

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

**ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH BIS, INC..
RESULTING FROM STATEWIDE CONTRACT NO. 1013**

This Addendum 1 (“Addendum”) is an Amendment to the Contract awarded to BIS, Inc. in connection with Statewide Contract No. 1013 (“Solicitation”) and is effective April 30, 2020, (“Effective Date”).

Recitals

Whereas, the State issued a Solicitation for proposals to provide Document Lifecycle Management solutions, as more particularly described in the Solicitation;

Whereas, BIS, Inc. submitted a proposal which contained exceptions to the Solicitation terms and various other “Contract Documents”; and

Whereas, the State and BIS, Inc. have negotiated the final terms under which BIS, Inc. will perform the Services under the Contract.

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. Addendum Purpose.

This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to BIS, Inc. as of even date with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. Negotiated Documents of the Contract.

2.1. The parties have negotiated certain terms of the Contract as follows:

- i. Revisions to the End User License Agreement initially proposed by BIS, Inc. as contained in Attachment A to this Addendum;
- ii. revisions to BIS, Inc’s Master Service Agreement as contained in Attachment B to this Addendum; and

iii. The State's Hosting Agreement as contained in Attachment C to this Addendum.

- 2.2. Accordingly, 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.
3. BIS, Inc. affirmatively acknowledges it takes no exception to the Solicitation and that it will not ask the State or any Customer to execute additional documents not listed above in connection with this Contract.
4. BIS, Inc. refers to Business Imaging Systems, Inc. dba BIS, all of which are one and the same entity, also referenced herein and in the Contract Documents as "Supplier," "Vendor" and/or "Contractor."
5. The State of Oklahoma is or may also be referenced herein and in the Contract Documents as "State," "Agency," "OMES" and/or "Customer."

State of Oklahoma


By: D. Jerry Moore

Name: D. Jerry Moore

Title: Chief Information Officer

Date: 5/4/2020

BIS, Inc.

By: 

Name: Dan Rotelli

Title: President

Date: 04/30/2020



**Attachment A to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH BIS, INC.
RESULTING FROM STATEWIDE CONTRACT NO. 1013**

The End User License Agreement is hereby amended as set forth below and supersedes all prior documents submitted by **BIS, Inc.** or discussed by the parties. The parties agree to use this **End User License Agreement** or a document substantially similar in the form of this **End User License Agreement**.

END-USER LICENSE AGREEMENT

The “Grooper Software”

This End-User License Agreement (“EULA” or “Agreement”) is a Contract Document in connection with Statewide Contract No. 1013 (“Contract”) between The State of Oklahoma, by and through the Office of Management and Enterprise Services (“Licensee”), and Business Imaging Systems, Inc. dba BIS (“Licensor”), an Oklahoma corporation with an address at 13900 N. Harvey Ave., Edmond, Oklahoma 73013, for the software product identified above, which includes computer software and may include associated media, printed materials, and “online” or electronic documentation.

LICENSOR PROVIDES THE GROOPER SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY SIGNING BELOW, CLICKING THE “ACCEPT” BUTTON OR CONTINUING TO USE THE GROOPER SOFTWARE, LICENSEE (a.) ACCEPTS THIS AGREEMENT AND AGREES THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (b.) REPRESENTS AND WARRANTS THAT: (i.) IF LICENSEE IS AN INDIVIDUAL, LICENSEE IS 18 YEARS OF AGE OR OLDER; AND (ii.) IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION OR OTHER LEGAL ENTITY, LICENSEE HAS THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSOR WILL NOT AND DOES NOT LICENSE THE GROOPER SOFTWARE TO LICENSEE AND LICENSEE MUST NOT DOWNLOAD THE GROOPER SOFTWARE OR DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR LICENSEE’S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY GROOPER SOFTWARE THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF LICENSOR’S GROOPER SOFTWARE. FURTHERMORE, LICENSOR OWNS PATENTS AND/OR PATENTS PENDING FOR THE GROOPER SOFTWARE AND/OR ITS APPLICATIONS. LICENSEE’S LICENSE OR USE OF THE GROOPER SOFTWARE MAY BE COVERED UNDER ONE OR MORE OF THE FOLLOWING PENDING OR GRANTED U.S. PATENTS: 15/858,355, 15/858,297 or 15/858,230.

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

“**Documentation**” means user manuals, technical manuals and any other materials provided by Licensor, in printed, electronic or other form, that describe the installation, operation, use or technical specifications of the Grooper Software.

“**Grooper Software**” means the software programs for which Licensee is purchasing a license.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**License Fees**” means the license fees, including all taxes thereon, paid, or required to be paid, by Licensee for the license granted under this Agreement.

“**Person**” means an individual, corporation, partnership, joint venture, Limited Liability Company, governmental authority, unincorporated organization, trust, association or other entity.

“**Support Fees**” has the meaning set forth in Section 5(a.).

“**Term**” means the period the Grooper Software is in use by Licensee or until otherwise expired or terminated as set forth in this Agreement or any other written agreement between Licensee and Licensor and subject to payment of all applicable License Fees, the terms of this Agreement and the license granted hereunder.

“**Territory**” means the territorial limits of this Agreement and the license granted herein which is defined as the United States of America and Canada, including their respective territories.

“**Third Party**” means any Person other than Licensee or Licensor.

“**Update**” has the meaning set forth in Section 5(b.).

2. License Grant and Scope. Subject to and conditioned upon Licensee’s payment of the License Fees and Licensee’s reasonable compliance with all terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, limited license within the Territory during the Term to use, solely by and through its authorized users, the Grooper Software and Documentation, solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 3 or elsewhere in this Agreement. This license granted herein provides Licensee the right to:

(a.) Download, install, run and use in accordance with the Documentation one (1) copy of the Grooper Software on one (1) network environment owned or leased, and controlled by, Licensee solely for Licensee’s internal business purposes and not via any remote access or other network. In addition to the foregoing, Licensee has the right to make one copy of the Grooper Software solely for archival purposes and backup purposes, provided that Licensee shall not, and shall not knowingly allow any Person to, install or use any such copy other than if and for so long as any copy installed in accordance with the preceding sentence is inoperable and, provided, further, that Licensee uninstalls and otherwise deletes such inoperable copy(ies). All copies of the Grooper Software made by Licensee:

- (i.) will be the exclusive property of Licensor;
- (ii.) will be subject to the terms and conditions of this Agreement; and

- (iii.) must include all Intellectual Property Rights notices contained in the original copy licensed to Licensee; and
- (b.) Download or otherwise make one (1) copy of the Documentation and use such Documentation, solely in support of its licensed use of the Grooper Software in accordance herewith. All copies of the Documentation made by Licensee:
 - (i.) will be the exclusive property of Licensor;
 - (ii.) will be subject to the terms and conditions of this Agreement; and
 - (iii.) must include all Intellectual Property Rights notices contained in the original copy licensed to Licensee.
- 3. Use Restrictions. Licensee shall not directly or indirectly:
 - (a.) use (including make any copies of) the Grooper Software or Documentation beyond the scope of the license granted under Section 2;
 - (b.) provide any other Person, including any subcontractor, independent contractor, affiliate, subsidiary or service provider of Licensee, with access to or use of the Grooper Software or Documentation for any reason other than Licensee's use under this Agreement without prior written approval of Licensor, such approval not to be unreasonably withheld;
 - (c.) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Grooper Software or Documentation or any part thereof;
 - (d.) combine the Grooper Software or any part thereof with, or incorporate the Grooper Software or any part thereof in, any other programs for any reason other than Licensee's use under this Agreement;
 - (e.) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Grooper Software or any part thereof;
 - (f.) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices provided on or with the Grooper Software or Documentation, including any copy thereof;
 - (g.) except as expressly set forth in Section 2, copy the Grooper Software or Documentation, in whole or in part;
 - (h.) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Grooper Software, or any features or functionality of the Grooper Software, to any Third Party for any reason other than Licensee's use under this Agreement, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service;
 - (i.) use the Grooper Software or Documentation in violation of any law, regulation or rule; or
 - (j.) use the Grooper Software or Documentation for purposes of competitive analysis of the Grooper Software, the development of a competing software product or service or any other purpose that is to Licensor's commercial disadvantage.
- 4. Responsibility for Use of Grooper Software. Licensee is responsible and liable for all uses of the Grooper Software and Documentation through access thereto provided by Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Grooper Software and Documentation by any Person to whom Licensee may

provide access to or use of the Grooper Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

5. Maintenance and Support.

(a.) Subject to Section 5(c.), the license granted hereunder entitles Licensee to the basic software maintenance and support services (described from time to time on Licensor's website located at www.bisok.com and/or www.grooper.com and provided to Licensee upon request):

(i.) for one (1) year following the date of this Agreement; and

(ii.) thereafter, solely if Licensee purchases additional support services for a fee ("**Support Fees**").

Such support services shall be provided on the terms and conditions set forth herein.

(b.) Maintenance and support services will include provision of such updates, upgrades, bug fixes, patches and other error corrections (collectively, "**Updates**") as Licensor makes generally available to all licensees of the Grooper Software then entitled to maintenance and support services. Licensor may develop and provide Updates in its sole discretion, and Licensee agrees that Licensor has no obligation to develop any Updates at all or for particular issues. Licensee further agrees that all Updates will be deemed Grooper Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Maintenance and support services do not include any new version or new release of the Grooper Software that Licensor may issue as a separate or new product, and Licensor may determine whether any issuance qualifies as a new version, new release or Update in its sole discretion.

(c.) Licensor has no obligation to provide maintenance and support services, including Updates:

(i.) for any but the current and two (2) most recent versions or releases of the Grooper Software;

(ii.) for any copy of Grooper Software for which all previously issued Updates have not been installed;

(iii.) if Licensee is in material breach under this Agreement;

(iv.) if Licensee has failed for thirty days to pay License Fees or Support Fees pursuant to this Agreement, including any omitted or unaccounted License Fees discovered pursuant to an audit as described in Section 15; or

(v.) for any Grooper Software that has been modified other than by Licensor, or that is being used with any hardware, software, configuration or operating system not specified in the Documentation.

6. Intellectual Property Rights. Licensee acknowledges and agrees that the Grooper Software and Documentation are provided under the license granted herein, and are not being sold to Licensee. Licensee shall not acquire any ownership interest in the Grooper Software or Documentation under this Agreement, or any other rights other than the right to use the same

in accordance with the license granted herein, and subject to all terms, conditions and restrictions, under this Agreement. Licensor reserves and shall retain its entire right, title and interest in and to the Grooper Software and all Intellectual Property Rights arising out of or relating to the Grooper Software, except as expressly granted to Licensee in this Agreement. Licensee shall safeguard all Grooper Software (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access. Licensee shall promptly notify Licensor if Licensee becomes aware of any infringement of Licensor's Intellectual Property Rights and reasonably cooperate with Licensor in any legal action taken by Licensor to enforce its Intellectual Property Rights.

7. Intentionally Deleted.
8. Consent to Use of Data. Licensee agrees that Licensor may collect and use technical information Licensee provides as a part of support services related to the Grooper Software. Licensor agrees not to use this information in any way other than as required by the Contract and to improve its products.
9. Intentionally Deleted.
10. Limited Warranty and Exclusive Remedy. Licensor warrants that the Grooper Software will perform substantially in accordance with the Documentation for a period of ninety (90) days from the date of purchase.
11. Disclaimer of Warranties. The Limited Warranty that appears above is the only express warranty made to Licensee and is provided in lieu of any other express warranties (if any) created by any documentation or packaging. **SECTION 10 ABOVE SETS FORTH THE FULL EXTENT OF WARRANTIES PROVIDED UNDER THIS AGREEMENT AND LICENSOR MAKES NO OTHER REPRESENTATION OR WARRANTY. THESE WARRANTIES ARE IN LIEU OF ANY OTHER EXPRESS, AND ALL IMPLIED OR STATUTORY, WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY FOR NON-INFRINGEMENT.**
12. Exclusion of Incidental, Consequential, and Certain Other Damages. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, FOR BUSINESS INTERRUPTION, , AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE GROOPER SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA.,**
13. Limitation of Liability and Remedies. Notwithstanding any damages that Licensee might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of Licensor under any provision of this EULA and Licensee's exclusive remedy for all of the foregoing (except for any remedy of repair or replacement elected by Licensor with respect to any breach of the Limited Warranty) shall be limited to the greater of the amount actually paid by Licensee for the Grooper Software or U.S.

\$5.00. The foregoing limitations, exclusions and disclaimers (including Sections 10, 11 and 12 above) shall apply to the maximum extent permitted by applicable law.

Notwithstanding anything to the contrary in the Contract, the foregoing provisions of the Section shall not apply to or limit damages, expenses, costs, actions, claims and liabilities arising from or related to property damage, bodily injury or death caused by Licensor; the indemnification obligations set forth in this Contract; Licensor's confidentiality obligations set forth in this Contract; data security and breach notification obligations set forth in in the Contract; the bad faith, gross negligence or intentional misconduct of Licensor or its employees agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.

14. Intentionally deleted.
15. Grooper Software Audit Rights. Licensor may inspect and audit Licensee's use of the Grooper Software upon thirty (30) days' written notice to Licensee during the Term in order to confirm Licensee's compliance with this Agreement. All such audits will be conducted during Licensee's regular business hours. Licensee will cooperate in good faith with Licensor during any such audit and provide access to any servers in Licensee's control or possession that hosted an install of the Grooper Software during the Term. If pursuant to any such audit, Licensor discovers any unauthorized use of the Grooper Software, Licensee agrees to pay within thirty (30) days of invoice any omitted or unaccounted License Fees at the price in the pricing proposal. If Licensee fails to pay such License Fees within thirty (30) days of such invoice, Licensor may terminate this Agreement, all licenses of the Grooper Software, and any maintenance and support of the Grooper Software. Licensee will be responsible for its own costs incurred in cooperating with any such audit.
16. Export Laws. The Grooper Software is subject to U.S. export regulations, and may not be shipped, transferred, exported, or used for any purpose prohibited by international and national laws that apply to the Grooper Software, including the U.S. Export Administration Regulations and other U.S. and foreign restrictions. Licensee will not export or re-export the Grooper Software without first notifying Licensor and obtaining the appropriate U.S. or foreign export licenses.
17. Applicable Law. This Agreement is governed by and construed in accordance with the internal laws of the State of Oklahoma without giving effect to any borrowing statute or choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Oklahoma. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the courts of the State of Oklahoma in each case located in the city of Oklahoma City and County of Oklahoma, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. If any case involves solely subject matter over which federal courts have exclusive jurisdiction, the case will be brought in the courts of the State of Oklahoma originally; if the fact finder concludes that such case is only appropriate in federal court, parties agree to transfer the case to the appropriate federal court located in Oklahoma.
18. Entire Agreement. This EULA (including any addendum or mutually signed amendment to this EULA which is included with the Grooper Software) and all Contract Documents are the entire agreement between Licensee and Licensor relating to the Grooper Software and the support services (if any) and they supersede all prior or contemporaneous oral or written

communications, proposals and representations with respect to the Grooper Software or any other subject matter covered by this EULA.



Master Services Agreement

Attachment B to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH BIS, INC.
RESULTING FROM STATEWIDE CONTRACT NO. 1013

The Master Services Agreement is hereby amended as set forth below and supersedes all prior documents submitted by BIS, Inc. or discussed by the parties. The parties agree to use this Master Services Agreement or a document substantially similar in the form of this Master Services Agreement.

This Agreement is a Contract Document in connection with Statewide Contract No. 1013 ("Contract") and is made between Business Imaging Systems, Inc. ("BIS") an Oklahoma corporation with offices at 13900 North Harvey, Edmond, OK 73013, and The State of Oklahoma, by and through the Office of Management and Enterprise Services ("Customer") with a mailing address of Office of Management and Enterprise Services - Central Purchasing - 2401 N. Lincoln Blvd. Oklahoma City, OK 73105, and becomes effective as of the date of the last signature below ("Effective Date").

This Agreement describes the terms and conditions under which BIS will perform the services ("Services") and provide certain deliverables ("Deliverables") for Customer as described in any Statement of Work ("SOW") between the parties. The specific business details of each such engagement shall be set forth in a separately signed SOW, which shall incorporate the terms of this Master Agreement by reference.

NOW, THEREFORE, in consideration of the premises and obligations contained herein, such adequate consideration mutually acknowledged hereby, the parties agree as follows:

1. Purpose

BIS provides a variety of technology-related services to its customers. This Agreement describes the terms and conditions under which Customer may engage BIS to perform services for Customer.

2. Definitions

The following definitions apply to this Agreement and any related Statement of Work.

- 2.1 "Code" means computer-programming code. Unless specifically stated otherwise in the SOW, Code includes Binary Code but not Source Code. "Binary Code" means Code that loads and executes without further processing by a software compiler or linker or that results when Source Code is processed by a software compiler. "Source Code" means human-readable form of Code and related system documentation, including comments and any procedural language.
- 2.2 "Deliverable" means any Code, Documentation or other materials procured or prepared by BIS under a SOW for delivery to Customer, and any other objects identified as Deliverables in a SOW.
- 2.3 "Documentation" means user manuals, help guides, specifications and other written information provided by BIS under a particular SOW, including text or graphic files.
- 2.4 "Services" means the services and Deliverables to be provided by BIS to or for the benefit of Customer, as described in a SOW. Such services may include, but are not limited to, technical support, consulting, or education services.
- 2.5 "Statement of Work" ("SOW") means a written document executed between the parties, or when authorized by BIS, an order form signed only by Customer, that includes at least the following information: (a.) a description of the Services and Deliverables; (b.) the parties' responsibilities; and (c.) the service fees and method of calculation. Any SOW shall be in a form substantially similar to BIS's standard SOW.

3. Rules of Engagement

- 3.1 Initiating Services. All services provided by BIS to Customer shall be implemented through individual Statements of Work. A SOW will become effective upon execution by authorized representatives of both parties, unless the SOW is in the form of an order form signed by Customer, which will become effective upon written acceptance by a representative of BIS authorized to do so.

- 3.2 SOW Integration. This Agreement will be made a part of each SOW, and the Agreement terms and conditions will apply to each SOW. If a SOW contains provisions inconsistent with this Agreement, the SOW provisions shall prevail with respect to that SOW. This Agreement by itself does not obligate a party to provide any services or enter into any SOW.
- 3.3 Change Order. Any changes to the obligations of either party or to any other material aspect of a SOW will require a written change order signed by both parties that describes the changes and any related cost adjustments.
- 3.4 Acceptance. Services will be deemed satisfactory to and accepted by Customer unless within thirty (30) days after submission to Customer, Customer gives BIS written notice of aspects in which the Services do not meet the SOW requirements. Upon receipt of such written notice, BIS will use commercially reasonable efforts to make such changes as will be required to correct any deficiencies.

4. Responsibilities

- 4.1 Assumptions. The description of the Services and related compensation amount in each SOW will be based upon information Customer provides to BIS and upon any assumptions set forth in the SOW. Customer acknowledges that if the information provided by Customer is incomplete or inaccurate, or if the stated assumptions are not correct, then the parties will modify the SOW pursuant to Section 3.3 (Change Order).
- 4.2 Customer Assistance. Customer agrees that it will reasonably cooperate with and assist BIS in BIS's performance of the Services.
- 4.3 Project Managers. Each party shall appoint a project manager ("Project Manager") for each SOW. Each party may replace its designated Project Manager upon written notice to the other party.
- 4.4 Protection of Customer System. Customer is solely responsible to take appropriate measures to isolate and back up its computer system, including its computer programs, data and files, and to take other actions necessary to protect its system and data.
- 4.5 Site Regulations. BIS employees performing Services on Customer premises shall observe reasonable safety and security protocols of which BIS is notified in writing. While working on-site with the Customer, BIS personnel shall abide by all reasonable workplace rules that are obvious or made known to them, such as smoking restrictions, drug-free workplace rules, parking zones, physical and network security policies, privacy policies and hours of operation.

5. Compensation and Payment Terms

- 5.1 Compensation for Services; Expenses. Customer shall pay all the amounts specified in the relevant SOW, including, without limitation, compensation for Services and all reasonable out-of-pocket expenses incurred in the performance of the Services, and for any non-standard expenses incurred at the written request of Customer as more specifically described in the pricing proposal.. Any pricing in a SOW will be set as it was provided in the pricing proposal... BIS will refund all fees, other than annual software support and maintenance fees that are prepaid but unused.
- 5.2 Purchase Order. Prior to the start date of a SOW, Customer shall issue a Purchase Order ("PO") equal to the amount specified in the SOW. If Customer does not issue POs, Customer shall submit in the SOW the following: (a.) Customer's internal tracking number for the SOW; (b.) amount specified in the relevant SOW; (c.) billing address; and (d.) purchasing contact.
- 5.3 Invoicing. Unless otherwise agreed in a SOW, Service fees and expenses shall be calculated by BIS on a weekly basis and invoiced to Customer within five (5) days after the end of each week.
- 5.4 Early project termination. If a project is terminated early or expected volumes have not been achieved as set forth in a SOW, project pricing listed in such SOW will be null and void, and standard fees will apply pursuant to the submitted pricing proposal.

6. Intellectual Property

- 6.1 License. Subject to payment of all applicable fees for Services and Deliverables provided to Customer, BIS grants to Customer, and Customer acquires, a nonexclusive, nontransferable, perpetual, royalty-free (other than payments identified in the relevant SOW) license to use, execute, perform, reproduce, display and distribute the Deliverables internally within Customer. All proprietary rights notices must be faithfully reproduced and included on all copies, modifications and adaptations.
- 6.2 Ownership. Except as expressly provided otherwise in this Section 6 (Intellectual Property), other Contract Documents, or any SOW, BIS (and/or its licensors) retains on an exclusive basis all right, title

and interest in and to any intellectual property developed, delivered and/or used by BIS in the performance of this Agreement including intellectual property developed solely for Customer. Neither this Agreement nor any SOW shall change the ownership of any intellectual property of either party in existence prior to the Effective Date. Notwithstanding anything to the contrary herein, any Services, Code, Documentation, Deliverable or other work product delivered by BIS to Customer pursuant to the terms of this Agreement shall not be considered "work made for hire" and ownership thereof shall remain exclusively with BIS, subject to the license granted to Customer under Section 6.1 (License). Should Customer be deemed to acquire any ownership interest in the Services, Code, Documentation, Deliverable or other work product delivered by BIS, Customer hereby assigns, grants and conveys to BIS all right, title and interest in and to any and all such Services, Code, Documentation, Deliverable or other work product delivered by BIS.

- 6.3 Protection of Deliverables. Customer agrees to take all reasonable steps to protect Deliverables under this Agreement, and any related Documentation, from unauthorized copying or use. If a Deliverable consists of software, any Source Code of such Deliverable shall be deemed to include trade secrets of BIS and/or its licensors and is not licensed to Customer. Customer agrees not to modify, disassemble or decompile any such Deliverable in order to discover the trade secrets contained in any Source Code or for any other reason.
- 6.4 Restrictions. Except as expressly authorized in this Agreement, Customer agrees not to rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify or time share any Deliverable.

7. Warranty

- 7.1 Warranty for Services. BIS warrants that the Services shall be performed in a professional manner in accordance with generally accepted industry standards. Unless otherwise stated in the SOW, this warranty shall be effective for ninety (90) days following acceptance of the Services in accordance with Section 3.4 (Acceptance). Upon breach of this warranty, BIS shall correct the Services so that the Services comply with this warranty. If BIS is unable to correct the Services within a reasonable period of time, Customer may terminate the relevant SOW and obtain a refund of the amount Customer paid to BIS for the Services BIS is unable to correct.
- 7.2 Exclusions. THIS WARRANTY EXCLUDES NON-PERFORMANCE ISSUES THAT RESULT FROM THIRD-PARTY HARDWARE OR FIRMWARE MALFUNCTION OR DEFECT; SOFTWARE NOT DEVELOPED BY BIS; INCORRECT DATA OR INCORRECT PROCEDURES USED OR PROVIDED BY CUSTOMER OR A THIRD PARTY; OR DEFECTS WHICH ARE OUTSIDE THE REASONABLE CONTROL OF BIS.. ANY WARRANTY UNDER THIS SECTION 7 (WARRANTY) SHALL IMMEDIATELY CEASE IF CUSTOMER MODIFIES OR KNOWINGLY ALLOWS ANY THIRD PARTY TO MODIFY ANY PORTION OF A DELIVERABLE AND/OR MODIFIES CUSTOMER'S SYSTEM SO THAT A DELIVERABLE IS NO LONGER FUNCTIONAL OR APPROPRIATE.
- 7.3 Disclaimer. EXCEPT AS EXPRESSLY DESCRIBED IN THIS SECTION 7 (WARRANTY), BIS MAKES NO WARRANTY OF ANY KIND. BIS DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, REPRESENTATIONS, AND CONDITIONS WITH RESPECT TO SERVICES AND DELIVERABLES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, GOOD TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. BIS DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES PROVIDED WILL BE WITHOUT DEFECT OR ERROR.

8. Confidential Information

- 8.1 "Confidential Information" means (a.) BIS or Customer documents, files and data which BIS has accessed in performing the Services, and (b.) any financial, strategic or other information that the disclosing party ("Discloser") provides to the receiving party ("Recipient") that would reasonably be considered to be confidential or that the Discloser has otherwise marked as "confidential."
- 8.2 Open Records Act. By virtue of the Agreement, Customer may be exposed to or be provided with certain confidential and proprietary information of BIS. BIS shall clearly mark any such information as confidential. ("Confidential Information"). Customer is a state agency and subject to the Oklahoma Open Records Act and BIS acknowledges information marked Confidential Information will be disclosed to the extent permitted under Customer's Open Records Act and in accordance with this Section. Customer agrees to use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Customer will not use BIS' Confidential Information for purposes other than those necessary to directly further the purposes of the Agreement.

- 8.3 Exclusions. Confidential Information will not include any information that is (a.) already in possession of Recipient without obligation of confidence; (b.) independently developed by Recipient; (c.) becomes publicly available without breach of this Agreement; (d.) rightfully received by the Recipient from a third party without obligation of confidence; (e.) released for disclosure by the Discloser with its written consent; or (f.) required to be disclosed pursuant to court or government agency order or rule, provided that before disclosing any otherwise Confidential Information, Recipient provides reasonable notice of such order or rule giving Discloser opportunity to object to or limit such disclosure.
- 8.4 Obligations. The Recipient of Confidential Information agrees to exercise reasonable care to protect Confidential Information from unauthorized disclosure, which care shall not be less than the Recipient exercises to protect its own confidential information. The Recipient may disclose Confidential Information only to its employees or agents who need to know such information and shall contractually require such employees or agents to comply with the obligations of confidentiality.
- 8.5 "Residuals" means technical information or know-how retained in an employee's memory, but does not include information deliberately memorized to classify it as Residuals. Either party shall be free to use for any purpose Residuals resulting from access to or work with Confidential Information, provided that such party otherwise complies with the confidentiality obligations contained in this Section 8 (Confidential Information). However, this provision does not grant either party a license under the other party's patents or copyrights, nor does it give the Recipient the right to disclose business plans or financial, statistical, or personnel data, nor does it allow for any purpose the literal copying of a document. The Recipient shall have no obligation to limit or restrict the assignment of persons with Residuals.
- 8.6 Non-disclosure or Confidentiality Agreement. In the event the parties have executed a separate agreement which contains terms and obligations with regards to confidential information that are more restrictive or for a longer duration than this Agreement, the parties agree to comply with such terms and obligations.

9. Indemnification and Insurance

- 9.1 Infringement Indemnity. Subject to the disclaimer below, BIS will indemnify, defend and hold Customer harmless from any final judgment awarded against Customer in the U.S. or related settlement to which BIS agrees, which provides that any Deliverable supplied by BIS infringes any U.S. copyright or U.S. patent of any third party, provided: (a.) Customer promptly notifies BIS in writing of the initial claim; and (b.) to the extent authorized by the Attorney General of the State of Oklahoma, allows BIS to control the defense and any related settlement negotiations. If the Attorney General of the State of Oklahoma does not authorize sole control of the defense and settlement negotiations to BIS, BIS shall be granted authorization to equally participate in any proceeding related to this section but BIS shall remain responsible to indemnify the State for all associated costs, damages and fees incurred by or assessed to the State.
- 9.1.1 Remedy. Should any Deliverable provided by BIS under this Agreement or any SOW, or the operation of any such Deliverable, become, or in BIS's opinion is likely to become, the subject of infringement of any U.S. copyright or U.S. patent, BIS's sole obligation and Customer's exclusive remedy under this Section 9 (Indemnification and Insurance) shall be, at BIS's option and expense, either to procure for Customer the right to continue using the Deliverable, to replace or modify the Deliverable so that it becomes non-infringing, or to grant Customer a refund of the amounts paid by Customer for any such infringing Deliverable.
- 9.1.2 Disclaimer. BIS shall have no responsibility for infringement to the extent the infringement results from (a.) compliance with Customer's designs or instructions not recommended by BIS, (b.) a modification not authorized in writing by BIS, (c.) use or combination with third party software, equipment, or data, (d.) non-licensed use,
- 9.2 General Indemnity. BIS (the "Indemnifying Party") will indemnify, defend, and hold the other party, its officers, directors, employees, and/or shareholders, harmless from any final court judgment (or settlement to which the parties have agreed) arising from personal injury or tangible property damage which is determined by a court to be caused by the negligence or willful misconduct of the Indemnifying Party or its authorized employees relating to this Agreement or any SOW. "Tangible property" does not include electronic files, data, or other electronic information.
- 9.3 Insurance. Each party will maintain reasonable amounts of insurance, which shall at least meet any limits required by law, for public liability, property damage, employer's liability and workers compensation.

10. Limitation of Liability

- 10.1 Liability. A party's liability for any claim arising under or relating to this Agreement or any SOW shall be limited to direct damages and shall not exceed the amount paid, and any amounts owed but not yet paid, for the Services. The limitation in this Section 10.1 (Liability) shall not apply to a party's infringement of the other party's intellectual property rights. Notwithstanding anything to the contrary in the Contract, the foregoing provisions of the Section shall not apply to or limit damages, expenses, costs, actions, claims and liabilities arising from or related to property damage, bodily injury or death caused by BIS; the indemnification obligations set forth in this Contract; BIS' confidentiality obligations set forth in this Contract; data security and breach notification obligations set forth in the Contract; the bad faith, gross negligence or intentional misconduct of BIS or its employees agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.
- 10.2 Disclaimer. Neither party shall be liable to the other for any indirect, special, incidental or consequential damages, (including loss of profits or business) arising under or relating to this Agreement or any SOW, even if the other party has been advised of the possibility of such damages.

11. 11. Term and Termination Consequences of Expiration and/or Termination.

- 11.1.1 Effect of Termination. Unless otherwise agreed to in writing, upon Agreement termination, any SOW then in effect will immediately terminate.
- 11.1.2 Termination Payment. In the event of termination of a SOW, Customer shall pay BIS the amounts specified in the Costs Section of each such SOW relating to work performed by BIS prior to and including the date of termination, as well as any additional costs or expenses which BIS has incurred or contracted for with respect to the Services and is unable to avoid. Customer will not pay for any goods or services not actually received. BIS will refund any fees, other than annual software maintenance and support fees that have been prepaid but unused. Additionally, all property of each party in possession of the other party; relating to such SOW shall be returned, including, without limitation, any Deliverable provided to Customer by BIS under such SOW but not yet fully paid for by Customer, and all Confidential Information. Except in case of breach by Customer, Customer may retain a license under Section 6.1 (License) to use incomplete Deliverables for which it has paid.; however, all warranties regarding such Deliverables shall cease
- 11.1.3 Survival of Terms. The provisions of this Agreement which by their nature extend beyond the termination of the Agreement will survive termination or expiration of the Agreement.

12. General Provisions

- 12.1 Separate Software License. The Services may be in support of a Customer license to software under a separate agreement. Such separate agreement shall govern all use by Customer of such software, and this Agreement shall relate solely to the Services. This Agreement is not intended to modify in any way the licensing, warranty, or other agreement provisions for software products separately licensed by Customer from BIS or any other party, except as expressly provided herein or in a SOW.
- 12.2 Notice. Unless otherwise agreed to by the parties, all notices shall be deemed effective when made in writing and received by either (a.) registered mail, (b.) certified mail, return receipt requested, (c.) overnight mail, (d) personally delivered, or (e) via secure email transmission with proof of receipt by the addressee, addressed and sent to the receiving party's address specified in the introductory paragraph to this Agreement, with the original of the notice being addressed to the Project Manager (with respect to any SOW).
- 12.3 Force Majeure. If either party shall be prevented from performing any portion of this Agreement or any SOW by causes beyond its control, including but not limited to labor disputes, civil commotion, war, governmental regulations or controls, casualty, epidemics, inability to obtain materials or services or acts of God or nature, such defaulting party shall be excused from performance for the period of the delay and for a reasonable time thereafter and such failure or inability shall not constitute a breach of this Agreement. In the event that 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. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Customer may terminate a purchase order if BIS cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Customer.

Exclusions: Non-suspended Obligations: Notwithstanding the foregoing or any other provisions in the Contract, (1) in no event will any of the following be considered a force majeure event: (a) shutdowns, disruptions or malfunctions in BIS' systems or any of BIS' telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to BIS' systems; or (b) the delay or failure of BIS or subcontractor personnel to perform any obligation of BIS hereunder unless such delay or failure to perform is itself by reason of a force majeure event; and (2) no force majeure event modifies or excuses BIS' confidentiality, indemnification or data security and breach notification obligations set forth herein.

- 12.4 Independent Contractor. Nothing in this Agreement or any SOW, and no course of dealing between the parties, shall be construed to create any employment, joint venture, agency relationship nor partnership between a party and the other party or the other party's employees or agents. Each party shall be solely responsible for payment of its employees' salaries (including withholding of income taxes and social security), workers compensation, and all other employment benefits.
- 12.5 Jurisdiction. This Agreement and any SOW shall be construed in accordance with and governed by the laws of the State of Oklahoma and applicable U.S. federal laws, without regard to conflicts of laws provisions. Venue for any actions arising under or relating in any way to this Agreement shall vest exclusively in the courts of general jurisdiction located in Oklahoma County in the State of Oklahoma.
- 12.6 Severability. If any provision or portion of this Agreement or any SOW shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.
- 12.7 Waiver. No waiver of any Agreement right shall be effective unless in writing signed by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform shall be deemed a waiver of any future right.
- 12.8 Binding Effect/Assignment. This Agreement and any SOW is binding upon the parties' respective representatives, successors, and assigns. Neither party shall transfer or assign this Agreement or any SOW without the prior written consent of the other party. However, neither party shall unreasonably delay or withhold consent to an assignment of this Agreement or any SOW (solely in entirety). Despite the foregoing, rights granted under the terms of this Contract may be assigned or transferred, at no additional cost, to other entities within the State.
- 12.9 Subcontracting Services. BIS may subcontract any portion of the Services to a third-party contractor with the prior consent of Customer, provided that BIS remains fully responsible to Customer for the delivery of the Services, such consent not to be unreasonably delayed or withheld.
- 12.10 No Third-Party Beneficiaries. Unless otherwise provided herein, no third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
- 12.11 Entire Agreement. This Agreement, including any SOW, and other Contract Documents are the entire agreement between the parties with respect to the subject matter and supersedes any prior agreement or communications between the parties relative thereto, whether written or oral. This Agreement and/or any SOW may be modified only by a written addendum or change order signed by authorized signatories of both parties. The terms of any invoice, purchase order or similar document will not modify this Agreement.



**Attachment C to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH BIS, INC.
RESULTING FROM STATEWIDE CONTRACT NO. 1013**

The Hosting Agreement is hereby amended as set forth below and supersedes all prior Hosting Agreements discussed by the parties.

HOSTING AGREEMENT

I. Definitions

- a. “Customer Data” shall mean all data supplied by or on behalf of Customer in connection with the Contract, excluding any confidential information of Vendor.
- b. “Data Breach” shall mean the unauthorized access by an unauthorized person that results in the access, use, disclosure or theft of Customer Data.
- c. “Non-Public Data” shall mean 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.
- d. “Personal Data” shall mean 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) contains electronic protected health information that is subject to the Health Insurance Portability and Accountability Act of 1996, as amended.
- e. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the hosted environment used to perform the services.

II. Customer Data

- a. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Vendor 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. Vendor 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).

- b. Vendor 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. Vendor 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, Vendor shall not respond to subpoenas, service or process, FOIA 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 Vendor's proposed responses. Vendor agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
- c. Vendor 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 Vendor. Vendor will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Vendor will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Vendor as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Vendor's negligence or willful misconduct, Vendor, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

III. Data Security

- a. Vendor 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. Vendor 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 Vendor applies to its own personal data and non-public data of similar kind.
- b. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Vendor is responsible for encryption of Personal Data.

- c. Vendor represents and warrants to the Customer that the hosting equipment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Vendor will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Vendor 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 Vendor, Vendor 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 Vendor has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Vendor is responsible for costs incurred by Customer for Customer to remediate the virus.
- d. Vendor 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. Vendor 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. Vendor shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Vendor's obligations under the Contract.
- e. Vendor 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.
- f. Vendor 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. Vendor 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.

IV. Security Assessment

- a. The State requires any entity or third-party vendor hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Vendor 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.

- b. To the extent Vendor requests a different sub-contractor than the third-party hosting vendor already approved by the State, the different sub-contractor is subject to the State's approval. Vendor agrees not to migrate State's data or otherwise utilize a different third-party hosting vendor in connection with key business functions that are Vendor's obligations under the Contract until the State approves the third-party hosting vendor's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party hosting vendor does not meet the State's requirements under the State Certification and Accreditation Review, Vendor acknowledges and agrees it may not utilize such third-party vendor in connection with key business functions that are Vendor's obligations under the Contract, until such third party meets such requirements.

V. Security Incident Notification and Responsibilities: Vendor shall inform Customer of any Security Incident or Data Breach.

- a. Vendor 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, Vendor will coordinate with Customer prior to making any such communication.
- b. Vendor 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).
- c. Vendor shall: (i) maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.

VI. Data Breach Notification and 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 Vendor.

- a. Vendor, unless stipulated otherwise, shall promptly notify the Customer identified contact within 2 hours or sooner, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach. Vendor 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.

- b. Unless otherwise stipulated, if a Data Breach is a direct result of Vendor's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor 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 – (2), (3) and (4) 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 Vendor based on root cause.
- c. If a Data Breach is a direct result of Vendor's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

VII. Notice: Contact information for Customer for notifications pursuant this Hosting Agreement are consistent with the Contract with a copy sent to:

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

And

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

And

OMES Information Services General Counsel
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

For immediate notice which does not constitute written notice:

OMES Help Desk

405-521-2444

helpdesk@omes.ok.gov

Attn: Chief Information Security Officer

VIII. Vendor Representations and Warranties: Vendor represents and warrants the following

- a. The product and services provided under this Hosting Agreement do not infringe a third party's patent or copyright or other intellectual property rights.
- b. Vendor 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.
- c. The execution, delivery and performance of the Contract, the Hosting Agreement and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Vendor 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 Vendor and any third parties retained or utilized by Vendor to provide goods or services for the benefit of the Customer.
- d. Vendor 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.

IX. Indemnity

- a. Vendor's Duty of Indemnification. Vendor agrees to indemnify and shall hold the State of Oklahoma and State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees) (collectively "Damages") (other than Damages that are the fault of Customer) arising from or in connection with Vendor's breach of its express representations and warranties or other obligations in this Hosting Agreement and the Contract. If a third party claims that any portion of the products or services provided by Vendor under the terms of the Contract or this Hosting Agreement infringes that party's patent or copyright, Vendor shall defend and indemnify the State of Oklahoma and Customer against the claim at Vendor's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State of Oklahoma and/or Customer. The State of Oklahoma and/or Customer shall promptly notify Vendor

of any third party claims and to the extent authorized by the Attorney General of the State of Oklahoma, allow Vendor to control the defense and any related settlement negotiations. If the Attorney General of the State of Oklahoma does not authorize sole control of the defense and settlement negotiations to Vendor, Vendor shall be granted authorization to equally participate in any proceeding related to this section but Vendor shall remain responsible to indemnify Customer and the State of Oklahoma for all associated costs, damages and fees incurred by or assessed to the State of Oklahoma and/or Customer. Should the software become, or in Vendor's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated under this Hosting Agreement, Vendor 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.

X. Termination and Suspension of Service:

- a. In the event of a termination of the Contract, Vendor shall implement an orderly return of Customer Data in a mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of Customer Data.
- b. During any period of service suspension, Vendor shall not take any action to intentionally erase any Customer Data.
- c. In the event of termination of any services or agreement in entirety, Vendor shall not take any action to intentionally erase any Customer Data for a period of:
 - i. 10 days after the effective date of termination, if the termination is in accordance with the contract period
 - ii. 30 days after the effective date of termination, if the termination is for convenience
 - iii. 60 days after the effective date of termination, if the termination is for cause

After such period, Vendor shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

- d. The State shall be entitled to any post termination assistance generally made available with respect to the services.

- e. Vendor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer. 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.