

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

**ADDENDUM 1 TO  
STATE OF OKLAHOMA CONTRACT WITH MICHAEL BAKER INTERNATIONAL  
RESULTING FROM SOLICITATION NO. 0900000417**

This Addendum 1 (“Addendum”) is an Amendment to the Contract awarded to Michael Baker International in connection with Solicitation Number 0900000417 (“Solicitation”) and is effective August 10, 2020, (“Effective Date”).

**Recitals**

Whereas, the State issued a Solicitation for proposals to provide for creating and maintaining GIS data that will be used to provide location and routing data for Next Generation 9-1-1 services in Oklahoma, as more particularly described in the Solicitation;

Whereas Michael Baker International submitted a proposal which contained exceptions to the Solicitation terms and various other Contract Documents; and

Whereas, the State and Michael Baker International have negotiated the final terms under Michael Baker International 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 Michael Baker International 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.**

- i. Incorporation of Exceptions to Terms and Conditions as contained in Attachment A to this Addendum;
- ii. The parties have negotiated certain terms of the Contract as follows: Incorporation of the Hosting Agreement as contained in Attachment B to this Addendum;
- iii. Incorporation of Datamark Software as a Service Agreement as contained in Attachment C to this Addendum.
- iv. Incorporation of Schedule A Annual License Fee
- v. Incorporation of Schedule B Point of Contact

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. Michael Baker International affirmatively acknowledges the exceptions it takes to the Solicitation are referenced in Attachment C of this Addendum of which are made and that it will not ask the State or any Customer to execute additional documents not listed above in connection with this Contract.

**State of Oklahoma**

By: 

Name: D. Jerry Moore

Title: Chief Information Officer

Date: Aug 18, 2020

**Michael Baker International**

By: 

Name: Jason J. Bivens

Title: Associate Vice President

Date: 08/18/2020

**Attachment A to  
Addendum 1 to  
STATE OF OKLAHOMA CONTRACT WITH MICHAEL BAKER INTERNATIONAL  
RESULTING FROM SOLICITATION NO. 0900000417**

**Negotiated Exceptions to the Solicitation**

The Solicitation is hereby amended to include the terms as set forth below and supersedes all prior terms and Exceptions submitted by Michael Baker International or discussed by the parties.

<b>RFP Section</b>	<b>Exception</b>
<b>A. General Provisions, A.1.14-A.1.19 Definitions</b>	<p>After item A.1.13, insert these definitions and renumber the subsequent definitions after this insertion:</p> <p>A.1.14 Software as a Service (SaaS) Agreement - means the agreement that governs the DATAMARK VEP SaaS application provided by Supplier to the State Entity. Its terms and conditions are incorporated within this Agreement as Attachment C. Conflict between the language of Attachment C and the language of the RFP will be resolved with the language of the RFP having priority over the language in Attachment C.</p> <p>A.1.15. "Standard of Care" - means the degree of care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.</p>
<b>A. General Provisions, A.18 Termination for Cause</b>	<p>Original language of A.18 remains without change to language in RFP.</p>
<b>A. General Provisions, A.28.2 Confidentiality</b>	<p>Amend and change language to read:</p> <p>No State data or records shall be provided or the contents thereof disclosed to a third party unless specifically authorized to do so in writing by the State CIO or in compliance with a valid court order or other legal or administrative proceeding or due process of law. The Supplier shall immediately forward to the State and the State CIO 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.</p>

RFP Section	Exception
<b>A. General Provisions, A.40 Failure to Provide</b>	<p>Amend and change language to read:</p> <p>The Supplier's repeated failure to provide defined services in accordance with the standard of care, without reasonable basis as determined in the sole discretion of the State CIO, shall constitute a material breach of the Supplier's obligations, which may result in partial or whole cancellation of the Contract.</p>
<b>A. General Provisions, A.45.1 Ownership Rights</b>	<p>Amend and change language to read:</p> <p>Any software developed by the Supplier under this Agreement 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 the Utilities, 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 Utilities, 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 Utilities embodied in or delivered to the State in conjunction with the products.</p>
<b>A. General Provisions, A.45.2 Ownership Rights</b>	<p>Amend and change language to read:</p> <p>Except for any Utilities or Software or Services described within the Supplier's SaaS Agreement, 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.</p>
<b>A. General Provisions, A.45.8 Ownership Rights</b>	<p>Addition of Section A.45.8 is included and reads:</p> <p>It is understood and agreed that this section 45 does not apply to the Software as discussed within Supplier's SaaS Agreement.</p>

RFP Section	Exception
<b>A. General Provisions, A.46 Ownership Rights</b>	<p>Addition of “under this Agreement” resulting in the following language of the first paragraph:</p> <p>If required under applicable Oklahoma law relating to customized computer software developed or modified exclusively for a State Entity under this Agreement, the Supplier shall have 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, with the escrow agent including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following.</p>
<b>B. Special Provisions, B.3 Warrants Supplier</b>	Original language of B.3 remains without change to language in RFP.
<b>B. Special Provisions, B.6 Commercial Off-The-Shelf (Cots) Software</b>	Original language of B.6 remains without change to language in RFP.
<b>B. Special Provisions, B.8 Ownership</b>	Original language of B.8 remains without change to language in RFP.
<b>B. Special Provisions, B.9</b>	Reject the addition of the proposed language of B.9 in vendor exceptions.
<b>B. Special Provisions, B.10</b>	Reject the addition of the proposed language of B.10 in vendor exceptions.
<b>B. Special Provisions, B.11</b>	Reject the addition of the proposed language of B.11 in vendor exceptions.



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**Attachment B to  
Addendum 1 to  
STATE OF OKLAHOMA CONTRACT WITH MICHAEL BAKER INTERNATIONAL  
RESULTING FROM SOLICITATION NO. 0900000417**

**HOSTING AGREEMENT**

This Hosting Agreement (“Hosting Agreement”) is a Contract Document in connection with the Contract issued as a result of Solicitation No. 0900000417 (the “Contract”) and entered into between Michael Baker International (“Vendor”) and the State of Oklahoma by and through the Office of Management and Enterprise Services (“State” or “Customer”), the terms of which are incorporated herein. This Hosting Agreement is applicable to any Customer Data stored or hosted by Vendor in connection with the Contract. Unless otherwise indicated herein, capitalized terms used in this Hosting Agreement without definition shall have the respective meanings specified in the Contract.

**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. In connection with the services required in response to Solicitation Number 90000417 Customer Data will include public safety GIS data consisting but not limited to Street Centerlines, address points, and emergency service boundaries and other Public Data.
- 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). It is agreed that any Customer Data supplied that is in the Public Domain shall not have an obligation of confidentiality.
- 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.

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](mailto: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, and employees, and agents harmless from all liabilities, claims, damages, losses, costs, and 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 material breach of its express representations and warranties or other material 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, 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. However, Vendor will not be required to so defend or indemnify the State or Customer if the claim results from State or Customer's knowing alteration of products or services, in that such alteration created the infringement upon any presently existing U.S. letters patent or copyright

**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.

All termination actions that are required of the Vendor will be compensated in accordance with the terms of the Contract.

**Signature Block**

IN WITNESS WHEREOF, each person executing this Contract below represents that he or she is authorized to enter into this Contract on behalf of such party and each party expressly agrees to the terms and conditions of this Contract.

VENDOR:

[insert vendor name]

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[insert printed name and title]

Date

STATE:

State of Oklahoma by and through the Office of Management and Enterprise Services on behalf of [insert agency name]

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[insert printed name and title]

Date

**Attachment C to  
Addendum 1 to  
STATE OF OKLAHOMA CONTRACT WITH MICHAEL BAKER INTERNATIONAL, INC.  
RESULTING FROM STATE-WIDE NUMBER SW 1177  
DATAMARK®**

**Software as a Service Agreement SAMPLE**

The Software as a Service Agreement is hereby amended as set forth below and supersedes all prior documents submitted by **Michael Baker International, Inc.** or discussed by the parties. The parties agree to use this **Software as a Service Agreement** or a document substantially similar in the form of this **Software as a Service Agreement**.

This Software as a Service (SaaS) Agreement (the “**Agreement**”), is by and between Michael Baker International, Inc., a Pennsylvania corporation with offices located at 5 Hutton Centre Drive, Suite 500, Santa Ana, CA 92707 (“**Provider**”) and State of Oklahoma, by and through OMES, (“**State**”) and is a Contract Document stemming from Oklahoma State Wide 1177 (“SW1177”) State, is identified as any Authorized User under SW 1177.

WHEREAS, State wishes to procure from Provider the software services described herein, and Provider wishes to provide such services to State, each on the terms and conditions set forth in this SaaS Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

“**Access Credentials**” means any user name, identification number, password, or other means used to verify an individual’s identity and authorization to access and use the Hosted Services.

“**Authorized User**” means an employee or contractor of State that is authorized by State to use and/or access the Services solely for a purpose that is consistent with the terms and conditions of this SaaS Agreement and for whom Provider has created Access Credentials. For clarity, an Authorized User may not be a third party unless expressly agreed to by Provider.

“**State Data**” means, other than Resultant Data, information, data and other content, in any form or medium that is collected, downloaded or otherwise received, directly or indirectly from State or an Authorized User by or through the Services.

“**State Systems**” means the State’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by State or through the use of third-party services.

“**Documentation**” means any manuals, instructions or other documents or materials that the Provider provides or makes available to State in any form or medium and which describe the functionality, components, features or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

State.

**“Harmful Code”** means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent State or any Authorized User from accessing or using the Services or Provider Systems as intended by this SaaS Agreement. Harmful Code does not include any Provider Disabling Device.

**“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.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**“Losses”** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**“Permitted Use”** means any use of the Services by an Authorized User for the benefit of State solely for the purpose of accessing and maintaining State Data and/or Resultant Data.

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

**“Process”** means to take any action or perform any operation or set of operations that the SaaS Services are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. **“Processing”** and **“Processed”** have correlative meanings.

**“Provider Disabling Device”** means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Provider or its designee to disable State’s or any Authorized User’s access to or use of the Services automatically with the passage of time or under the positive control of Provider or its designee.

**“Provider Materials”** means the Service Software, Specifications, Documentation and Provider Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any



deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials do not include State Data or Resultant Data.

**“Provider Personnel”** means all individuals involved in the performance of Services as employees, agents or independent contractors of Provider or any Subcontractor.

**“Provider Systems”** means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third-party services.

**“Representatives”** means, with respect to a party, that party’s employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors and legal advisors.

**“Resultant Data”** means information, data and other content that is derived by or through the Services from Processing State Data.

**“Service Software”** means the Provider software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Provider provides remote access to and use of as part of the Services.

**“Specifications”** means any specifications for the Services set forth in Schedule A hereto.

**“Third Party Materials”** means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider.

## 2. Services;

- 2.1. Services. Subject to and conditioned on State’s and its Authorized Users’ compliance with the terms and conditions of this SaaS Agreement, during the Term, Provider shall provide State and its Authorized Users the services the services described below, (collectively, the **“Services”**), in accordance with the Specifications and terms and conditions hereof, including to host, manage, operate and maintain the Service Software for remote electronic access and use by State and its Authorized Users.

Services Description. The DataMark® VEP SaaS application (Service), consisting of Services that are implemented using conventional web technology. No additional plugins or downloads are required to access the Services. No data is made publicly available. Access to the Services is restricted to Authorized Users only. State’s data access is also restricted. All access to State Data and/or Resultant Data is facilitated by the Services through customized download and editing modules. File level access or repository browsing, such as traditional FTP capabilities, are not exposed to any State. All State interaction with the Services is transported by HTTPS. Internally, files used with the Services are scanned for virus and malware. This action is performed in isolation from other State Data and Resultant Data.

Maintenance of the Service Software for remote electronic access and use by State and its Authorized Users (“**Hosted Services**”) will be in substantial conformity with the Specifications, except for:

- a) Scheduled Downtime in accordance with Section 5.2;
- b) Service downtime or degradation due to a Force Majeure Event;
- c) State’s or any Authorized User’s use of Third Party Materials, misuse of the Hosted Services, or use of the Services other than in compliance with the express terms of this SaaS Agreement and the Specifications; and
- d) any suspension or termination of State’s or any Authorized Users’ access to or use of the Hosted Services as permitted by this SaaS Agreement.

2.2. Service and System Control. Except as otherwise expressly provided in this SaaS Agreement, as between the parties:

- a) Provider has and will retain sole control over the operation, provision, maintenance and management of the Services and Provider Materials, including the: (I) Provider Systems; (ii) selection, deployment, modification and replacement of the Service Software; and (iii) performance of Support Services and Service maintenance, upgrades, corrections and repairs; and
- b) State has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the State Systems, and sole responsibility for all access to and use of the Services and Provider Materials by any Person by or through the State Systems or any other means controlled by State or any Authorized User, including any: (i) information, instructions or materials provided by any of them to the Services or Provider; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions or actions based on such use.

2.3. Project Management. Each party shall, throughout the Term, maintain within its organization a project manager to serve as such party’s primary point of contact for day-to-day communications, consultation and decision-making regarding the Services (each a “**Project Manager**”). Each Project Manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this SaaS Agreement. Each party shall ensure its Project Manager has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity. The parties’ initial Project Managers are identified in Schedule B attached hereto. Each party shall use commercially reasonable efforts to maintain the same Project Manager in place throughout the Term. If either party’s Project Manager ceases to be employed by such party or such party otherwise wishes to replace its Project Manager, such party shall promptly name a new Project Manager by written notice to the other party in accordance with the notice requirements in Section 16.4 of this SaaS Agreement.

- 2.4. Changes. Provider reserves the right, in its sole discretion, to make any changes to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Provider's services to its States, (ii) the competitive strength of or market for Provider's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.
- 2.5. Subcontractors. Provider may from time to time in its discretion engage third parties to perform Services (each, a "**Subcontractor**").
- 2.6. Suspension or Termination of Services. Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate or otherwise deny State's, any Authorized User's or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its good faith and reasonable discretion, that: (i) State; State or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (ii) this SaaS Agreement expires or is terminated. This Section 2.6 does not limit any of Provider's other rights or remedies, whether at law, in equity or under this SaaS Agreement. Notwithstanding the foregoing, Provider must provide notice and opportunity to cure. Provider shall not invoice for any period of suspension and any fees pre-paid for period of suspension, must be reimbursed.

2.7. RESERVED

3. Authorization and State Restrictions.

- 3.1. Authorization. Subject to and conditioned on State's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this SaaS Agreement, Provider hereby grants to State, during the Term, a non-exclusive, non-sublicensable, worldwide right and license to access, use, display, and execute the Provider Materials in connection with the Services, solely for the Permitted Use by and through Authorized Users in accordance with the Specifications, the conditions and limitations set forth in this SaaS Agreement. This authorization, other than as may be expressly set forth in Section 16.8, is non-transferable.
- 3.2. Reservation of Rights. Except as expressly set forth in Section 3.1 hereto, nothing in this SaaS Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Provider Materials or Third Party Materials, whether expressly, by implication, estoppel or otherwise. Subject to Section 3.1 hereto, all right, title and interest in and to the Services, the Provider Materials and the Third Party Materials are and will remain with Provider and the respective rights holders in the Third Party Materials.
- 3.3. Authorization Limitations and Restrictions. State shall not knowingly, and shall not permit any other Person to, access or use the Services or Provider Materials except as expressly permitted by

this SaaS Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, State shall not, except as this SaaS Agreement expressly permits:

- a) copy, modify or create derivative works or improvements of the Services or Provider Materials;
- b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, in whole or in part;
- d) bypass or breach any security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User through the use of his or her own then-valid Access Credentials;
- e) input, upload, transmit or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;
- f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Provider Systems or Provider's provision of services to any third party, in whole or in part;
- g) remove, delete, alter or obscure any trademarks, Specifications, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;
- h) access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law;
- i) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage; or
- j) otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under Section 3.1 hereto.

#### 3.4. Service Use and Data Storage.

Schedule A sets forth a schedule of Fees for designated levels of Hosted Service usage (each a "**Service Allocation**"), beginning with the Fees payable by State for the levels of Hosted Service

usage in effect as of the effective date. The usage of the service is bound to an agreed upon geographic extent of data based upon the data footprint provisioned for application on-boarding. Any changes to this extent will result in additional licensing fees for access to the Service via a written change order in accordance with Section 2.4 hereto.

#### 4. State Obligations.

- 4.1. State Systems and Cooperation. State shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with the Specifications all State Systems on or through which the Services are accessed or used; (b) provide Provider Personnel with such reasonable access to State's premises and State Systems as is necessary for Provider to perform the Services in accordance with the Availability Requirement and Specifications; and (c) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this SaaS Agreement.
- 4.2. Effect of State Failure or Delay. Provider is not responsible or liable for any delay or failure of performance caused by State's delay in performing, or failure to perform, any of its obligations under this SaaS Agreement (each, a "**State Failure**").
- 4.3. Corrective Action and Notice. If State becomes aware of any actual or threatened activity prohibited by Section 3.3, State shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful hereto measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.
- 4.4. Audit. Once a year, State shall provide Provider with access to conduct an on-premises audit of State's compliance with the use of the Services with 10 business days of advance notice to State. Audit shall take place during business hours and at vendor's expense.

#### 5. Availability.

- 5.1. Service Levels. Subject to the terms and conditions of this SaaS Agreement and as set forth in below hereto, Provider will use commercially reasonable efforts to make the Hosted Services Available during the applicable Service Windows (except during Force Majeure events) and in accordance with generally recognized industry Service Level Standards for SaaS applications, excluding unavailability as a result of any of the Exceptions described below in this Section 5.1 (the "**Availability Requirement**"). "**Service Level Failure**" means a material failure of the Hosted Services to meet the Availability Requirement. "**Available**" means the Hosted Services are available for access and use by State and its Authorized Users over the Internet and operating in material accordance with the Specifications.

For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Hosted Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of State or its Authorized Users to access or use the

Hosted Services that is due, in whole or in part, to any: (a) access to or use of the Hosted Services by State or any Authorized User, or using State's or an Authorized User's Access Credentials, that does not strictly comply with this SaaS Agreement and the Specifications; (b) State Failure; (c) State's or its Authorized User's Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Provider pursuant to this SaaS Agreement; (f) Scheduled Downtime; or (g) disabling, suspension or termination of the Services pursuant to Section 2.6 hereto.

5.2. **Scheduled Downtime.** For each scheduled outage of the Hosted Services ("**Scheduled Downtime**") Provider shall:

- a) for non-emergency maintenance to be performed on the Hosted Services, provide seven (7) calendar days prior written notice to State of such non-emergency maintenance, such written notice to include a general description of all such non-emergency maintenance; and
- b) for emergency maintenance to be performed on the Hosted Services, (i) provide State as much prior notice as is commercially practicable of all such emergency maintenance to be performed on the Services, and (ii) provide a general description of all such emergency maintenance performed no more than ten (10) calendar days following completion of such emergency maintenance.

5.3. If Provider fails to meet the Availability Requirement for a calendar month during the term of their service contract, State will be entitled to collect a credit from Provider for the following percentages of the pro-rata monthly portion of the annual fees paid by State for the Provider web hosting service for the month at issue (i.e. the "Monthly Annual Fees"):

<b>Outage Time (in a given calendar month)</b>	<b>Outage Percentage (in a given calendar month)</b>	<b>Credit Percentage (of the monthly portion of the annual fee)</b>
Less than or equal to 1 hour	Less than or equal to ~ 0.1%	None
More than 1 hour but less than 8 hours	More than ~ 0.1% but less than ~ 1.1%	25%
More than 8 hours but less than 24 hours	More than ~ 1.1% but less than ~ 3.3%	50%
More than 24 hours	More than ~ 3.3%	75%

In order to be entitled to a credit in any instance to which a credit may be collected above, State must inform Provider's Technical Support Department by email (a "Credit Request") within ten (10) days from the end of the month in which the State believes that Provider did not satisfy the Availability Commitment.

Unless Provider disputes in good faith that its Availability Requirement was not met in the month at issue, in which event it shall explain to State the basis for its disagreement and share any related documentation in this regard, Provider will issue the appropriate credit to State to be used against a future invoice.

In the event of a dispute regarding whether an Outage occurred, or as to the duration of an Outage, the output of the monitoring tools utilized by Provider and agreed upon and confirmed by the State shall be conclusive and controlling.

States right to receive a credit for a failure to meet the Availability Requirements for a given month shall be State's remedy in connection with the Outage(s) giving rise to the credit. The aggregate maximum value of credits to be issued by Provider to State for any and all Outages(s) that occur in a single month will not exceed fifty percent (50%) of the monthly Service fee.

6. Data Backup. As part of the Services, Provider Systems perform routine data backups of State Data. Provider shall backup State Data no less than daily. Any backups of State Data shall not be considered in calculating storage used by State.

7. Security.

- 7.1. Provider Systems and Security Obligations. Provider will employ security measures in accordance with applicable industry practice.

- 7.2. State Control and Responsibility. State has and will retain sole responsibility for: (a) all State Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of State or any Authorized User in connection with the Services; (c) State's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by State or through the use of third-party services ("**State Systems**"); (d) the security and use of State's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the State Systems or its or its Authorized Users' Access Credentials, with or without State's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

- 7.3. Access and Security. State shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and (b) control the content and use of State Data, including the uploading or other provision of State Data for Processing by the Hosted Services.

8. Fees; Invoices; Payment Terms.

- 8.1. Fees. State shall pay Provider the fees set forth in Sales Order of this SaaS Agreement ("**Fees**") in accordance with this Section 8

- a) The State contract number assigned to this SaaS Agreement will be provided to the Provider, in writing, prior to the start of any work.
    - b) The State agrees to pay the Provider for the herein described services at a rate of compensation according to the deliverable payment schedule stated in **Sales Order**. The State shall have the right to retain from any payment due the Provider under this

SaaS Agreement, an amount sufficient to satisfy any amount of service level credits due and owing to the State by the Provider.

- c) The State Project Manager must approve all invoices prior to payment being made.
- d) The State shall have forty-five (45) days from the receipt of an invoice seeking payment of fees or costs to either pay the invoice, or notify the Provider that the deliverable, or any part thereof, is unacceptable.

8.2. RESERVED.

8.3. RESERVED.

8.4. RESERVED.

8.5. Payment. State shall pay all Fees within forty-five (45) calendar days after receipt of a proper invoice therefor. State shall make all payments hereunder in US dollars. State shall make payments to the address or account specified in Sales Order or such other address or account as Provider may specify in writing from time to time.

8.6. Late Payment. If State fails to make any payment when due then, in addition to all other remedies that may be available:

- a) Provider may charge interest on the past due amount at the rate of 0.25% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;
- b) If such failure continues for thirty (30) calendar days following written notice thereof, Provider may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to State or any other Person by reason of such suspension. It being understood, with the exception of the Service fees, Provider is not entitled to any amounts accrued during the period of suspension.

8.7. RESERVED.

## 9. Intellectual Property Rights.

9.1. Services and Provider Materials. All right, title and interest in and to the Services and Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and the respective rights holders in the Third-Party Materials. State has no right, license or authorization with respect to any of the Services or Provider Materials (including Third-Party Materials) except as expressly set forth in Section 3.1 or the applicable third-party license. All other rights in and to the Services and Provider Materials (including Third-Party Materials) are expressly reserved by Provider and the respective third-party licensors.



- 9.2. State Data; Resultant Data. As between State and Provider, State is and will remain the sole and exclusive owner of all right, title and interest in and to all State Data and all Resultant Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 9.3 hereto.
- 9.3. Consent to Use State Data, Resultant Data. State hereby irrevocably grants all such rights and permissions in or relating to State Data and Resultant Data: (a) to Provider, its Subcontractors and the Provider Personnel as are necessary or useful to perform the Services; and (b) to Provider as are necessary or useful to enforce this SaaS Agreement and exercise its rights and perform its hereunder.

## 10. Confidentiality

- 10.1. Confidential Information. By virtue of the Agreement, State may be exposed to or be provided with certain confidential and proprietary information of the Provider. Provider shall clearly mark any such information as confidential. ("Confidential Information"). State or a state agency is subject to the Oklahoma Open Records Act and Supplier acknowledges information marked Confidential Information will be disclosed to the extent permitted under State's Open Records Act and in accordance with this section. State 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. State will not use Provider's Confidential Information for purposes other than those necessary to directly further the purposes of the Agreement. The State will be responsible for the accuracy and completeness of all State Data provided to Provider. State Data shall mean all data supplied by the State in connection with the Contract. The State shall retain exclusive ownership of all State Data and such State Data shall be deemed to be the State's Confidential Information, as set forth in the Contract. Provider shall restrict access to State's Data to State's employees and agents as necessary to perform the Services, and to Provider and its employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein). Provider will protect the State Data from unauthorized dissemination and use with the same degree of care that it uses to protect its own Confidential Information and, in any event, will use no less than a reasonable degree of care in protecting State Data. Provider shall promptly notify the State upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to State Data or State's use of the [hosted environment]. Provider shall notify the State at the contact set forth notification section by the fastest means available and also in writing. In no event shall Provider provide such notification more than 24 hours after Provider receives the request. Except to the extent required by law, Provider shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to State without first notifying the State and obtaining the State's prior approval, which shall not be unreasonably withheld, of Provider's proposed responses. Provider agrees to provide its completed responses to the State with adequate time for State review, revision and approval.
- 10.2. Exclusions. Confidential Information does not include information that : (a) was rightfully known to the State without restriction on use or disclosure prior to such information's being disclosed or made available to the State in connection with this SaaS Agreement; (b) was or becomes generally known by the public other than by the State's or any of its Representatives' noncompliance with this SaaS Agreement; (c) was or is received by the State on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to

maintain its confidentiality; or (d) was or is independently developed by the State without reference to or use of any Confidential Information.

10.3. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Provider shall:

- a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this SaaS Agreement;
- b) except as may be permitted by and subject to its compliance with Section 10.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Provider's exercise of its rights or performance of its obligations under and in accordance with this SaaS Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Provider's obligations under this Section 10.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 10.3;
- c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care; and
- d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 10.

10.4. Compelled Disclosures. In the event that State is requested or required by legal or regulatory authority to disclose any Confidential Information, State shall promptly notify the Provider of such request or requirement so that the Provider may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained prior to the State's requirement to reply, State agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand.

## 11. Term and Termination.

11.1. Initial Term. The initial term of this SaaS Agreement commences as of the upon Final Acceptance by the State unless terminated earlier pursuant any of this SaaS Agreement's express provisions, will continue in effect until twelve (12) months from such date (the "**Initial Term**").

11.2. Renewal. This SaaS Agreement can renew by written mutual agreement for up to four (4) additional successive twelve (12) month term(s) unless earlier terminated pursuant to this SaaS Agreement's express provisions. . (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

11.3. Termination. In addition to any other express termination right set forth elsewhere in this SaaS Agreement:

- a) The Provider may terminate this Contract immediately, in whole or in part for material default, or for non-material default with a thirty (30) day written notice. The State may terminate this Contract in whole or in part for default or any other just cause upon a thirty (30) day written notification to the Provider. The State may terminate this Contract immediately, in whole or in part, without a thirty (30) day written notice to the Provider, when violations are found to be an impediment to the function of the State and detrimental to the cause of a State Entity, when conditions preclude the thirty (30) day notice, or when the State determines that an administrative error occurred prior to Contract performance. Similarly, an Affiliate may terminate its obligations to Provider immediately upon any of the foregoing conditions in this subsection. If this Contract or certain obligations hereunder are terminated, the State, State Entity or Affiliate, as applicable, shall be liable only for payment for products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law;
- b) The State may terminate this Contract, in whole or in part, for convenience if the State Chief Information Officer determines that termination is in the State's best interest. The State shall terminate this Contract by delivering to the Supplier a notice of termination for convenience specifying the terms and effective date of termination. The Contract termination date shall be a minimum of sixty (60) days from the date the notice of termination is issued by the State. Similarly, an Affiliate may terminate its obligations to Supplier upon a determination by the proper authority for such Affiliate that termination is in the Affiliate's best interest and notice of termination by such Affiliate shall be provided in accordance with the foregoing requirements set forth in this subsection; and
- c) Either party may terminate this SaaS Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business. The terms of this Contract and any purchase order issued for multiple years under this Contract are contingent upon sufficient appropriations being made by the applicable state legislature, federal government or other appropriate government entity. Notwithstanding any language to the contrary in this Contract, or any other Contract Document, the State Entity or Affiliate may terminate its obligations under this Contract if sufficient appropriations are not made by the Oklahoma Legislature, federal government or other appropriate governing entity to pay amounts that may become due under the terms of multiple year agreements in connection with this Contract. The decision as to whether sufficient appropriations are available shall be accepted by, and be final and binding on, the Supplier.

11.4. Effect of Expiration or Termination. Upon any expiration or termination of this SaaS Agreement, except as expressly otherwise provided in this SaaS Agreement:

- a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;
- b) Provider shall immediately cease all use of any State Data or State's Confidential Information and (i) within five (5) business days return to State, or at State's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on State Data or State's Confidential Information; and (ii) permanently erase all State Data and State's Confidential Information from all systems Provider directly or indirectly controls, provided that, for clarity, Provider's obligations under this Section 11.4(b) do not apply to any Resultant Data;
- c) State shall immediately cease all use of any Services or Provider Materials and (i) within fifteen (15) business days return to Provider, or unless subject to Oklahoma's Open Records Act, at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any Provider Materials or Provider's Confidential Information; (ii) unless subject to Oklahoma Open Records Act, permanently erase all Provider Materials and Provider's Confidential Information from all systems State directly or indirectly controls;
- d) notwithstanding anything to the contrary in this SaaS Agreement, with respect to information and materials then in its possession or control: (i) the State may retain the Provider's Confidential Information in its then current state and solely to the extent and for so long as required by applicable Law; (ii) Provider may also retain State Data in its backups, archives and disaster recovery systems until such State Data is deleted in the ordinary course; and (iii) all information and materials described in this Section 11.4(d) will remain subject to all confidentiality, security and other applicable requirements of this SaaS Agreement;
- e) Provider may disable all State and Authorized User access to the Hosted Services and Provider Materials;
- f) If State terminates this SaaS Agreement pursuant to Section 11.3, State will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination; and
- g) If Provider terminates this SaaS Agreement pursuant to Section 11.3(a) or 11.3(b), all Fees that would have become payable had the SaaS Agreement remained in effect until expiration of the Term will be reimbursed on a prorated basis within thirty (30) calendar days.

## 12. Representations and Warranties.

### 12.1. Mutual Representations and Warranties. Provider represents and warrants to the State that:

- a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

- b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this SaaS Agreement;
- c) the execution of this SaaS Agreement by its representative whose signature is set forth at the end of this SaaS Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
- d) when executed and delivered by both parties, this SaaS Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

12.2. Additional Provider Representations, Warranties and Covenants. Provider represents, warrants and covenants to State that Provider will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this SaaS Agreement.

12.3. RESERVED.

12.4. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 12.1, AND SECTION 12.2 HEREIN, PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, , AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE..

13. RESERVED.

14. Limitations of Liability.

14.1. 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 Provider 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.. 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 Provider 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 Provider or its employees, agents or subcontractors.

14.2. The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether State has accepted a product or service. The parties agree that Provider 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.

THIS SECTION 14 SETS FORTH STATE'S REMEDIES AND PROVIDER'S LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND PROVIDER MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

#### 15. Force Majeure.

15.1. 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.

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 Provider cannot cause delivery of a product or service in a timely manner to meet the business needs of State.

15.2. 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 Provider's system or any of Provider'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.

#### 16. Miscellaneous.

16.1. Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this SaaS Agreement.

16.2. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this SaaS Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship

between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

- 16.3. Public Announcements. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this SaaS Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party.
- 16.4. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this SaaS Agreement have binding legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 16.4):

If to Provider:

MICHAEL BAKER INTERNATIONAL, INC.  
Address: 5 Hutton Centre Dr., Santa Ana, CA 92707  
E-mail: [info@datamarkgis.com](mailto:info@datamarkgis.com)  
Attention: Jason Bivens

If to State:

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

Notices sent in accordance with this Section 16.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third (3<sup>rd</sup>) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

- 16.5. Interpretation. The parties intend this SaaS Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this SaaS Agreement to the same extent as if they were set forth verbatim herein.
- 16.6. Headings. The headings in this SaaS Agreement are for reference only and do not affect the interpretation of this SaaS Agreement.
- 16.7. Entire Agreement. This SaaS Agreement and the Attachments and Exhibits attached hereto and incorporated herein constitute the entire, fully integrated agreement between the parties with

respect to the subject matter hereof and supersedes all prior or contemporaneous verbal or written agreements between the Parties with respect thereto, excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this SaaS Agreement.

- 16.8. Assignment. State shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this SaaS Agreement, to any other party without the prior written consent of Provider. The identity of the person or the entity, if not an individual, who or which shall be the owner or holder of the rights granted under this SaaS Agreement is very important to the STATE. Therefore, the PROVIDER shall not, without prior written consent of the STATE, sell, pledge, transfer or otherwise encumber this SaaS Agreement, or the rights granted therein, to any third party. Assignment, pledging, sale, transferring, or encumbering of any interest in or under this SaaS Agreement or the rights thereunder, to anyone other than the State, without the prior written consent of the State, shall be grounds for immediate termination of this SaaS Agreement. All terms and conditions of this SaaS Agreement shall extend to and be binding on any approved purchaser, assignee, or other successor in interest.
- 16.9. No Third-party Beneficiaries. This SaaS Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or because of this SaaS Agreement.
- 16.10. Amendment and Modification; Waiver. No amendment to or modification of this SaaS Agreement is effective unless it is in writing and signed by the Provider and State. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this SaaS Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this SaaS Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 16.11. Severability. If any term or provision of this SaaS Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this SaaS Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this SaaS Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 16.12. Surviving Terms. 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. If the Contract is terminated or expires without renewal, then the Software availability (Services) will end.



- 16.13. Governing Law; Submission to Jurisdiction. This SaaS Agreement is governed by and construed in accordance with the internal laws of the State of Oklahoma without giving effect to any 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 SaaS Agreement or the licenses granted hereunder shall be instituted exclusively in Oklahoma County, Oklahoma or the courts of the mutually agreed upon state in each case, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.
- 16.14. Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 10, or in the case of State, Sections 3.3, 4.3, or 7.2, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- 16.15. Counterparts. This SaaS Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same SaaS Agreement. A signed copy of this SaaS Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this SaaS Agreement.

**Schedule A**

The parties agree to use this **Schedule A** or a document substantially similar in the form of this **Schedule A**.

**MILESTONE PAYMENT SCHEDULE**

Annual License Fee		
Description	Milestone Payment Due Date	Annual Fee
DataMark VEP Software as a Service (SaaS) Year x License	Insert date	\$Insert Amount
Add additional rows for each year as needed		

Invoices shall be addressed to:


**Schedule B**

The parties agree to use this **Schedule B** or a document substantially similar in the form of this **Schedule B**.

**PROJECT MANAGERS & POINTS OF CONTACT**


# PARTIALLY EXECUTED SW 1177 Addendum w Attach A-C - Michael Baker Int. Inc

Final Audit Report

2020-08-18

Created:	2020-08-18
By:	Jason Lawson (jason.lawson@omes.ok.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9Tkjt23MeZ9ytxLQ3KsSjWVt0yY6ysnr

## "PARTIALLY EXECUTED SW 1177 Addendum w Attach A-C - Michael Baker Int. Inc" History



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Signed document emailed to Jerry Moore (jerry.moore@omes.ok.gov), Lauren Kelliher (lauren.kelliher@omes.ok.gov) and Jason Lawson (jason.lawson@omes.ok.gov)

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