTRACT WITH INSIGHT PUBLIC SECTOR, INC.

This State of Oklahoma Statewide Contract No. 1041 (“Contract”) is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services (“State”) and Insight Public Sector, Inc. (“Supplier”) and is effective as of the date of last signature to this Contract. The initial Contract term, which begins on the effective date of the Contract, is one year and there are four (4) one-year options to renew the Contract.

Purpose

The State is awarding this Contract to Supplier for the provision of software and services to support State agencies and other eligible Oklahoma Interlocal Entities, including software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and This Contract memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation 0900000556, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Oklahoma Statewide Contract Terms, Attachment C;
 - 2.4. Information Technology terms, Attachment D;
 - 2.5. Information Security Requirements, Attachment D-1;
 - 2.6. Service Level Agreement, Attachment E-1
 - 2.7. Pricing, Attachment E-2
 - 2.8. Value Add, Attachment E-3
 - 2.9. Exceptions, Attachment F
 - 2.10. Template for Contract Modifications for Quotes, Statements of Work, or other Ordering Documents, Attachment F-1.

3. The parties additionally agree:

- 3.1. Except for information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.
- 3.2. Unless mutually agreed to in writing by the Chief Information Officer utilizing Attachment F-1, no Contract Document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State. If Supplier is acting as a reseller, any third-party terms provided are also subject to the foregoing.
- 3.3. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.
- 3.4. Supplier, as a software value added reseller, is required to ensure that any software or information technology resold complies with applicable law and the Compliance and Electronic and Information Technology Accessibility clause in the Contract. This includes providing the State with a Voluntary Product Accessibility Template ("VPAT"). If the software or information technology is not compliant, Supplier holds an affirmative obligation to ensure that the software or information technology becomes compliant or provide notice to the State that the software or information technology cannot be made complaint and why.
- 3.5. Third Party Products resold under this Contract shall also be governed by the negotiated electronic license, subscription, maintenance, support or similar agreement between the State and the third-party publisher or supplier. Supplier agrees that all such agreements will pass to any applicable Acquisition placed by the State or Customer hereunder. Any other Third-Party Product terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement shall be binding only upon the State's acceptance of those additional terms.

- 3.6. The parties agree and understand that Supplier has included a draft/sample Statement of Work (SOW) and Master Reseller Agreement in their bid response. These are not to be included in the final contract as Supplier has withdrawn these items from their bid response. End user may be required to sign a Statement of Work (SOW) at the opportunity level for any professional services engagements.

Any additional documents provided by Supplier in their bid response that are not included in this final Contract have been rejected by the State and are not intended to be part of this final Contract.

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


4. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

STATE OF OKLAHOMA

Insight Public Sector, Inc.

by and through the

**OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES**

By: 
Joe McIntosh (Oct 23, 2023 09:54 CDT)

By: 
Scott Friedlander (Oct 23, 2023 10:53 EDT)

Name: Paul J. McIntosh

Name: Scott Friedlander

Title: Chief Information Officer

Title: Senior Vice President Public Sector

Date: 10/23/2023

Date: 10/23/2023

ATTACHMENT A
SOLICITATION NO. 0900000556

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded by the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract Document.

PURPOSE

The Contract is awarded as a statewide contract on behalf of the Office of Management and Enterprise Services for software and services to support State agencies and other eligible Oklahoma Interlocal Entities. This Supplier will provide software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration.

1. Contract Term and Renewal Options

The initial Contract term, which begins on the effective date of the Contract, is one year and there are [4] one-year options to renew the Contract.

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

This State of Oklahoma General Terms (“General Terms”) is a Contract Document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract Document, Supplier and State agree to the following General Terms:

1 Scope and Contract Renewal

- 1.1** Supplier may not add products or services to its offerings under the Contract without the State’s prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier’s performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract Documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Addendum. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4** The State may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the State

exercises such option to extend ninety (90) days, the State shall notify the Supplier in writing prior to Contract end date. The State, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

- 1.5** Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

2 Contract Effectiveness and Order of Priority

- 2.1** Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until the Contract is effective.
- 2.2** Contract Documents shall be read to be consistent and complementary. Any conflict among the Contract Documents shall be resolved by giving priority to Contract Documents in the following order of precedence:
- A.** any Addendum;
 - B.** any applicable Solicitation;
 - C.** any Contract-specific State terms contained in a Contract Document including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
 - D.** the terms contained in this Contract Document;
 - E.** any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation or applicable law;
 - F.** any statement of work, work order, or other similar ordering document as applicable; and
 - G.** other mutually agreed Contract Documents.
- 2.3** If there is a conflict between the terms contained in this Contract Document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms

provided by Supplier shall not take priority over this Contract Document or Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Addendum.

- 2.4 Any Contract Document shall be legibly written in ink or typed. All Contract transactions, and any Contract Document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

3 **Modification of Contract Terms and Contract Documents**

- 3.1 The Contract may only be modified, amended, or expanded by an Addendum. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.
- 3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.

4 **Definitions**

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 4.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 4.2 **Addendum** means a mutually executed, written modification to a Contract Document.
- 4.3 **Amendment** means a written change, addition, correction or revision to the Solicitation.
- 4.4 **Bid** means an offer a Bidder submits in response to the Solicitation.

- 4.5 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.6 **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract Documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 4.7 **Contract Document** means this document; any master or enterprise agreement terms entered into between the parties that are mutually agreed to be applicable to the Contract; any Solicitation; any Contract-specific terms; any Supplier's Bid as may be negotiated; any statement of work, work order, or other similar mutually executed ordering document; other mutually executed documents and any Addendum.
- 4.8 **Customer** means the entity receiving goods or services contemplated by the Contract.
- 4.9 **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 4.10 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.
- 4.11 **Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 4.12 **Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.13 **Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 4.14 **OAC** means the Oklahoma Administrative Code.
- 4.15 **OMES** means the Office of Management and Enterprise Services.

- 4.16 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.17 State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 4.18 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 4.19 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 4.20 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 4.21 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract Document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created,

prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5 Pricing

- 5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 5.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

6 Ordering, Inspection, and Acceptance

- 6.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.
- 6.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-5, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 6.3 Supplier shall deliver products and services on or before the required date specified in a Contract Document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract Document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.
- 6.4 Product warranty and return policies and terms provided under any Contract Document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

7 Invoices and Payment

- 7.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.
- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F.** Supplier shall have no right of setoff.
- G.** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.
- H.** The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.

8 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

- 8.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set

forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a thirty (30) day notice of cancellation and name the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$5,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$5,000,000 combined single limit each accident;
- D.** Directors and Officers Insurance which shall include Employment Practices Liability as well as Consultant's Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than \$5,000,000 per occurrence;
- E.** Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and
- F.** Additional coverage required in writing in connection with a particular Acquisition.

- 8.2** Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.
- 8.3** Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

9 Compliance with Applicable Laws

- 9.1** As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:
- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
 - B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
 - C.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;
 - D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
 - E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;

- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
 - G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
 - H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify;
 - I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
 - J.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- 9.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at https://omes.ok.gov/sites/g/files/gmc316/f/InfoSecPPG_0.pdf. Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 9.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.4** In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory

contract provisions required in connection with the receipt of federal funds or other funding source.

- 9.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 9.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.
- 9.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 9.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.
- 9.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 9.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format

usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

10 Audits and Records Clause

- 10.1** As used in this clause and pursuant to 67 O.S. §203, “record” includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 10.2** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
- 10.3** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

11 Confidentiality

- 11.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer’s prior express written

permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.

- 11.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 11.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll free telephone call center services.
- 11.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 11.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents,

representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.

11.6 The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

11.7 Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) résumé, pricing or marketing materials provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

12 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is

related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

13 Assignment and Permitted Subcontractors

13.1 Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.

13.2 Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

13.3 If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to

the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

13.4 All payments under the Contract shall be made directly to the Supplier, except as provided in subsection A above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.

13.5 Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

14 Background Checks and Criminal History Investigations

Prior to the commencement of any services, background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to the State in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or services.

15 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property,

copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

16 Indemnification

16.1 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.
- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

16.2 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

16.3 Notice and Cooperation

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

16.4 Coordination of Defense

In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally

participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

16.5 Limitation of Liability

- A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.
- B.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- C.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

17 Termination for Funding Insufficiency

- 17.1** Notwithstanding anything to the contrary in any Contract Document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

- 17.2** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.
- 17.3** The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

18 Termination for Cause

- 18.1** Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.
- 18.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.
- 18.3** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence

of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

- 18.4** The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-9 is an example.

19 Termination for Convenience

- 19.1** The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.
- 19.2** Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but

there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

20 Suspension of Supplier

- 20.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.
- 20.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.
- 20.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract.

A determination that Supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

22 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

23 Force Majeure

23.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

23.2 Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

23.3 Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay

or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

24 Security of Property and Personnel

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

25 Notices

All notices, approvals or requests allowed or required by the terms of any Contract Document shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the physical address set forth below. Notice information may be updated in writing to the other party as necessary. Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall not be delivered solely via e-mail.

If sent to the State:

State Purchasing Director
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

With a copy, which shall not constitute notice, to:

Purchasing Division Deputy General Counsel
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

26 Miscellaneous

26.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract Documents, in the singular or in the aggregate, shall be governed by the laws of the State without regard to application of choice of law principles. Pursuant to 74 O.S. §85.14, where federal granted funds are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents, shall be in Oklahoma County, Oklahoma.

26.2 No Guarantee of Products or Services Required

The State shall not guarantee any minimum or maximum amount of Supplier products or services required under the Contract.

26.3 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

26.4 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

26.5 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

26.6 Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 *et seq.* Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required.

26.7 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

26.8 Mutual Responsibilities

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

26.9 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or

condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

26.10 Severability

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

26.11 Section Headings

The headings used in any Contract Document are for convenience only and do not constitute terms of the Contract.

26.12 Sovereign Immunity

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State.

26.13 Survival

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract Documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

26.14 Entire Agreement

The Contract Documents taken together as a whole constitute the entire agreement between the parties. No statement, promise, condition,

understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract Document shall be binding or valid. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

26.15 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent, or another representative violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

26.16 Import/Export Controls

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

ATTACHMENT C

OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

- 1.1** The Contract is a non-mandatory statewide contract for use by State agencies. Additionally, the Contract may be used by any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department or other entity designated to act on behalf of the political subdivision; a state, county or local governmental entity in its state of origin; and entities authorized to utilize contracts by the State via a multistate or multigovernmental contract.
- 1.2** The Contract is a firm, fixed price contract for indefinite delivery and quantity for the Acquisitions available under the Contract.

2. Orders and Addendums

- 2.1** Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations may be required.
- 2.2** Any ordering document shall be effective between Supplier and the Customer only and shall not be an Addendum to the Contract in its entirety or apply to any Acquisition by another Customer.
- 2.3** Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Addendum to the Contract shall be signed by the State Purchasing Director or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.

3. Termination for Funding Insufficiency

In addition to Contract terms relating to termination due to insufficient funding, a Customer may terminate any purchase order or other payment mechanism if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. The determination by the Customer of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

4. Termination for Cause

In addition to Contract terms relating to termination for cause, a customer may terminate its obligations, in whole or in part, to Supplier if it has provided Supplier with written notice of material breach and Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. The Customer may also terminate a purchase order or other payment mechanism or Supplier's activities under the Contract immediately without a thirty (30) day written notice to Supplier, if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements if such non-compliance relates or may relate to Supplier provision of products or services to the Customer or if Supplier's material breach is reasonably determined (i) to be an impediment to the function of the Customer and detrimental to the Customer, or (ii) when conditions preclude the thirty (30) day notice.

5. Termination for Convenience

In addition to any termination for convenience provisions in the Contract, a Customer may terminate a purchase order or other payment mechanism for convenience if it is determined that termination is in the Customer's best interest. Supplier will be provided at least thirty (30) days' written notice of termination.

6. Contract Management Fee and Usage Report

6.1 Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the

right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

6.2 While Supplier is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

6.3 All Contract Usage Reports shall meet the following criteria:

- i. Electronic submission in Microsoft Excel format to strategic.sourcing@omes.ok.gov;
- ii. Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;
- iii. Submission no later than forty-five (45) days following the end of each calendar quarter;
- iv. Contract quarterly reporting periods shall be as follows:
 - a. January 01 through March 31;
 - b. April 01 through June 30;
 - c. July 01 through September 30; and
 - d. October 01 through December 31.
- v. Reports must include the following information:
 - a. Procuring entity;
 - b. Order date;

- c. Purchase Order number or note that the transaction was paid by Purchase Card;
- d. City in which products or services were received or specific office or subdivision title;
- e. Product manufacturer or type of service;
- f. Manufacturer item number, if applicable;
- g. Product description;
- h. General product category, if applicable;
- i. Quantity;
- j. Unit list price or MSRP, as applicable;
- k. Unit price charged to the purchasing entity; and
- l. Other Contract usage information requested by the State.

6.4 Payment of the contract management fee shall be delivered to the following address within forty-five (45) calendar days after the end of each quarterly reporting period:

State of Oklahoma
Office of Management and Enterprise Services, Central Purchasing
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

To ensure payment is properly accounted for, Supplier shall provide the following information with payment: (i) reference to the applicable Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s) and the amount of the contract management fee being paid for each contract number.

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, OMES-Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

1 Definitions

- 1.1 **COTS** means software that is commercial off the shelf.
- 1.2 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier.
- 1.3 **Data Breach** means the unauthorized access by an unauthorized person that results in the use, disclosure or theft of Customer Data.
- 1.4 **Host** includes the terms **Hosted** or **Hosting** and means the accessing, processing or storing of Customer Data.
- 1.5 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.6 **Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 1.7 **Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential

by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.

- 1.8 Personal Data** means Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.
- 1.9 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.10 State CIO** means the State Chief Information Officer or authorized designee.
- 1.11 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 1.12 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.
- 1.13 Work Product** means any and all deliverables produced by Supplier for Customer under a statement of work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (i) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts,

personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or statement of work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or a statement of work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Supplier personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2 Termination of Maintenance and Support Services

Customer may terminate maintenance or support services without an adjustment charge, provided any of the following circumstances occur:

- 2.1** Customer removes the product for which the services are provided, from productive use or;
- 2.2** The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).

If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 Compliance and Electronic and Information Technology Accessibility

State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at <https://omes.ok.gov/services/information-services/accessibility-standards>. Supplier shall provide a Voluntary Product Accessibility Template ("VPAT") describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.

4 Media Ownership (Disk Drive and/or Memory Chip Ownership)

- 4.1** Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the property of the Customer.
- 4.2** Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime (repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 Offshore Services

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 Compliance with Technology Policies

- 6.1** The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at https://omes.ok.gov/s/g/files/gmc316/f/InfoSecPPG_0.pdf.

Supplier's employees and subcontractors shall adhere to the applicable State IT Standard Methodologies and Templates including but not limited to Project Management, Business Analysis, System Analysis, Enterprise and IT Architecture, Quality, Application and Security Methodologies and Templates as set forth at <http://eclipse.omes.ok.gov>.

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

- 6.3** Supplier shall comply with the CJIS Security Policy as more particularly described at Appendix 2 attached hereto and incorporated herein.

7 Emerging Technologies

The State of Oklahoma reserves the right to enter into an Addendum to the Contract at any time to allow for emerging technologies not identified elsewhere in the Contract Documents if there are repeated requests for such emerging technology or the State determines it is warranted to add such technology.

8 Extension Right

In addition to extension rights of the State set forth in the Contract, the State CIO reserves the right to extend any Contract if the State CIO determines such extension to be in the best interest of the State.

9 Source Code Escrow

Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- 9.4** The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5** The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6** The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7** Supplier's ceasing of maintenance and support of the software; or
- 9.8** Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 Commercial Off The Shelf Software

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail.

11 Ownership Rights

Any software developed by the Supplier under the terms of the Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as “Work for Hire”, Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be

shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 Intellectual Property Ownership

The following terms apply to ownership and rights related to Intellectual Property:

- 12.1** As between Supplier and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier hereby agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is hereby effectively transferred, granted, conveyed, assigned and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.
- 12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier’s signature due to the dissolution of Supplier or Supplier’s failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier’s agent and Supplier’s attorney-in-fact to act for and in Supplier’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer’s sole expense, in the preparation and

prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or

necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

- 12.9** Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.
- 12.10** To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.
- 12.11** If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 Hosting Services

- 13.1** If Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract Hosts Customer Data in connection with an Acquisition, the provisions of Appendix 1, attached hereto and incorporated herein, apply to such Acquisition.

13.2 If the Hosting of Customer Data by Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract contributes to or directly causes a Data Breach, Supplier shall be responsible for the obligations set forth in Appendix 1 related to breach reporting requirements and associated costs. Likewise if such Hosting contributes to or directly causes a Security Incident, Supplier shall be responsible for the obligations set forth in Appendix 1, as applicable.

14 Change Management

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon renewal or if future bids submitted by Supplier are evaluated by the State.

15 Service Level Deficiency

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

16 Notices

In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

With a copy, which shall not constitute notice, to:

Information Services Deputy Counsel
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Appendix 1 to State of Oklahoma Information Technology Terms

The parties agree to the following provisions in connection with any Customer Data accessed, processed or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract

A. Customer Data

1. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).
2. Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
3. Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

B. Data Security

1. Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public

Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

2. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data.
3. Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
4. Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
5. Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.
6. Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
7. Any remedies provided in this Appendix are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

C. Security Assessment

1. The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards

during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.

2. Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

D. Security Incident or Data Breach Notification: Supplier shall inform Customer of any Security Incident or Data Breach.

1. Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
2. Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).
3. Supplier shall:
 - a. Maintain processes and procedures to identify, respond to and analyze Security Incidents;
 - b. Make summary information regarding such procedures available to Customer at Customer's request;
 - c. Mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Supplier; and

d. Document all Security Incidents and their outcomes.

4. If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

E. **Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Supplier.

1. Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
2. Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.
3. If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

F. **Notices**

In addition to notice requirements under the terms of the Contract and those set forth above, a request, an approval or a notice in connection with this Appendix provided by Supplier shall be provided to:

Chief Information Security Officer

3115 N. Lincoln Blvd

Oklahoma City, OK 73105

and

servicedesk@omes.ok.gov.

G. Supplier Representations and Warranties

Supplier represents and warrants the following:

1. The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
2. Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.
3. The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.
4. Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

H. Indemnity

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier's breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party's patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier's

opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

I. Termination, Expiration and Suspension of Service

1. During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.

2. In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;

b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or

c. a combination of the two immediately preceding options.

3. Supplier shall not take any action to intentionally erase any Customer Data for a period of:

a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;

b. 30 days after the effective date of termination, if the termination is for convenience; or

c. 60 days after the effective date of termination, if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

4. The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

5. Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

Appendix 2 to State of Oklahoma Information Technology Terms

INTRODUCTION

The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation (“FBI”), Criminal Justice Information Services (CJIS) Division’s CJIS Security Policy (“CJIS Security Policy” or “Security Policy” herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer (“CSO”) and the FBI CJIS Division’s Audit Staff.

CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. **Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”**

DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI and CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy **plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.**

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at: <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

Policy Requirement Checklist		Compliance checklist –
Policy Area 1	Information Exchange Agreements	
Policy Area 2	Security Awareness Training	
Policy Area 3	Incident Response	
Policy Area 4	Auditing and Accountability	
Policy Area 5	Access Control	
Policy Area 6	Identification and Authentication	
Policy Area 7	Configuration Management	
Policy Area 8	Media Protection	
Policy Area 9	Physical Protection	
Policy Area 10	Systems and Communications Protection and Information Integrity	
Policy Area 11	Formal Audits	
Policy Area 12	Personnel Security	

Attachment D-1

Information Security Requirements

1. General Information Security Requirements

- a. No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.
- b. Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.
- c. Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.
- d. Contractor or its subcontractors agree to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

2. HIPAA Requirements

- a. Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).
- b. If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse, and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor’s security compliance as it pertains to this contract.
- c. Business Associate Terms Definitions:
 - i. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that “PHI” and “ePHI” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business

Associate's workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.

- ii. Business Associate. "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
 - iii. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 C.F.R. 160.103.
 - iv. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
 - v. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.
- d. Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, "PHI") solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:
- i. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
 - ii. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
 - iii. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
 - iv. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
 - v. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA's compliance and the Secretary of the Department of Health and Human Services (HHS);
 - vi. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
 - vii. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the

form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;

- viii. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- ix. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- x. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual who's Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;
- xi. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
- xii. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
- xiii. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
- xiv. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to

- respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- xv. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and
 - xvi. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.
- e. Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:
- i. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
 - ii. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
 - iii. disclose PHI to report violations of law to appropriate federal and state authorities; or
 - iv. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;

- v. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
 - vi. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § (d)(1)].
- f. Obligations of Covered Entity
- i. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
 - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.
 - iii. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
 - iv. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
 - v. Covered Entity shall provide the minimum necessary PHI to Business Associate.
- g. Term and Termination:
- i. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
 - (1) retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
 - (3) continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - (4) not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under "Permitted Uses and Disclosures By Business Associate" that applied prior to termination; and
 - (5) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- ii. All other applicable obligations of Business Associate under this Agreement shall survive termination.
 - iii. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D).
- h. Miscellaneous Provisions:
- i. No Third Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
 - ii. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
 - iii. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
 - iv. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
 - v. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
 - vi. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
 - vii. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s)

to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

3. 42 C.F.R. Part 2 Related Provisions

- a. Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:
 - i. Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
 - ii. Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of an kind;
 - iii. Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
 - iv. Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).

- v. Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
- vi. Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
- vii. Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
- viii. Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;
- ix. Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.
- b. Data Security. The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.
- c. Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.
- d. Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.
- e. Redisclosure of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

4. Federal Tax Information Requirements IRS Publication 1075 (If Applicable)

- a. **PERFORMANCE:** If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent

within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

- i. All work will be performed under the supervision of the State of Oklahoma.
- ii. The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- iii. FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- iv. FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- v. The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- vi. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- vii. All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- viii. No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- ix. Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- x. To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

- xi. In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- xii. For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- xiii. The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

b. CRIMINAL/CIVIL SANCTIONS

- i. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- ii. Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- iii. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- iv. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material

in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- v. Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c. INSPECTION: The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

5. SSA Requirements (If applicable)

- a. PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
 - i. All work will be done under the supervision of the State of Oklahoma.
 - ii. Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
 - iii. All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

- iv. No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- v. The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- vi. Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- vii. Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful assess and/or disclosure.
- viii. Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.
- ix. The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- x. Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- xi. SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- xii. SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.

- xiii. If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
 - xiv. In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
 - xv. The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.
- b. **CRIMINAL/CIVIL SANCTIONS:** The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.
- i. **Civil Remedies.**
 - (1) In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of —
 - (a) actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
 - (b) the costs of the action together with reasonable attorney fees as determined by the court.
 - (2) An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where

parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

ii. Criminal Penalties

- (1) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).
- (2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- (3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

6. Child Support FPLS Requirements (If applicable)

- a. Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.

- i. This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- ii. This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

7. FERPA Requirements (If applicable)

- a. If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

8. CJIS Requirements (If applicable)

- a. INTRODUCTION

This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.

b. CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”

c. DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI AND CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at:
<https://www.fbi.gov/services/cjis/cjissecurity-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

**ATTACHMENT E-1 to
STATE OF OKLAHOMA CONTRACT WITH
INSIGHT PUBLIC SECTOR, INC.
RESULTING FROM SOLICITATION NO. 0900000556**

The Service Level Agreement is hereby amended to include the terms as set forth below and supersedes all prior Service Level Agreements submitted by INSIGHT PUBLIC SECTOR, INC. or discussed by the parties.

Insight SLA

Customer satisfaction is defined by our customers on an individual basis. Each customer has a different set of priorities and qualifications for their IT Business Partner. Insight's first step in building a lasting relationship with a customer is to understand the customer's definition of customer satisfaction and tailor our services to meet those unique needs. Insight services all our accounts with the same commitment to customer satisfaction.

Insight has quality service goals in place for responding to your requests:

Service Goal	North America
Calls Answered	90% of calls answered within 60 seconds
Voicemail Response Time	2 business hours
Web Quotes Standard Products	Real-time
Quotes Standard Products Tiers I & II	Respond and/or resolve 90% within 4 business hours
Quotes Non-Standard Product Tier III	Respond within 1 business day and close 90% within 3 business days
Orders Entered Timely (Including order confirmation)	4 business hours from receipt

SERVICE LEVELS

INSIGHT INCLUDES THE FOLLOWING SERVICE LEVEL OBJECTIVES IN THE SERVICE, WHICH ARE FURTHER DESCRIBED BELOW:

- INCIDENT MANAGEMENT O INCIDENT RESPONSE
- O INCIDENT UPDATE
- O INCIDENT RESOLUTION
- SERVICE REQUEST IMPLEMENTATION

SEE PRICING/INVOICING SECTION FOR ADDITIONAL SERVICE LEVEL ASSUMPTIONS AND SERVICE LEVEL PENALTIES.

SERVICE LEVEL DEFINITIONS

INCIDENT RESPONSE AND UPDATE SERVICE LEVELS OBJECTIVES VARY BASED ON THE PRIORITY LEVEL OF

THE INCIDENT. INSIGHT DEFINES EACH PRIORITY LEVEL AS FOLLOWS:

INCIDENT MANAGEMENT DEFINITIONS

PRIORITY 1 – CRITICAL

CLIENT'S SYSTEM IS INOPERABLE, HOST SITE, DATA CENTER, OR E-COMMERCE COMPLEX IS DOWN, NETWORK PERFORMANCE IS SEVERELY DEGRADED, OR EVENT CAUSING CRITICAL IMPACT TO BUSINESS OPERATIONS IF SERVICE IS NOT RESTORED QUICKLY.

WORKAROUNDS ARE NOT AVAILABLE. CLIENT IS WILLING TO COMMIT SUBSTANTIAL RESOURCES 24/7 TO RESOLVE THE SITUATION.

PRIORITY 2 – HIGH

REMOTE SITE IS DOWN, NETWORK PERFORMANCE IS DEGRADED, BACKUP DEVICES/CONNECTIONS HAVE INITIATED CLIENT IS EXPERIENCING INTERMITTENT FAILURE OR PERFORMANCE DEGRADATION WHICH HAS LIMITED CLIENT'S NORMAL BUSINESS OPERATIONS. THESE INCIDENTS ARE TIME-SENSITIVE AND CRITICAL TO PRODUCTIVITY BUT DO NOT CAUSE AN IMMEDIATE WORK STOPPAGE. NO WORKAROUND OR MANUAL WORKAROUNDS ARE AVAILABLE AND OPERATIONS CAN CONTINUE IN A LIMITED CAPACITY. CLIENT IS WILLING TO COMMIT FULL-TIME RESOURCES DURING NORMAL BUSINESS HOURS TO RESOLVE THE SITUATION.

PRIORITY 3 - MODERATE

CONDITIONS ARE DEFINED AS A MINOR INCIDENT THAT CAN BE WORKED AROUND WITHOUT MAJOR IMPACT TO CLIENT'S NORMAL BUSINESS OPERATIONS. FOR EXAMPLE: NETWORK, COMPUTE, STORAGE, CALL CENTER, PHONE SYSTEM, OR SYSTEM PERFORMANCE IS SLIGHTLY DEGRADED OR NETWORK FUNCTIONALITY IS IMPAIRED WITH LIMITED IMPACT TO BUSINESS OPERATIONS.

PRIORITY 4 – LOW

GENERAL QUESTIONS OR A MINOR INCIDENT THAT HAS LITTLE TO NO IMPACT ON CLIENT'S NORMAL BUSINESS OPERATIONS. CLIENT REQUIRES INFORMATION OR ASSISTANCE ON PRODUCT CAPABILITIES, INSTALLATION OR CONFIGURATION. THIS CATEGORY ALSO INCLUDES SCHEDULED MAINTENANCE AND ENHANCEMENTS.

INCIDENT UPDATE

ADD RELEVANT INFORMATION ON INCIDENT STATUS TO THE INCIDENT TICKET.

INCIDENT RESPONSE TIME

TIME MEASURED FROM "CASE CREATED" TO "CASE ACKNOWLEDGED" BY INSIGHT

INCIDENT RESOLUTION TIME

TIME MEASURED FROM "CASE ACKNOWLEDGED" TO "CASE RESOLVED" OR "CASE PRIORITY LOWERED" OR "CASE MOVED TO A MONITORING STATE." LOWERING CASE PRIORITY IS DEFINED BY ALL OF THE FOLLOWING:

SERVICE LEVEL AGREEMENT – PENALTY DEFINITION

PENALTIES FOR FAILING TO MEET SERVICE LEVEL AGREEMENTS VARY BASED ON THE NUMBER OF PRIORITY 1 AND PRIORITY 2 INCIDENTS RECEIVED **PER MONTH** AS INDICATED BELOW.

20 or Fewer Priority 1 Incidents or Priority 2 Incidents, Respectively: PRIORITY	SERVICE MEASURE	DURATION	PERFORMANCE METRIC
PRIORITY 1 *	INCIDENT RESPONSE TIME	15 MINUTES	90 TO 94.9% = 2% CREDIT OF MRC 80 TO 89.9% = 4% CREDIT OF MRC BELOW 80% = 6% CREDIT OF MRC
PRIORITY 2 *	INCIDENT RESPONSE TIME	1 HOUR	90 TO 94.9% = 1% CREDIT OF MRC 80 TO 89.9% = 2% CREDIT OF MRC BELOW 80% = 3% CREDIT OF MRC
PRIORITY 1 **	INCIDENT RESOLUTION TIME	4 HOURS	90 TO 94.9% = 2% CREDIT OF MRC 80 TO 89.9% = 4% CREDIT OF MRC BELOW 80% = 6% CREDIT OF MRC

ATTACHMENT E-2 to
STATE OF OKLAHOMA CONTRACT WITH
INSIGHT PUBLIC SECTOR, INC.
RESULTING FROM SOLICITATION NO. 0900000556

The Pricing is hereby amended to include the terms as set forth below
and supersedes all prior Pricing submitted by
INSIGHT PUBLIC SECTOR, INC. or discussed by the parties.

Software Publishers		
Description	Maximum Cost + % Markup	% off List Price
ADOBE	1.75%	
Atlassian	4.00%	
AUTODESK	2.25%	
BARRACUDA NETWORKS	2.25%	
BMC SOFTWARE	2.00%	
Broadcom (including CA TECHNOLOGIES and Sym	2.25%	
Camtasia	4.00%	
CHECK POINT SOFTWARE	2.25%	
Checkmarx	4.00%	
CHERWELL	2.00%	
CISCO	1.75%	
CITRIX	2.00%	
COMMVAULT	1.75%	
CPSI, Ltd	4.00%	
CROWDSTRIKE	2.00%	
DELL	2.00%	
DELPHIX	2.00%	
DOCUSIGN	2.25%	
DYNATRACE	2.25%	
EnfoTech	4.00%	
Entrust	4.00%	
eQuest	4.00%	
FORCEPOINT	2.25%	
FORTINET	2.00%	
GOOGLE	2.00%	
Grayshift	4.00%	
Guardian RFID	4.00%	
HAProxy	4.00%	
IBM	1.75%	
IBoss	4.00%	
INFORMATICA	2.25%	
IVANTI	2.25%	
KNOWBE4	2.25%	
Lexipol	4.00%	
MCAFFEE	2.00%	
MICRO FOCUS	2.25%	
MICROSOFT	1.75%	
MULESOFT	2.00%	
NETMOTION	2.25%	
Netrwix	4.00%	
OKTA	2.00%	

Professional Services - Hourly Not-to-Exceed Rates		
Description	List Price	Discounted Hourly Rates
Sr. Principal Consultant		\$325
Principal Consultant		\$300
Sr. Managing Consultant		\$275
Managing Consultant		\$250
Sr. Consultant		\$225
Consultant		\$185
Assoicate Consultant II		\$145
Assoicate Consultant I		\$85

**ATTACHMENT E-3 to
STATE OF OKLAHOMA CONTRACT WITH INSIGHT PUBLIC SECTOR, INC.
RESULTING FROM SOLICITATION RESULTING FROM SOLICITATION NO. 0900000556**

The Value Add is hereby amended to include the terms as set forth below and supersedes all prior Value Add documents submitted by INSIGHT PUBLIC SECTOR, INC. or discussed by the parties.

As mentioned previously, we offer a variety of ways to drive down cost to the State. We start with a single point of accountability for your IT team. We leverage direct relationship with multiple manufacturers. We offer a summary billing for multiple manufacturers with one PO for multiple manufacturers' products. Your dedicated Insight team continuously monitors your Cost Plus program structure offered to similarly sized organizations ensuring you receive a competitive Cost Plus program structure. We guarantee 48-hour shipment and delivery with SLAs. Because we stock products, emergency needs can quickly be resolved. We can even pre-configure your products for expedited delivery. Our dedicated order entry system is designed to limit mistakes, and your involvement. The state will receive price drops and other proactive notifications. Our consolidated SLA reporting helps you control your business and leverage a special Cost Plus program structure with manufacturers. We guide and help you negotiate the best deals with each publisher. Insight tailors the States' our cost-saving strategies to meet your unique needs, reducing costs associated with your procurement processes.

Overview

IT management includes more than just buying a product, and it's essential to consider the total value of the reseller relationship—the ease of having **one contact to handle all your IT needs**. Selecting Insight as your single source provider for IT products and services provides many benefits, including having only **one** relationship to build and maintain and eliminating the need for multiple POs, multiple invoices, and multiple opportunities for error.

We have significant experience developing procurement processes and solutions for organizations. We have found that many of our clients reduced their overall technology expenditures by moving all technology purchases through a single vendor. These savings include hard dollar savings captured through lower configuration and freight costs and soft dollar savings captured through the streamlined ordering and invoicing processes.

When soft costs are accounted for, additional savings are realized when purchasing through Insight. Insight understands the Total Cost of Ownership and that clients must assess cost through all phases of the procurement process, including order management, purchase order transaction costs, receiving and staging, invoice processing, image management, and rollout management. In addition, Insight has multi-vendor capabilities, allowing us to provide unbiased product recommendations that reflect the manufacturer choice that is truly best for your business. As

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The Value Add is hereby amended to include the terms as set forth below and supersedes all prior Value Add documents submitted by INSIGHT PUBLIC SECTOR, INC. or discussed by the parties. mentioned above:

Insight's Differentiators

- Single Point of accountability
- Direct relationship with multiple manufacturers
- Summary billing for multiple manufacturers
- One PO for multiple manufacturers' products
- Coordination of deliveries (including third-party products)
- Dedicated Insight Account Team that continuously monitors your Cost Plus program structure offered to similarly sized organizations ensuring you receive a competitive Cost Plus program structure.
- We own distribution facilities, enabling us to stock forecasted and non-forecasted inventory and to participate in bulk buy activity. These benefits are passed on to Insight clients through our Cost Plus programs. We can even stock your product if you purchased it elsewhere.

Our system uses an intelligent fulfillment model, sourcing from different suppliers and selecting the supplier with the least cost product available for shipment. This ensures fulfillment, and the Cost Plus program structure will still lead the industry.

- We guarantee 48-hour shipment and delivery with SLAs. Because we stock products, emergency needs can quickly be resolved. We can even pre-configure your products for expedited delivery.
- Dedicated order entry, limiting mistakes, and your involvement
- Ability to compare similar configurations among multiple manufacturers
- Receive price drops and other proactive notifications
- Our integration facilities can create and manage images that work across multiple manufacturers' platforms.
- Our consolidated SLA reporting helps you control your business and leverage a special Cost Plus program structure with manufacturers.
- Our rollout management methodologies combine managed procurement, integration, logistics/distribution, installation, and disposal.
- Insight tailors our cost-saving strategies to meet your unique needs, reducing costs associated with your procurement processes.

Insight's Value-Add Software Services – Fee Based

Whether you purchase directly through an Insight software and services account executive or enter into a software contract with us, you receive much more than software from our dedicated team. We offer a myriad of software services, both free and those available for a fee. Below are the Services available for a fee:

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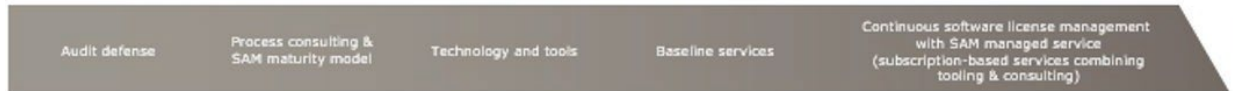
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Fee-based:

Implementation services



License consulting services



Below, we have provided an overview of some of our Fee-based Value Add Services.

Implementation Services

Insight has developed comprehensive solutions to meet the market demand and deliver meaningful client outcomes at scale. We quickly adapt to new innovative technology trends to advance our technical expertise. Our nearly 11,500 global teammates help organizations be ambitious in their digital transformation by providing Insight Intelligent Technology Solutions in the following key areas: Modern Workplace, Modern Apps, Modern Infrastructure, Intelligent Edge, Data and AI, and Cybersecurity.



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We expect our clients to achieve advantages by leveraging our unique capabilities to provide end-to-end secure digital transformation solutions and services. From IT strategy and design to implementation and management, we meet clients wherever they are now and work alongside them to get them to where they want to be. We provide technical expertise and advisory, whether implementing public cloud or as-a-service workplace solutions, designing a next-generation or hybrid cloud data center, or leveraging sophisticated Internet-of-Things ("IoT") and artificial intelligence solutions to improve our clients' experiences services to our clients as an industry-recognized solutions integrator.

Our go-to-market framework for cloud and digital expertise is built on over 30 years of broad IT experience combined with strategic acquisitions, new cloud and digital knowledge, and deep partner relationships. We are uniquely positioned to help our clients maximize the values of their technology today – and accelerate tomorrow. Each of our areas of expertise represents a discrete area of growth for our business. When connected, they provide a platform for our clients to leverage our breadth of knowledge to solve their most relevant business challenges. Powered by Insight's legacy technology supply chain expertise, we can support our services offerings within the hardware, software, and cloud solutions from market-leading and emerging manufacturer brands.

We employ centralized and field-based sales, engineering, and services to execute our strategy to connect with our clients. We also invested in technical engineers, architects, and software developers who create and deliver integrated IT solutions to our clients globally, a capability we believe differentiates us in the marketplace.

Software Asset Management (SAM)

Whether you operate locally or globally, Software Asset Management (SAM) presents a truly unique set of risk and cost challenges. Acquire too many entitlements and watch your budget slowly dry up. Under-invest and risk the cost of achieving compliance after a failed audit and significant unbudgeted liabilities.

Insight can help you determine your entitlement and utilization rates, reconcile the difference, and then proactively track, analyze, and manage your software asset portfolio from procurement to retirement.

More than just after-the-fact license utilization reporting, Insight's full lifecycle software asset management solutions give you visibility into and control of your software asset portfolio while allowing you to manage your entitlements and compliance in real-time to overcome the challenges of software asset management.

Fee-Based Software Asset Management Tools & Services

Our fee-based SAM tools and services help you become and remain compliant with the software publishers. Our SAM tools help you manage license compliance and our SAM team provides full lifecycle SAM solutions that give you clear visibility into and control of your software asset portfolio.

Enterprise License Dashboard

Insight's Enterprise License Dashboard is a fee-based proprietary software asset management license entitlement and compliance tool designed to help you manage your software licenses. It can be used for a license tracking project, in case of an audit, or to streamline the Microsoft true-up process. This tool consists of two main components.

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1. The cloud-based portal allows you to have a comprehensive view of your software license information, your current license entitlement position, license deployment information, and your license compliance position. This is free for our Microsoft Enterprise Agreement (EA) clients.
2. The second component is a Collection Service, which is installed in your IT environment and can interact with Microsoft SCCM, Altiris, or other tools you may have in place for transmittal of your license inventory/discovery information.

Enterprise License Dashboard is offered as a subscription for multiple software publishers. Our SAM team performs license reconciliations for those publishers and delivers them through the Enterprise License Manager portal.

Insight's Enterprise License Dashboard:

- Provides quick and easy access to your license agreement details
- Provides quick and easy access to your license entitlement information
- Provides license installation data
- Provides Microsoft EA True-Up data (for compliance)
- Provides Microsoft EA T-36 plan overview

Enterprise License Manager

Enterprise License Manager is a dynamic software asset management framework and process solution that gives your organization the ability to track, analyze and manage your software assets from procurement through deployment on a real-time basis. Enterprise License Manager enables you to leverage your existing software asset management tools and can take advantage of the always-current license position information to avoid creating a license compliance issue. Enterprise License Manager information can also be used to eliminate overbuying and maverick software purchasing and reallocation of unused licenses.

Note: Enterprise License Dashboard is a subscription based managed service in a hosted environment. Enterprise License Manager comes in both a hosted managed service and in an on-premise model. The on-premise model can be subscription based or perpetual with maintenance. Enterprise License Manager and Enterprise License Dashboard can support multiple languages. We will work with you to understand your specific language requirements.

License Reconciliation Services (LRS)

Our team of SAM consultants helps you maximize your software investments and gain control over your software assets by answering three main questions: What software are you entitled to use, what software is installed and what is the difference between the two. License Reconciliation Services are completed in steps:

1. Analyzing and reconciling your installed or deployed software to identify your installed licenses.
 2. Comparing your software license entitlements to your installed licenses to identify your software license position (over licensed, under licensed, opportunities for cost management).
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License Reconciliation Benefits include:

- Redistribution of unused software licenses
- Creating a standard software environment
- Foundation for license management processes
- Preparation for internal or external audits and help with compliancy
- Reliable baseline counts of license entitlements and installed software
- Basis for license agreement negotiations
- Detailed overview serves as basis for migration planning
- Sarbanes-Oxley compliance
- Reliable forecast of future licensing needs, preventing you from under- or over-buying software licenses
- Creating a starting point for implementing a software asset management program

SAM Workshops

Insight offers fee-based onsite interactive engagements where Insight's license management subject matter experts facilitate internal discussions—sharing best practices and creating a workable SAM strategy based upon your unique needs and business issues. Workshops are available on fundamentals, business processes, and implementation planning. Our team collaborates with your designated project owners to identify immediate opportunities for improvement and chart a course for a world-class license management infrastructure.

Managed SAM Services

Insight's Managed SAM Services combines SAM Consultant resources and our proprietary tools (Enterprise License Dashboard and/or Enterprise License Manager) to proactively manage your software licenses on an ongoing basis. The Managed SAM Services can be tailored to integrate software portfolio requests, procurement, deployment discovery/inventory, management technologies, workflow and processes.

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Whether you purchase directly through an Insight software and services account executive or enter into a software contract with us, you receive much more than software from our dedicated team. We offer a myriad of software services, both free and those available for a fee. Below are the Services included for free:

Included (Free) Services:

For purchases with an Account Executive:



For Enterprise Agreements:



Contract & Maintenance Services

Insight monitors your volume purchasing contracts with software publishers and, on a quarterly basis, notifies you of any approaching expiration dates to ensure that you have time to prepare for renewals and new agreements. We use our database of client contracts to track your milestones, or current standings in relation to your commitments, and advise you on your options for staying compliant with your forecasts. We have tools and processes in place that allows us to track expiring enrollments, as well as contractual and transactional maintenance by expiration date to help you stay current with your software license and maintenance agreements.

Software Renewal Support

Insight's software support teams have close relationships with the publishers and are focused on aiding you with publisher renewals. They have tools and resources at hand to help manage software assets by combining client assets from multiple orders into co-term agreements. They also send renewal notifications well in advance of the coverage ending date in order to ensure you have ample time to prepare for renewals.

License Consulting Services

Your Insight account team works with you and our license and software specialty teams to derive a current and ongoing licensing strategy for your software products based upon your software portfolio and your anticipated business needs. The goal is to reduce ongoing software spend while maintaining compliance and adequately serving the needs of your business.

Software License Consulting

One of Insight's core competencies is software licensing consulting. Our expertise allows us to maximize an Eligible Entity's ROI when faced with the complexity, options, and sheer

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Utilizing this knowledge, we will guide Entities through the necessary steps to trim per-unit prices, choose the right program, and take advantage of volume license and maintenance agreements. The result of this support is a more simplified software management process. Through the Account Teams, Entities will have access to our pool of Partner Champions. These specialized resources, whose positions are each partially funded by the associated software publisher, are in-house to administer our relationships with these publishers. They help us in providing our clients with timely communications and guidance on their licensing programs.

The Insight Account Team regularly ensures all software renewal options are assessed to maximize usage and minimize State and Entity costs by using our Insight Renewals & Warranty Manager tool.

Insight monitors volume purchasing contracts with software publishers and, on a quarterly basis, notifies our clients of any approaching expiration dates to ensure that they have time to prepare for renewals and new agreements. We use our database of client contracts to track client milestones, or current standings in relation to their commitments, and advise them on options for staying compliant with their forecasts. Insight deploys sophisticated tools and processes that allow us to track expiring enrollments, as well as contractual and transactional maintenance by expiration date, to help clients stay current with their software license and maintenance agreements.

Online Systems and Resources

Online Order Management

Insight provides you with a dedicated order management website that makes it easy to find, buy, and manage your IT assets. This online tool gives you a single electronic source for managing all the aspects of your account in real-time, at a global level. The many features of your customized—and customizable—website let you:

- Look up product information, availability, and customized pricing
- Place or save orders, automate order approvals through workflow tools
- Check order status and link to carriers' tracking systems
- Generate versatile purchase and invoice reports instantly
- Retrieve an up-to-the-minute graphical snapshot of all purchased products
- Quickly view the details of all your software contracts
- Share specific news of concern to your IT buyers and end users

E-procurement Integration

Insight's customizable order management website can integrate with any electronic ordering

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The Value Add is hereby amended to include the terms as set forth below and supersedes all prior Value Add documents submitted by INSIGHT PUBLIC SECTOR, INC. or discussed by the parties. tool that meets industry standards for e-procurement. Our e-procurement solutions can deliver significant savings and streamline IT purchasing if properly integrated with your e-procurement supplier system. We can help you realize substantial cost and resource savings through real-time integration with your ERP system including online ordering, order tracking, product information and cart pass using XML/cXML. Insight supports a wide variety of industry-standard solutions to suit your organization and can help you determine the options you need to consider for a successful integration.

Electronic Software Distribution

Insight proactively works with software publishers to obtain electronic delivery of software license and maintenance products that are available through our publisher partners' ESD websites. To deliver products electronically worldwide, we work with publishers who have viable ESD capabilities to distribute software via their websites.

ESD Guidelines

The trade laws and embargos of each country may vary, and each publisher may have guidelines about which downloads can be executed or which may not be allowed. Insight offers expert advice on ESD and how it can potentially meet your unique business requirements.

Online License Proofs

Insight provides Proof-of-Purchase certificates that list the licenses you own by program name, manufacturer part number, enrollment number, invoice number, purchase order number, purchase date, and quantity purchased. License Proofs can be issued for any program to help account for the software licenses you have purchased and reconcile that number with the licenses you have deployed on your desktops.

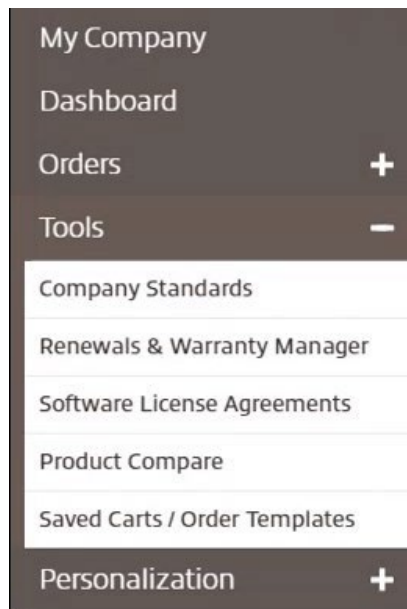
How to View and Manage myInsight

The *Software Licensing Agreements* feature provides an in-depth view into existing and recently expired *licensing agreements* across your entire organization.

After logging in to your myInsight account, within the left-side secondary navigation menu, select Tools > *Software License Agreements*.

**ATTACHMENT E-3 to
STATE OF OKLAHOMA CONTRACT WITH INSIGHT PUBLIC SECTOR, INC.
RESULTING FROM SOLICITATION RESULTING FROM SOLICITATION NO. 0900000556**

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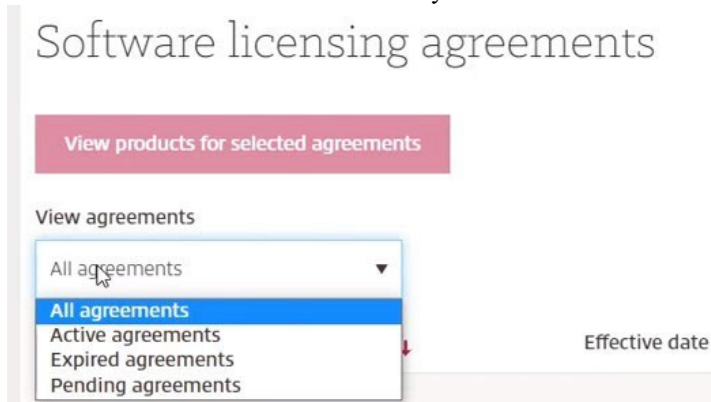
Depending on your organization's contract types there are two permission views you can access within the *Software Licensing Agreements* feature:

- **Software licensing permission view.** The *software licensing* permission view lets you explore active *licenses* by country and manufacturer within your organization. Expired *licenses* are also available in the feature for up to 90 days. When viewing an expired *license*, you can easily contact your client executive to renew the *license*.
- **Hosted licensing view.** The hosted licensing permission is where you can report the usage of existing agreements, such as a Microsoft Service Provider License Agreement (SPLA). When a contract expires, you can contact your hosted licensing specialist to begin the renewal process.

Within the *Software Licensing Agreement*, there are several options to help you navigate your existing contracts. Each contract is organized by its publisher, so you can view all Adobe, IBM or Microsoft contracts within one dropdown. At the top of the menu, you can also view by all *agreements*, active *agreements*, expired *agreements* and pending *agreements*.

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Within in each contract view, there are three options to select to review the contract:

- The **blue question mark** will display a summary of what the *agreement* includes.
- **View products** displays what products are included in that *agreement*.
- **View levels** displays the *license* levels within that *agreement*.

<input type="checkbox"/> Select all	Expand all	Effective date	Expiration date	Anniversary month	Enrollment country
<div><div></div><div><input type="checkbox"/> ADOBE VIP </div><div>Master agreement number: C3DD68D58E84F06038FA</div><div>Enrollment number: 08-Jan-2013</div><div>View levels View products</div></div>					
		31-Dec-9999	February		

When a contract is expired, you'll have the option to contact your representative for assistance.

✓

Symantec

A Division of Broadcom

Insight will help you solve your toughest *software* challenges with our services aimed at optimizing costs, simplifying management and increasing return on investment.

Enterprise Agreement (EA) Lifecycle Management Activities

Insight's Best in Class 3-year Enterprise Agreement (EA) support plan ensures you get maximum benefit from your EA.

- Scheduled contract-deliverable activities
 - Software Assurance review and assistance
-

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- Insight management over the life of the agreement
- Timely reviews, support and planning

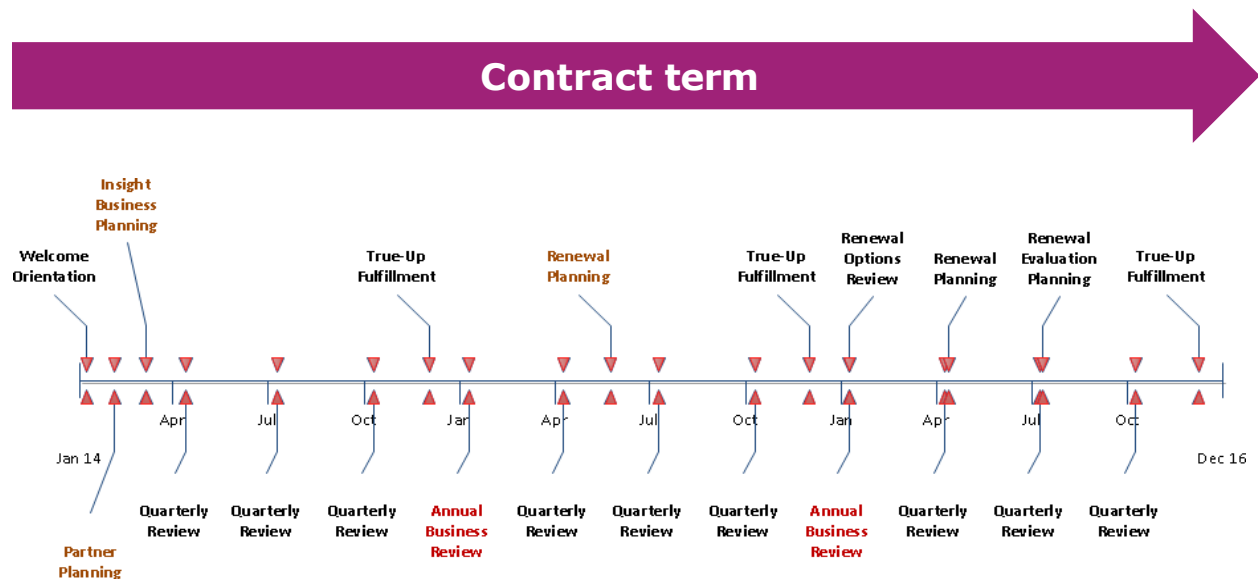
The EA Lifecycle Management program consists of a series of activities focused on four main pillars: 1) EA Lifecycle Management Onboarding, 2) Quarterly Reviews, 3) True-ups, and 4) Renewal Planning.



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Below is an example Insight's EA lifecycle plan. Checkpoints are scheduled as necessary to support contract requirements.



Insight Renewals & Warranty Manager: Insight and our clients can use this free tool to take the hassle out of running an organization to help clients save time and invest smarter.

- Vendor consolidation and renewals at a glance
- Budget planning and detailed reporting
- Electronic notifications and custom alerts
- Reduced rogue and maverick spending
- Ability to import and store warranty information, regardless of vendor

When a software order is placed, a Proof of License is sent to the buyer and any additional individuals noted on the order, and it is also attached to the order in our system for retrieval at a later date.

The Proof of License is available by contacting the Insight Sales Team or through self-service. By logging in to their myInsight account, Eligible Entity administrators can access and reprint the Proof of License.

By managing software assets more effectively, we can help our clients' organizations dramatically cut software licensing expenditures while improving the service delivered to end-users.

With the right strategy, organizations can reap the benefits of a more engaged and proactive approach to software license management. Insight's software solutions and services will help them drive better procurement decisions for greater, long-term cost savings. Portfolio management, compliance, integration and adoption, on premise or in the cloud, regionally or across the globe.

**ATTACHMENT F to
STATE OF OKLAHOMA CONTRACT WITH INSIGHT PUBLIC SECTOR, INC.
RESULTING FROM SOLICITATION RESULTING FROM SOLICITATION NO. 0900000556**

Negotiated Exceptions and Additional Terms to the Solicitation
The Solicitation is hereby amended to include the terms as set forth below and supersedes all prior terms submitted by INSIGHT PUBLIC SECTOR, INC. or discussed by the parties.

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

Term & Section

General Terms;
Ordering, Inspection, and Acceptance
(Section 6.2, 2nd Paragraph, pg. 7)

Language

No changes to the language of the solicitation.

General Terms; Indemnification
(Section 16.1 Acts or Omissions B., pg. 18)

No changes to the language of the solicitation.

General Terms; Indemnification
(Section 16.5 Limitation of Liability B., pg. 20)

No changes to the language of the solicitation.

**Attachment F-1 to
STATE OF OKLAHOMA CONTRACT WITH INSIGHT PUBLIC SECTOR, INC.
RESULTING FROM SOLICITATION NO. 0900000556**

**Template for Contract Modifications for Quotes, Statements of
Work, or other Ordering Documents**

The parties agree to use this template as the process to formally approve any terms, conditions or clauses that are to supersede the terms and Conditions in the Contract for purposes of the applicable quote, statement of work or other ordering document.

Contract Modifications for Quote, Statement of Work, or other Ordering Document

Solely for purposes of this ordering document, the terms and conditions of the Contract are hereby amended as set forth below. This amendment is considered an Addendum.

RFP Section	Exception/Additional Terms

STATE OF OKLAHOMA
by and through the
OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES

Insight Public Sector, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

The [INSERT AGENCY NAME] is additionally executing this document to memorialize its involvement in negotiation of and its agreement with the terms of this document.

By: _____

Name: _____

Title: _____

Date: _____

SW1041 Software**Exhibit 1**

Software Publishers		
Description	Maximum Cost + % Markup	% off List Price
ADOBE	1.75%	
Atlassian	4.25%	
AUTODESK	2.25%	
BARRACUDA NETWORKS	2.25%	
BMC SOFTWARE	2.00%	
Broadcom (including CA TECHNOLOGIES and Syn	2.25%	
Camtasia	4.25%	
CHECK POINT SOFTWARE	2.25%	
Checkmarx	4.25%	
CHERWELL	2.00%	
CISCO	1.75%	
CITRIX	2.00%	
COMMVAULT	1.75%	
CPSI, Ltd	4.25%	
CROWDSTRIKE	2.00%	
DELL	2.00%	
DELPHIX	2.00%	
DOCUSIGN	2.25%	
DYNATRACE	2.25%	
EnfoTech	4.25%	
Entrust	4.25%	
eQuest	4.25%	
FORCEPOINT	2.25%	
FORTINET	2.00%	
GOOGLE	2.00%	
Grayshift	4.25%	
Guardian RFID	4.25%	
HAProxy	4.25%	
IBM	1.75%	
IBoss	4.25%	
INFORMATICA	2.25%	
IVANTI	2.25%	
KNOWBE4	2.25%	
Lexipol	4.25%	
MCAFEE	2.00%	
MICRO FOCUS	2.25%	
MICROSOFT	1.75%	
MULESOFT	2.00%	
NETMOTION	2.25%	
Netrwx	4.25%	
OKTA	2.00%	
OPENTEXT	2.25%	
PatchMyPC	4.25%	
PDQ	4.25%	
Pegasystems	4.25%	
PowerDMS	4.25%	

PROGRESS SOFTWARE	2.25%	
PROOFPOINT	2.00%	
Q-Matic	4.25%	
QUEST SOFTWARE	2.25%	
RAPID7	2.25%	
Red Gate	4.25%	
RED HAT	1.75%	
RSA SECURITY	2.25%	
SALESFORCE	2.25%	
SANS Institute	4.25%	
SAP	2.25%	
Smartpoint Solutions	4.25%	
SOLARWINDS	2.25%	
SOPHOS	2.25%	
SPLUNK	1.75%	
Suse	4.25%	
TABLEAU	1.75%	
Techsmith	4.25%	
TENABLE	2.25%	
Today's Business Solutions, Inc	4.25%	
TREND MICRO	2.25%	
Userware	4.25%	
VARONIS	2.25%	
VEEAM	1.75%	
VERITAS	2.00%	
VMWARE	2.25%	
ZOHO	2.25%	
All other publishers	4.50%	

Other Value Add Products and Services		
Description	Maximum Cost + % Markup	% off List Price
Software Asset Management (SAM)	Custom Pricing*	
Cloud Financial Services	Custom Pricing*	

*Pricing for these Value Add Services vary based on individual need and are deal specific(titles, publishers, quantities)

Professional Services - Hourly Not-to-Exceed Rates		
Description	List Price	Discounted Hourly Rates
Sr. Principal Consultant		\$325
Principal Consultant		\$300
Sr. Managing Consultant		\$275
Managing Consultant		\$250
Sr. Consultant		\$225
Consultant		\$185

Assoicate Consultant II		\$145
Assoicate Consultant I		\$85