



STATE OF OKLAHOMA CONTRACT WITH TIMECLOCKS PLUS

This State of Oklahoma Contract is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services (OMES) and TimeClocks Plus, dba Data Management, Inc. ("Supplier") pursuant to 62 O.S. §34.11.1 and is effective as of the date of last signature.

Purpose

The State is awarding the Contract to Supplier for the provision of a time collection and management system, as more particularly described in certain Contract Documents. This Contract Document memorializes the agreement of the parties with respect to terms of 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. The parties agree that Supplier has not yet begun performance of work under the Contract. Upon full execution of the Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Attachment A - Omitted
 - 2.2. General Terms, Attachment B;
 - 2.3. Attachment C - Omitted;
 - 2.4. Information Technology terms, Attachment D;
 - 2.5. Attachment E – Omitted;
 - 2.6. Attachment E.1 – Master SaaS Agreement;
 - 2.7. Attachment E.2 – Hardware Maintenance Exchange;
 - 2.8. Attachment E.3 – Price List
 - 2.9. Attachment E.4 – Hosting Agreement;
 - 2.10. Attachment F - Omitted.

For clarity, Attachments A, C, E, and F are intentionally omitted.

3. The parties additionally agree:


- 3.1. except and information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.

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

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

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

TIMECLOCKS PLUS, dba DATA
MANAGEMENT, INC.

By: 

Name: D. Jerry Moore

Title: Chief Information Officer

Date: Jan 25, 2021

By: 

Name: Derek L McIntyre

Title: COO

Date: 1/23/2021

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

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

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

1 Scope and Contract Renewal

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

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

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

2 Contract Effectiveness and Order of Priority

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

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

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

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

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

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

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

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

4 **Definitions**

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

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

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

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

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

5 Pricing

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

6 Ordering, Inspection, and Acceptance

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

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

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

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

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

7 Invoices and Payment

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

The following terms additionally apply:

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

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

- 8.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

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

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$2,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$1,000,000 combined single limit each accident;
- D.** Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$10,000,000 per occurrence; and
- E.** Additional coverage required in writing in connection with a particular Acquisition.

- 8.2** Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its

employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.

- 8.3** Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

9 Compliance with Applicable Laws

- 9.1** As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
- B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
- C.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;
- D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
- E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;

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

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

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

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

10 Audits and Records Clause

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

11 Confidentiality

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

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

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

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

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

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

12 Conflict of Interest

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

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

13 Assignment and Permitted Subcontractors

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

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

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

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

14 Background Checks and Criminal History Investigations

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

15 Patents and Copyrights

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

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

16 Indemnification

16.1 Acts or Omissions

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

16.2 Infringement

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

16.3 Notice and Cooperation

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

16.4 Coordination of Defense

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

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

16.5 Limitation of Liability

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

17 Termination for Funding Insufficiency

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

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

18 Termination for Cause

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

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

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

19 Termination for Convenience

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

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

20 Suspension of Supplier

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

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

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

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

22 Certification Regarding State Employees Prohibition From Fulfilling Services

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

23 Force Majeure

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

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

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

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

24 Security of Property and Personnel

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

25 Notices

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

If sent to the State:

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

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

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

26 Miscellaneous

26.1 Choice of Law and Venue

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

26.2 No Guarantee of Products or Services Required

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

26.3 Employment Relationship

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

26.4 Transition Services

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

26.5 Publicity

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

26.6 Open Records Act

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

26.7 Failure to Enforce

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

26.8 Mutual Responsibilities

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

26.9 Invalid Term or Condition

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

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

26.10 Severability

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

26.11 Section Headings

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

26.12 Sovereign Immunity

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

26.13 Survival

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

26.14 Entire Agreement

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

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

26.15 Gratuities

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

26.16 Import/Export Controls

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

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

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

1 Definitions

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

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

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

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

2 Termination of Maintenance and Support Services

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

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

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

3 Compliance and Electronic and Information Technology Accessibility

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

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

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

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

5 Offshore Services

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

6 Compliance with Technology Policies

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

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

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, SOC 2 Type II standards which Supplier agrees to provide upon request. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

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

7 Emerging Technologies

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

8 Extension Right

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

9 Source Code Escrow

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

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

10 Commercial Off The Shelf Software

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

11 Ownership Rights

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

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

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

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

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

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

The Parties acknowledge that at the time of signing, all software provided by Supplier are commercially available off-the-shelf products, licensed to the State of the term of the Contract.

12 Intellectual Property Ownership

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

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

an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer's sole expense, in the preparation and

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

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

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

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

13 Hosting Services

- 13.1** If Supplier or its subcontractor, affiliate or any other person or entity providing products

or services under the Contract Hosts Customer Data in connection with an Acquisition, the provisions of Appendix 1, attached hereto and incorporated herein, apply to such Acquisition.

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

14 Change Management

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide one (1) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon renewal or if future bids submitted by Supplier are evaluated by the State.

15 Service Level Deficiency

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

16 Notices

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

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

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

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

**TimeClock Plus, LLC
sales@tcpsoftware.com
rlindsey@tcpsoftware.com**

Appendix 2 to State of Oklahoma Information Technology Terms

INTRODUCTION

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

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

CJIS SECURITY POLICY REQUIREMENTS GENERALLY

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

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

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

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

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

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

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

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

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

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

**ATTACHMENT E.1 TO THE OKLAHOMA STATEWIDE CONTRACT WITH
TIMECLOCKS PLUS.**

**TimeClock Plus OnDemand
Master SaaS Agreement**

WHEREAS, DMI and Client desire to enter into this Agreement for the provision of hosted services by DMI to Client, as provided herein.

NOW, THEREFORE, in reliance on the mutual covenants and promises, representations and agreements set forth herein, the parties agree as follows:

1. Definitions.

1.1 "Affiliate" means with respect to Client, any parent or subsidiary corporation, and any corporation or other business entity controlling, controlled by or under common control with Client.

1.2 "DMI Technology" means the computer hardware, software and other tangible equipment and intangible computer code contained therein used by DMI in the provision of the TCP Services.

1.3 "TCP Services" means the hosted TimeClock Plus software application hosted by DMI in accordance with DMI's then-current hosting environment and including the ancillary services described in this Agreement.

1.4 "Client Equipment" means the computer hardware, software and other tangible equipment and intangible computer code employed by Client in its use of the TCP Services.

1.5 RESERVED.

1.6 "Designated Users" means the number of identifiable unique persons who are authorized by Client at any one time to use the TCP Services as set forth in the Order Form.

1.7 "Use Fees" means the fees set forth on the applicable Order Form or Invoice.

1.8 "Internet Data Center(s)" means any of the facilities used by DMI to provide the TCP Services.

1.9 "Maintenance And Support Services" means the services and related terms and conditions as provided in the Maintenance And Support Terms attached as Exhibit A.

1.10 "Order Form" means a written document mutually agreed upon and executed by the parties for ordering products and/or services, and which expressly incorporates the terms of this Agreement.

1.11 RESERVED.

1.12 "Unsecured Client Data" means Client Data that has not been rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of at least 128 bit encryption technology.

1.13 "Employee" means Client's individual employee, worker, consultant, substitute or contractor.

1.14 "Active Employee" means a Client Employee that has not been marked as either terminated or suspended within the TimeClock Plus OnDemand system for whom Customer is required to pay a fee under this Agreement.

1.15 "Monthly Employee Fee" means DMI's then current fee for each of Client's Employees to access and use the Services, measured over the course of each calendar month, no matter the term of this Agreement.

1.16 "Personal Data" means any information that can be used to identify, locate or contact an Employee or User.

1.17 "Subprocessor" mean any third party processor engaged by DMI for the purposes of processing Personal Data.

1.18 "Hardware Support and Maintenance Agreement" means any agreement that extends services to current TimeClock Plus terminals, clocks, and biometric devices, and maintenance releases for related products purchased or licensed by the Customer from DMI or a registered reseller.

1.19 "Supported Hardware" means any hardware purchased from DMI that is coverable under a DMI Support and Maintenance Agreement.

2. Provision of Services. Subject to the other terms and conditions of this Agreement and DMI's Global Data Privacy Policy, DMI grants to Client and its Affiliates only for their Designated Users a nonexclusive right and subscription license and to access and use the TCP Services during the Term only for internal business purposes of processing, storing and maintaining Client Data. DMI shall provide Customer and its authorized Employees and Users the TCP Services during the Term in accordance with the terms and conditions of this Agreement.

2.1 Client's Responsibilities. Client agrees to act as the Data Controller, and appoint DMI as Data Processor, of information entered by its authorized Employees and Users. Client agrees to impose similar data protection-related terms that will not be less protective than those imposed on DMI by this Agreement and the Global Data Privacy Policy.

2.2 Subprocessors. DMI has appointed third party data Subprocessors for the purposes of providing hosting and security services. These Subprocessors may process Personal Data in accordance with the terms of this agreement, SW1114, and the Global Data Privacy Policy. The Subprocessor agreements impose similar data protection-related processing terms on the third party Subprocessor that are not less protective than those imposed on DMI in this Agreement and the DMI Privacy Code for Client Data Processing Services. DMI has published an overview of the categories of Subprocessors involved in the performance of the relevant Services which can be found at www.timeclockplus.com/privacy.aspx.

3. Security. As part of the TCP Services, DMI shall implement reasonable security procedures consistent with industry best standards to protect Client Data from unauthorized access, including without limitation (i) 128-bit encryption of data at rest within DMI's servers, movable computing devices, and data communications, (ii) firewalls, (iii) virus detection and anti-virus software, (iv) authentication techniques, such as user names and passwords, or authorization formats, which limit access to particular users; and (v) additional security controls consistent with SOC 2 Type II reporting standards (the "Security Standard"). In addition, DMI shall not host or archive Client Data outside the United States.

4. Breaches of Security. DMI shall implement reasonable and appropriate security procedures consistent with prevailing industry standards and applicable data protection laws to protect Client Data from unauthorized access by physical and electronic intrusion. DMI will promptly report to Client any unauthorized access to Client Data upon discovery and in accordance

with applicable data breach notification laws. DMI will use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access. In the event notification to persons included in such Client Data is required, DMI and DMI's third party breach notification contractor will control all breach notifications.

5. Lost Data; Recovery. DMI shall undertake commercially reasonable efforts to backup Client Data. Client Data backups are made no less than two (2) times per day and restoration will be from the most recent backup. The parties agree, however, that DMI shall not be responsible for (i) the accuracy and adequacy of any Client Data or (ii) for maintaining procedures other than the TCP Services for reconstruction of lost data.

6. Relocation of DMI Supplied Equipment. In the event that DMI deems it necessary to relocate the DMI Technology to another Internet Data Center operated by or for DMI, Client will cooperate in good faith with DMI to facilitate such relocation. The terms of the Global Data Privacy Policy and this Agreement govern the transfer of Personal Data to a third party Subprocessor and DMI shall be solely responsible for any costs and expenses incurred by DMI in connection with any such relocation and will use commercially reasonable efforts, in cooperation with Client, to minimize and avoid any interruption to the TCP Services.

7. Restriction on Use. Client covenants and agrees that its use of the TCP Services will be in a manner consistent with this Agreement and with all applicable laws and regulations, including trade secret, copyright, trademark, data protection, and export control laws. Without limiting the generality of the foregoing, Client shall not knowingly, nor shall it knowingly permit or assist others, to:

- 7.1 abuse or fraudulently use the TCP Services;
- 7.2 obtain or attempt to obtain TCP Services by any fraudulent means or device with intent to avoid paying the Use Fees;
- 7.3 allow access to the TCP Services other than by the Designated Users;
- 7.4 permit any third party that is not an Affiliate to use or access the TCP Services;
- 7.5 process or permit to be processed the data of any third party that is not an Affiliate;
- 7.6 fail to implement data protection policies in accordance with applicable data protection laws;
- 7.7 attempt to copy, reverse-engineer, decompile, disassemble, create a derivative work from, or otherwise attempt to derive the source codes of any part of the DMI Technology; or
- 7.8 access, alter, or destroy any information of another customer of DMI by any fraudulent means or device, or attempt to do so.

8. Clause Intentionally Removed

9. Data Protection. DMI has adopted the provisions contained in the Global Data Privacy Policy for the processing of Client Employee Personal Data in accordance with GDPR and other applicable data protection laws.

9.1 Instructions. DMI will process certain categories and types of Personal Data only upon Client's instructions and in accordance with applicable data protection laws (e.g. GDPR). Client is responsible for ensuring that all Users who provide instructions are authorized to do so and agrees

that DMI will only perform processing activities that are necessary and relevant to provide the Services.

9.2 Requests. Client will have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which it was obtained. Client agrees to adopt a balanced and reasonable policy for managing Subject Access Requests (SARs) and 3rd party disclosures which safeguard the rights of all data subjects and respects the original purpose of the data collection. Client, as Data Controller, will be responsible for receiving, investigating, documenting, and responding to all User and Employee requests for inspection or erasure of Personal Data.

9.3 Assistance. Should Client request DMI's assistance for certain data requests, DMI shall assist the Client by providing the necessary information and documentation. DMI shall be given reasonable time to assist the Client with such requests in accordance with the applicable law.

9.4 Confidentiality. DMI shall treat all Personal Data and Customer Data, as defined in the Attachment E.6, Hosting Agreement, as strictly confidential information that may not be copied, transferred, or otherwise processed without the instruction of the Client. Transfer of Personal Data to another data controller or data processor (e.g. HRIS or Payroll application) is at the sole discretion of the Client and shall comply with applicable data protection laws.

9.5 Client Acknowledgement. Client acknowledges that DMI may not know the applicable data protection rights of any given employee and agrees to act in accordance with applicable data protection laws when providing instructions for the processing of Personal Data. Nothing in this Agreement relieves DMI of its own direct responsibilities and liabilities under the applicable data protection laws.

10. Supplemental Services; Master Agreement.

10.1 DMI may provide to Client supplemental services in accordance with a Statement of Work and a separate services agreement.

10.2 Client may elect to purchase additional products and services via Order Forms, executed by both parties, from time to time. The parties agree that this Agreement is a contract document in connection with SW111 4 and that additional transactions will be governed by the terms and conditions hereof.

11. Use Fees.

11.1 In consideration for the performance of the TCP Services, Client shall pay DMI the Use Fees. During the Term, Client will be billed in advance an amount equal to the annual charges as indicated in the applicable Order Form. All applicable and agreeable charges for TCP Services received and expenses incurred during a month will be billed at the end of the month in which the TCP Services were provided. Payment by Client for all fees is due upon receipt of each DMI invoice, and in no event shall payment be received by DMI later than forty-five (45) days after the invoice date. All payments will be made to DMI at its offices in San Angelo, Texas, in U.S. dollars.

11.2 Subsequent to the initial term specified in the applicable Order Form, DMI may increase the Use Fees at any time effective thirty (30) days after providing notice to Client; provided, however, that any such increase will not occur more than once in a consecutive twelve (12) month period and such increase shall not exceed the lower of either a three (3)% increase or the current CPI.

11.3 TCP Services charges will be equal to the number of total Employees multiplied by the Monthly Employee Fee. Client is responsible for Monthly Employee Fees for the total number

of Active Employees who are made active during any calendar month. Client may add additional Employees as desired each month, by paying the Monthly Employee Fees on the next billing cycle.

11.4 Employees added at any time during a calendar month will be charged a prorated amount for the remainder of that billing period. Because you are billed in advance for Services, if Client increases their Active Employee count during a calendar month, Client's next statement and charges will reflect the increased employee count with overage charges incurred from the previous month and prorated over the number of months remaining in the term.

11.5 Hardware Support and Maintenance charges will be equal to the percentage set forth in the applicable Hardware Support and Maintenance Agreement multiplied by the total purchase price of the Supported Hardware.

13. Clause Intentionally Removed

14. Clause Intentionally Removed

15. Clause Intentionally Removed

16. Clause Intentionally Removed

17. Transition Services. Except for termination by DMI for voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, upon receipt by DMI of Client's final payment for TCP Services, for a period of time not to exceed six (6) months following DMI's receipt of such final payment (the "Termination Assistance Period"), DMI will provide the TCP Services and any and all assistance reasonably requested by Client to allow the TCP Services to continue without interruption or adverse effect. In accordance with the Personal Data transfer provision contained in the Global Data Privacy Policy and this Agreement DMI shall provide Client Data to Client in a SQL database file format; provided, however that the fees for the creation and delivery of the Client Data database shall be capped at 1/12th of the annual Use Fees per month. During the Termination Assistance Period, Client shall continue to pay DMI fees equivalent to the then-current Use Fees, such fees to be pro-rated and payable on a monthly basis.

18. Section Reserved.

19. Confidential Information.

19.1 By virtue of the Agreement, Client may be exposed to or be provided with certain confidential and proprietary information of the DMI. DMI shall clearly mark any such information as confidential. ("Confidential Information"). Client is a state agency and subject to the Oklahoma Open Records Act and DMI acknowledges information marked Confidential Information will be disclosed to the extent permitted under Client's Open Records Act and in accordance with this section. Client 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. Client will not use DMI'S Confidential Information for purposes other than those necessary to directly further the purposes of the Agreement.

Exceptions. Information shall not be considered Confidential Information to the extent such information (i) is or becomes generally known or available to the public through no fault of the Client; (ii) was in the Client's possession before receipt from the DMI; (iii) is lawfully obtained from a third party who has the right to make such disclosure; or (iv) has been independently developed by Client reference to any Confidential Information..

Compelled Disclosure. In the event that Client is requested or required by legal or regulatory authority to disclose any Confidential Information, Client shall promptly notify the DMI of such request or requirement so that the DMI may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, Client 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.

19.2 Client Data. The Client will be responsible for the accuracy and completeness of all Client Data provided to DMI. Client Data shall mean all data supplied by the Client in connection with the Contract. The Client shall retain exclusive ownership of all Client Data and such Client Data shall be deemed to be the Client's Confidential Information, as set forth in the Contract. DMI shall restrict access to Client Data to Client's employees and agents as necessary to perform the Services, and to DMI and its employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein). DMI will protect the Client 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 Client Data. DMI shall promptly notify the Client upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Client Data or Client's use of the [hosted environment]. DMI shall notify the Client at the contact set forth [notification section] herein by the fastest means available and also in writing. In no event shall DMI provide such notification more than 24 hours after DMI receives the request. Except to the extent required by law, DMI shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Client without first notifying the Client and obtaining the Client's prior approval, which shall not be unreasonably withheld, of [vendor's] proposed responses. DMI agrees to provide its completed responses to the Client with adequate time for Client review, revision and approval.

20. Clause Intentionally Removed

21. Intellectual Property Ownership. Notwithstanding anything to the contrary this Agreement does not transfer from DMI to Client any ownership interest in the DMI Technology. The intellectual property rights embodied in the DMI Technology shall remain in and be the sole and exclusive property of DMI and its licensors. This Agreement does not transfer from Client to DMI any ownership interest in Client Data.

22. Client Representations and Warranties.

22.1 Client acknowledges that DMI, as Data Processor, exercises no control whatsoever over the content of the information passing through the TCP Services and that it is the sole responsibility of Client to ensure that the information it and its Users transmit and receive thereby complies with all applicable laws and regulations, whether now in existence or hereafter enacted and in force.

22.2 In the event of any breach of any of the foregoing representations or warranties in this Section 22, in addition to any other remedies available at law or in equity, DMI will have the right to suspend immediately any TCP Services if deemed reasonably necessary by DMI to prevent any harm to DMI and its business. DMI will provide notice to Client and an opportunity to cure, if practicable, depending on the nature of the breach. Once cured, DMI will promptly restore the TCP Services.

23. DMI Representations and Warranties. DMI represents and warrants that (i) it has the legal right to enter into this Agreement and perform its obligations hereunder, and (ii) the performance of its obligations and delivery of the TCP Services to Client will not violate any applicable laws or regulations of the United States or cause a breach of any agreements between DMI and any third

parties. In the event of a breach of the warranties set forth in this Section 23, Client's sole remedy is termination of this Agreement upon written notice to DMI.

24. Limited Warranty. DMI represents and warrants that the TCP Services will be free of errors and defects that materially affect the performance of the TCP Services ("Limited Warranty"). Client's sole and exclusive remedy for breach of the Limited Warranty shall be the prompt correction of non-conforming TCP Services at DMI's expense or if DMI is unable to correct and the TCP Service is unusable, Client shall be entitled to a refund of the remaining Use Fees.

25. Service Level Agreement. The TCP Services Level Agreement set forth in Exhibit B states Client's sole and exclusive remedy for any performance failure of the TCP Services in terms of levels of service.

26. Warranty Disclaimer. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 24 (LIMITED WARRANTY) and any warranty obligations set forth in SW1114, THE TCP SERVICES ARE PROVIDED BY DMI ON AN "AS IS" BASIS, AND CLIENT'S USE OF THE TCP SERVICES IS AT CLIENT'S OWN RISK. DMI AND ITS SUPPLIERS DO NOT MAKE, AND HEREBY DISCLAIM, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AGAINST HIDDEN DEFECTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. DMI DOES NOT WARRANT THAT THE TCP SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.

NOTHING STATED OR IMPLIED BY DMI WHETHER THROUGH THE TCP SERVICES OR OTHERWISE SHOULD BE CONSIDERED LEGAL COUNSEL. DMI HAS NO RESPONSIBILITY TO NOTIFY CLIENT OF ANY CHANGES IN THE LAW THAT MAY AFFECT USE OF THE TCP SERVICES. ANY ORAL STATEMENT, NOT REDUCED TO WRITING, OR IMPLICATION BY ANY PERSON CONTRADICTING THE RESPONSIBILITIES IN THIS PARAGRAPH IS UNAUTHORIZED AND SHALL NOT BE BINDING ON DMI. CLIENT ACKNOWLEDGES THAT IN ENTERING INTO THIS AGREEMENT, CLIENT HAS RELIED UPON CLIENT'S OWN EXPERIENCE, SKILL AND JUDGMENT TO EVALUATE THE TCP SERVICES AND THAT CLIENT HAS SATISFIED ITSELF AS TO THE SUITABILITY OF SUCH SERVICES TO MEET CLIENT'S REQUIREMENTS.

27. Clause Intentionally Removed

28. Clause Intentionally Removed

29. Liability Cap. Except for claims arising out of the indemnification obligations and the confidentiality, data security and breach notification obligations set forth in the Contract, in no event shall DMI's aggregate liability, if any, including liability arising out of contract, negligence, strict liability in tort or warranty, or otherwise, exceed the sum total any amounts payable by Client for the Use Fees during the twelve-month period immediately preceding the accrual of such liability. Notwithstanding anything to the contrary in the Contract, the foregoing provisions of this 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 DMI; the indemnification obligations set forth in this Contract; DMI'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 DMI or its employees agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.

30. Clause Intentionally Removed

31. Clause Intentionally Removed

32. Continuing Obligations. Those clauses the survival of which is necessary for the interpretation or enforcement of this Agreement shall continue in full force and effect in accordance with their terms notwithstanding the expiration or termination hereof, such clauses to include the following: (i) any and all warranty disclaimers, limitations on or caps of liability and indemnities granted by either party herein, (ii) any covenant granted herein for the purpose of determining ownership of, or protecting intellectual property rights, including without limitation, the Confidential Information of either party, or any remedy for breach thereof, and (iii) the payment of any money to either party hereunder.

EXHIBIT A MAINTENANCE AND SUPPORT TERMS

These Maintenance And Support Terms are intended to be part of the attached Master SaaS Agreement made and entered into by and between DMI and Client. DMI reserves the right to continuously improve the Maintenance And Support Services and to adapt such services to changes in technology and to DMI's business environment. Solely for these purposes, DMI reserves the right to modify, elaborate, remove or add to some or all of the provisions of these Maintenance And Support Terms at DMI's sole discretion, provided that any such improvement or adaptation shall not result in a diminution of the overall level of service. When reasonable, DMI shall provide advanced written notice to the Client of any such modification, elaboration, removal or addition to these provisions. If advanced notice is not possible, DMI shall provide written notice as soon as reasonably possible. All Support Services will be provided in accordance with applicable data protection laws and the Global Data Privacy Policy which can be found at www.timeclockplus.com/privacy.aspx.

These Maintenance And Support Terms are intended to be part of the attached Master SaaS Agreement made and entered into by and between DMI and Client.

1. Definitions. When used in these Maintenance Services Terms, the following terms will have the meaning set forth in this Section 1. Any capitalized terms not defined in these Maintenance Services Terms are as defined in the Master SaaS Agreement.

1.1 "CSR" means a DMI customer service representative.

1.2 "Error" means a failure of the TCP Services (i) to conform as to all material operational features and performance characteristics as provided in the documentation supplied by DMI and in any applicable Statements of Work for customizations to the TCP Services, and (ii) to be free of errors and defects that materially affect the performance of such features. This definition applies solely to TCP Services that have not been customized. Separate maintenance arrangements are available for customized TCP Services.

1.3 "Error Correction" means a software modification that corrects an Error when it is made or added to the TCP Services.

1.4 "Maintenance And Support Services" means the services described in Section 2 below.

1.5 "New Product" means a product that generates online services which may incorporate some functionality of the TCP Services in addition to one or more of the following changes to a different: (i) programming language, (ii) platform (e.g. .Java to .NET), (iii) style of computing (e.g. client server to web to cloud computing), or (iv) software model of deployment (e.g. local installation to SaaS).

1.6 "Support Term" means the Initial Term and any renewal terms in accordance with Section 14 of the Master SaaS Agreement.

1.7 "Third-Party Products" means any third-party software or hardware appliance product provided by DMI under an Order Form.

1.8 "Update" means TCP Services modifications consisting of Error Corrections, modifications, enhancements or future releases that are distributed generally to users of the same version of the TCP Services. Updates are generally designated by a change in the number to the right of the decimal point (e.g., Version 1.1 to Version 1.2).

1.9 "Upgrade" means a new version of the TCP Services that adds new features and functionality in addition to the original functional characteristics of the TCP Services that is distributed generally to users the TCP Services. Upgrades are generally designated by a change in the version number to the left of the decimal point (e.g., Version 1.1 to Version 2.1).

1.10 "Workaround" means a procedure or routine that eliminates the practical adverse effect of the Error when implemented in the regular operation of the TCP Services.

2. Maintenance And Support Services Description. DMI will provide the services described below in this Section 2 during Support Terms. These services are included in the annual Maintenance And Support Services fee.

2.1 Support Hours And Response Times. DMI will provide Maintenance And Support Services to Client during regular business hours which are 7:00 am to 7:00 pm CST Time, Monday through Friday, excluding company holidays ("Regular Business Hours"). If extended services are required beyond the Regular Business Hours, separate arrangements may be made with DMI in advance for support after Regular Business Hours or during weekends for significant go-live or upgrade events only.

2.2 Support Services. Support Services include:

2.2.1 issue determination services including (i) information gathering and analysis for TCP Services and Third-Party Products, and (ii) identification of Errors;

2.2.2 issue resolution services including (i) reasonable telephone consultation regarding the use and operation of the TCP Services and Third-Party Products that does not rise to the level of training, (ii) configuration changes for the TCP Services and Third-Party Products, (iii) validating that the TCP Services and Third-Party Products operate within documentation supplied by DMI, (iv) installation of stock (as distinguished from custom) templates for reports, documents, and forms for TCP Services and Third-Party Products, and (v) access to DMI's tplusondemand.com website;

2.2.3 commercially reasonable efforts to cause Third-Party Product suppliers to cure promptly any error or failure of a Third-Party Product to conform the applicable third-party agreement;

2.2.4 repair or replacement of open source software with functionally equivalent software; and

2.2.5 Error Correction services in accordance with the Error Correction Services Table below.

**Error Correction Services Table
(Service Response Targets)**

Problem Severity	Based on the nature of the reported issue and the impact on Client's business operations, the CSR assigns a severity level to the issue. The severity will always be set to a reasonable and realistic level, reserving the Severity Level 1 only for urgent situations. The severity level may change as new information becomes available.
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<p><u>Level 1:</u> <u>Urgent</u></p>	<p><u>Definition:</u> Issues preventing (i) Client from conducting day-to-day business, such as an inoperable production system, a lack of data integrity, data corruption, or data unavailability, or (ii) a go-live deadline. Client is unable to do production work, and no Workaround is available.</p> <p><u>Response:</u> Level 1 issues always take priority above all other issues. A Level 1 issue will immediately be assigned to a CSR, who will contact Client within one hour with an initial response. The CSR will then work without interruption on the issue until a resolution is reached, either in the form of a complete fix, or an interim Workaround solution that will cause the level of urgency to drop to Level 2. During this time, Client must be available should further information be required to resolve the issue. If the CSR is unable to contact Client within a reasonable timeframe, the Level 1 status will be downgraded to Level 2 until Client provides the requested documentation. Note: Level 1 issues must be reported to DMI customer support via telephone, or created via email or Web form with a follow-up phone call to confirm receipt.</p> <p><u>Follow-Up:</u> The CSR will update Client at a minimum of once per hour until the issue has been resolved or downgraded to Level 2.</p>
<p><u>Level 2:</u> <u>High</u></p>	<p><u>Definition:</u> Client is able to do some production work, but a major component of the TCP Services is not functioning properly, and a partial Workaround is available. Or, an issue puts a “go-live” deadline at high risk.</p> <p><u>Response:</u> Level 2 issues take priority over all other issues except Level 1. A Level 2 issue will immediately be assigned to a CSR, who will contact Client within four (4) business hours with an initial response. The CSR will then work without interruption during standard support hours until a resolution is reached, either in the form of a complete fix, or an interim Workaround solution that will cause the level of urgency to drop to Level 3. Note: In order to facilitate a more prompt response, Level 2 issues should only be reported to DMI customer support via telephone, or created via email or Web form with a follow-up phone call to confirm receipt.</p> <p><u>Follow Up:</u> The CSR will provide feedback to Client on a daily basis (or at mutually agreed upon intervals) until the issue has been resolved or downgraded to Level 3.</p>
<p><u>Level 3:</u> <u>Medium</u></p>	<p><u>Definition:</u> The customer is able to do most production work, but has limited functionality in a certain component of the TCP Services, and a reasonable workaround is available.</p> <p><u>Response:</u> The CSR provides an initial response to Client within the one business day, and will work on the issue during standard support hours after higher priority issues have been resolved. The CSR will work on the issue during standard support hours. <u>Follow-Up:</u> The CSR will provide feedback to Client as mutually agreed upon until the issue has been resolved or a more suitable Workaround is identified.</p>
<p><u>Level 4:</u> <u>Low</u></p>	<p><u>Definition:</u> The customer is able to do all production work, but has general questions, enhancement requests, or documentation needs/questions.</p> <p><u>Response:</u> The CSR provides an initial response to Client within two business days, and will work on the issue as time permits.</p> <p><u>Follow-Up:</u> Feedback will be provided to Client at mutually agreed upon intervals.</p>

2.2.6 Notwithstanding the foregoing, DMI will not be obligated to provide Maintenance And Support Services for problems solely arising as a result of abuse, misuse, accident or neglect by Client, or unauthorized modification to the TCP Services by Client (not under DMI's recommendation or instruction) that would materially impact DMI's ability to provide the Maintenance And Support Services until such problems are fixed by Client. In addition, the following services are not covered under Maintenance And Support Services and will be provided only by mutual agreement regarding fees, deliverables, and delivery schedules: (i) support for software or other products that were not purchased from DMI, (ii) customizations for rules, reports, templates, forms, applications, Business Objects Universe, and interfaces, (iii) development or customization of documentation, (iv) troubleshooting for Client owned hardware not provided by DMI, networks, connectivity, or operating systems, (v) installation of Java application servers, (vi) on-site services, (vii) remote or on-site training, (viii) remote administration, (ix) scripting, programming, database design, and web development, (x) data recovery, (xi) consultation regarding the use and operation of the TCP Services and Third-Party Products that rises to the level of training.

2.3 Updates And Upgrades.

2.3.1 DMI will provide Client with all Updates and Upgrades that are commercially released by DMI at no additional charge. Updates and Upgrades will not require any additional software, hardware or technology to operate in conformance with the Specifications, except to the extent specified in writing by DMI. DMI will provide the Updates or Upgrades as soon as they are made available, but in no event later than DMI's providing the Updates or Upgrades to another SaaS licensee or DMI's using the Updates or Upgrades in its normal course of business operation.

2.3.2 DMI will work with Client to establish mutually beneficial Update and Upgrade schedules. If Client chooses to postpone an Update or Upgrade that would correct a particular Error without having a negative impact on the functionality or performance of the TCP Services, then DMI will not be required to correct such Error by another means, and provided, further that Client's non-acceptance of any Update or Upgrade will not affect Client's payment obligations for Use Fees.

Please enter the email address for update or upgrade notices to be sent to:

2.4 Version Limitation. Notwithstanding anything contained herein to the contrary, DMI will provide Maintenance And Support Services for at least the current version and any preceding versions of the TCP Services that have been released by DMI within the last twelve (12) months. If no version has been released within the last eighteen (18) months, DMI will support the immediately preceding version. The foregoing limitation does not apply to reasonable telephone consultation regarding the use and operation of the TCP Services and Third-Party Products that does not rise to the level of training.

2.5 Updates To Maintenance And Support Services. DMI reserves the right to update Maintenance And Support Services for any renewal Support Term for purposes of conforming the scope of Maintenance And Support Services to changes in technology and/or industry practice; provided, however, in no event shall any such update result in a degradation or diminution of Maintenance And Support Services.

3. New Products. New Products are optional and are not included in the annual Maintenance And Support Services fee. New Products will be made available to Client as soon as they are released to other licensees in the normal course. DMI reserves the right to charge a license fee for New Products.

EXHIBIT B SERVICE LEVEL AGREEMENT

This Service Level Agreement is intended to be part of the attached Master SaaS Agreement made and entered into by and between DMI and Client. DMI reserves the right to continuously improve the uptime and performance of its TCP Services and to adapt such services to changes in technology and to DMI's business environment. Solely for these purposes, DMI reserves the right to modify, elaborate, remove or add to some or all of the provisions of this Service Level Agreement at DMI's sole discretion provided that any such improvement or adaptation shall not result in a diminution of the overall level of service. When reasonable, DMI shall provide advanced written notice to the Client of any such modification, elaboration, removal or addition to these provisions. If advanced notice is not possible, DMI shall provide written notice as soon as reasonably possible. This Service Level Agreement shall comply with applicable data protection laws and the Global Data Privacy Policy which can be found at www.timeclockplus.com/privacy.aspx.

1. TCP Services Level Agreement. In the event that Client experiences any of the service performance issues defined in Sections 2.1 and 2.2 as a result of DMI's failure to provide TCP Services, DMI will, upon Client's request in accordance with Section 3, credit Client's account as described below (the "Service Level Agreement"). The Service Level Agreement shall not apply to performance issues (i) caused by factors outside of DMI's reasonable control; (ii) that resulted from any actions or inactions of Client or any third parties; or (iii) that resulted from Client Equipment or third party equipment that is not within the sole control of DMI.

2. Service Level Agreement Definitions. For purposes of this Agreement, the following definitions shall apply only to the TCP Services. References to Section numbers in this Exhibit B shall apply to Sections in Exhibit B, unless expressly provided otherwise.

2.1 "Downtime" shall mean "unplanned" network unavailability within DMI's United States network for thirty (30) consecutive minutes due to the failure of DMI to provide TCP Services for such period. Downtime shall not include any packet loss or network unavailability during DMI's scheduled maintenance of the Internet Data Center(s), network and TCP Services.

2.2 "Performance Problem" shall mean a material deterioration in the performance of the TCP Services excluding any Downtime.

2.3 "Service Credit" shall mean an amount equal to the pro-rata monthly recurring connectivity charges (i.e., all monthly recurring bandwidth-related charges) for one (1) day of TCP Services.

3. Downtime Periods. In the event Client experiences Downtime, Client shall be eligible to receive a one-time Service Credit for each Downtime period; provided, however, that in no event shall Client be entitled to more than two (2) Service Credits for any given calendar day. For example, if Client experiences one (1) Downtime period, then Client shall be eligible to receive one (1) Service Credit; if Client experiences two (2) Downtime periods, whether from a single event or multiple events, then Client shall be eligible to receive two (2) Service Credits.

4. Performance Problem. In the event that DMI discovers or is notified by Client that Client is experiencing a Performance Problem, DMI will take all commercially reasonable actions necessary to determine the source of the Performance Problem.

5. Discovery of Source; Notification of Client. Within four (4) hours of discovering or receiving notice of the Performance Problem, DMI will use commercially reasonable efforts to determine whether the source of the Performance Problem is limited to the DMI Technology or whether the

Performance Problem arises from the Client Equipment or Client's connection to the Internet. If DMI determines that the DMI Technology and Client and DMI connection are not the source of the Performance Problem, then DMI will use commercially reasonable efforts to determine the source of the Performance Problem within an additional four (4) hour period, DMI will notify Client of its findings regarding the source of the Performance Problem promptly after the additional four (4) hour period.

6. Correction. If the source of the Performance Problem is within the sole control of DMI, then DMI will use commercially reasonable efforts to remedy the Performance Problem within four (4) hours of determining the source of the Performance Problem. If the source of and remedy to the Performance Problem reside outside of the sole control of DMI, then DMI will use commercially reasonable efforts to notify the party responsible for the source of the Performance Problem and cooperate with it to resolve such problem as soon as possible.

7. Service Credits for Performance Problems. In the event that DMI (i) is unable to determine the source of the Performance Problem within the time periods described in Section 5; or (ii) is the sole source of the Performance Problem and is unable to remedy such Performance Problem within the time period described in Section 6, DMI will deliver a Service Credit to Client for each four (4) hour period incurred in excess of the time periods for identification and resolution described above; provided, however, that in no event shall Client be entitled to more than two (2) Service Credits for a given calendar day.

8. Client Must Request Service Credit. Upon receipt of a written request from Client for a prior calendar month requesting information regarding a specific instance of Downtime or Performance Problem, DMI will provide Client with a related incident report from which Client may determine any Downtime and/or Performance Problems. In order to receive a Service Credit in connection with a particular instance of Downtime or a Performance Problem, Client must notify DMI within thirty (30) days from the time Client becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Client's right to receive a Service Credit for the applicable instance of Downtime or Performance Problem.

9. Maximum Service Credit. The aggregate maximum number of Service Credits to be issued by DMI to Client for any and all Downtime and Performance Problems that occur in a single calendar month shall not exceed seven (7) Service Credits. Any Service Credits owed shall be issued in the DMI invoice in the month following the Downtime or Performance Problem, unless the Service Credit is due in Client's final month of Service. In such case, a refund for the dollar value of the Service Credit will be mailed to Client.

10. Termination Option for Chronic Problems. Client may terminate this Agreement and without liability or penalty to DMI by notifying DMI within ten (10) days following the occurrence of either of the following: (i) Client experiences more than five (5) Downtime periods in any three (3) consecutive calendar month period; or (ii) Client experiences more than eight (8) consecutive business hours of Downtime due to any single event. Such termination will be effective thirty (30) days after receipt of such notice by DMI.

**ATTACHMENT E.2 TO THE OKLAHOMA STATEWIDE CONTRACT WITH TIMECLOCKS
PLUS**



**TimeClock Plus Hardware Maintenance
Exchange Replacement Service Plan**

These Hardware Maintenance Terms are intended to be part of the OnDemand Service Agreement, Master SaaS Agreement, or EULA, hereafter referred to as the Licensing Agreement, made and entered into by and between Data Management, Inc. ("DMI") and Customer ("You"). DMI reserves the right to continuously improve the Hardware Maintenance and Support Services and to adapt such Services to changes in technology and to DMI's business environment.

When Coverage Begins and Ends?

Initial coverage is for 12 months and begins when you purchase your Service..

What is Covered?

If during the coverage period, it is determined that a defect in materials or workmanship has occurred on covered hardware, DMI will incur expense to ship you replacement hardware to arrive at your specified location the next business day. The Service is preferably requested after troubleshooting assistance from the DMI Support Department. Service requests made after noon central time may be processed the following business day. Next business day delivery is limited to destinations within the 48 contiguous United States serviced by overnight express carriers. Cost to ship replacement hardware outside the 48 contiguous United States is the responsibility of Customer. Replacement hardware may not be identical, but a comparable device of like kind with the functional equivalent of the covered hardware.

If DMI replaces covered hardware, the original hardware becomes the property of DMI and the replacement hardware becomes your property for the remainder of the covered period.

The pre-paid shipping and instructions for return of the original hardware will be included in the packaging of the replacement hardware or can be provided upon request. DMI suggests you properly package and insure the shipment when returning the original hardware. The original hardware must be returned to DMI within 14 days of receiving the replacement hardware. You agree to pay DMI the Manufacturer's Suggested Retail Price (MSRP) of the original hardware if you do not return it to DMI within 14 days of receiving the replacement hardware. Your ability to request Exchange Replacement Service on any other covered hardware will be suspended until the original hardware is returned to DMI or you pay DMI the MSRP of the original hardware.

What is Not Covered?

DMI is not responsible for any cost incurred by you related to this Agreement including, but not limited to travel, communications, telephone company charges, technical troubleshooting, downtime, training, customer services and equipment training, that are not already included in the Contract.

This plan does not apply to:

- Damage caused by accident, abuse, misuse, liquid contact, fire, earthquake, other external causes, or operating covered hardware outside its intended or permitted use;
- Hardware with a serial number that has been defaced, altered, removed, or modified without written permission from DMI;
- Hardware that has been lost or stolen;

ATTACHMENT E.2 TO THE OKLAHOMA STATEWIDE CONTRACT WITH TIMECLOCKS PLUS

- Cosmetic damage including but not limited to scratches, dents, and broken plastics or ports;
- Consumable parts such as batteries;
- Preventative maintenance; or
- Defects caused by normal wear and tear or otherwise normal aging of product.

How to Obtain Service?

You may obtain Exchange Replacement Service by contacting the DMI Support Department (options listed below). You will need to provide the hardware serial number to confirm coverage. The DMI Support Department team members will ask you to troubleshoot the hardware in an attempt to get the hardware working to your satisfaction. After troubleshooting options are exhausted, the DMI Support Department team member will process your Service request and verify your preferred shipping address for the replacement hardware.

Phone: 325.223.9300 weekdays excluding holidays 7 A. M. to 7 P. M. CST

Email: Support@TimeClockPlus.com

Support Portal: <https://timeclockplus.force.com/TCPSupport/s/>

**TimeClock Plus Hardware Maintenance
Expedited Depot Repair Service Plan**

ATTACHMENT E.2 TO THE OKLAHOMA STATEWIDE CONTRACT WITH TIMECLOCKS PLUS

These Hardware Maintenance Terms are intended to be part of the OnDemand Service Agreement, Master SaaS Agreement, or EULA, hereafter referred to as the Licensing Agreement, made and entered into by and between Data Management, Inc. ("DMI") and Customer ("You"). DMI reserves the right to continuously improve the Hardware Maintenance and Support Services and to adapt such Services to changes in technology and to DMI's business environment.

When Coverage Begins and Ends?

Initial coverage is for 12 months and begins when you purchase your Service. .

What is Covered?

If during the coverage period, it is determined that a defect in materials or workmanship has occurred on covered hardware, DMI will provide all parts, materials (including pre-paid shipping labels), and labor necessary to expedite the return of covered hardware to you in operating condition. DMI, at its discretion and its cost, may elect to replace covered hardware in lieu of repair. Replacement hardware in lieu of repair may not be identical, but a comparable device of like kind with the functional equivalent of the covered hardware. If DMI replaces covered hardware, the original hardware becomes the property of DMI and the replacement hardware becomes your property for the remainder of the covered period.

What is Not Covered?

DMI is not responsible for any cost incurred by you related to this Service including, but not limited to travel, communications, telephone company charges, technical troubleshooting, downtime, training, customer services and equipment training, that are not already included in the Contract.

This Service does not apply to:

- Damage caused by accident, abuse, misuse, liquid contact, fire, earthquake, other external causes, or operating covered hardware outside its intended or permitted use;
- Hardware with a serial number that has been defaced, altered, removed, or modified without written permission from DMI;
- Hardware that has been lost or stolen;
- Cosmetic damage including but not limited to scratches, dents, and broken plastics or ports;
- Consumable parts such as batteries;
- Preventative maintenance; or
- Defects caused by normal wear and tear or otherwise normal aging of product.

Turn-Around Time

Turn-around time is measured in elapsed days from receipt of the covered hardware by the DMI Service Department.

- Delivery to destinations within the 48 contiguous United States serviced by standard carriers:
 - You will receive your repaired covered hardware or a replacement within 7 days from the arrival date of the covered hardware at the DMI Service Department.

ATTACHMENT E.2 TO THE OKLAHOMA STATEWIDE CONTRACT WITH TIMECLOCKS PLUS

- Delivery to destinations outside the 48 contiguous United States:
 - Cost to ship repaired covered hardware or a replacement is the responsibility of the Customer. Repaired covered hardware or a replacement will ship no later than 5 days after the arrival date of covered hardware at the DMI Service Department. Receipt by Customer is dependent on shipping method selected by Customer.

How to Obtain Service?

You may obtain Expedited Depot Repair Service by contacting the DMI Support Department (options listed below). You will need to provide the hardware serial number to confirm coverage. The DMI Support Department team members will troubleshoot the hardware in an attempt to get the hardware working to your satisfaction. After troubleshooting options are exhausted, the DMI Support Department team member will process your Service request. A Return Merchandise Authorization number will be issued along with instructions to send the covered hardware to the DMI Service Department.

Phone: 325.223.9300 weekdays excluding holidays 7 A. M. to 7 P. M. CST

Email: Support@TimeClockPlus.com

Support Portal: <https://timeclockplus.force.com/TCPSupport/s/>

TimeClock Plus Pricing List for the State of Oklahoma				
Organization: State of Oklahoma		TimeClock Plus, LLC provides integrated Cloud Time and Labor Management Technology with both Software and Hardware Solutions. TCP supports Employee Scheduling, Payroll and Human Resources		
Contract: TBD				
Vendor: TimeClock Plus, LLC				
Product Description: Integrated Cloud Time and Labor Mgt. Software and Hardware				
VENDOR SKU	DESCRIPTION	UNIT OF MEASURE	TIMECLOCK PLUS LIST (MSRP) PRICE	STATE OF OKLAHOMA DISCOUNTED PRICE/RATE
	NEXT GEN / TCP Cloud / SaaS Licensing (ANNUAL)			
3002-301	Enterprise Plan	each	0.00	0.00
3002-331	Enterprise Employee License (New)	each	65.00	28.00
	NEXT GEN Add-On Modules For Enterprise Cloud Plans (ANNUAL)			25%
3002-1001	TelClock Employee License (+ .10 per call per month)	each	12.00	9.00
3002-5101	Advanced Scheduler	each	5.00	3.75
3002-5201	Advanced Overtime Management (Included with Enterprise Plan)	each	4.00	Included
3002-5301	Occurrence Management	each	5.00	3.75
3002-5401	Mobile (Included with Enterprise Plan)	each	4.00	Included
3002-5501	Job Costing (Included with Enterprise Plan)	each	4.00	Included
3002-5601	Advanced Leave Management (Included with Enterprise Plan)	each	4.00	Included
3002-5701	Substitute Tracking	each	5.00	3.75
3002-5801	Annualized Employee Management (Included with Enterprise Plan)	each	4.00	Included
3002-5901	Shift Differential (Included with Enterprise Plan)	each	4.00	Included
	NEXT GEN HARDWARE			
	RDT Clocking Terminals			25%
3003-105	RDT	each	1,879.00	1,409.25
3003-300	RDT + Camera	each	2,179.00	1,634.25
3003-106	RDT + Mag	each	2,119.00	1,589.25
3003-306	RDT + Mag + Camera	each	2,460.00	1,845.00
3003-107	RDT + Bar Code	each	2,089.00	1,566.75
3003-312	RDT + Bar Code + Camera	each	2,412.00	1,809.00
3003-112	RDT + Prox (HID)	each	2,599.00	1,949.25
3003-318	RDT + Prox (HID) + Camera	each	2,759.00	2,069.25
3003-200	RDT + Fingerprint	each	2,779.00	2,084.25
3003-324	RDT + Fingerprint + Camera	each	3,079.00	2,309.25
3003-201	RDT + Mag + Fingerprint + Camera	each	3,019.00	2,264.25
3003-330	RDT + Bar Code + Fingerprint	each	3,360.00	2,520.00
3003-202	RDT + Bar Code + Fingerprint + Camera	each	2,989.00	2,241.75
3003-336	RDT + Prox (HID) + Fingerprint	each	3,312.00	2,484.00
3003-203	RDT + Prox (HID) + Fingerprint	each	3,499.00	2,624.25
3003-342	RDT + Prox (HID) + Fingerprint + Camera	each	3,659.00	2,744.25
	Hand Scanner Clocking Terminals			
3003-4100	GT-400 / 200 Series Hand Scanner	each	3,072.00	2,304.00

VENDOR SKU	Hardware Options	UNIT OF MEASURE	TIMECLOCK PLUS LIST (MSRP) PRICE	STATE OF OKLAHOMA DISCOUNTED PRICE/RATE
				25%
3003-1010	Mag Reader (Retrofit)	each	264.00	198.00
3003-1020	Bar Code Reader (Retrofit)	each	231.00	173.25
3003-1030	Prox (HID) (Retrofit)	each	792.00	594.00
3003-1050	WiFi 802.11 b/g/n Adaptor	each	139.00	104.25
3003-1060	WiFi 802.11 a/c Adaptor	each	139.00	104.25
3003-2010	Digital Output Module	each	361.00	270.75
3003-2020	Fingerprint Bio Reader (Retrofit)	each	990.00	742.50
3003-2030	Power over Ethernet Module 802.3af	each	381.00	285.75
3003-2040	Backup Battery	each	288.00	216.00
3003-2050	Camera (Retrofit)	each	350.00	262.50
3003-2090	Symbol CCD Scanner Wall Mount	each	89.00	66.75
3003-2100	Symbol USB Linear CCD Scanner	each	638.00	478.50
3003-2110	External Multi-Class Reader	each	943.00	707.25
3003-3100	v7 Desktop USB Bio Scanner	each	452.00	339.00
3003-4200	GT-400 Hand Scanner Integrated Barcode Reader	each	452.00	339.00
3003-4300	GT-400 Hand Scanner Battery Backup	each	386.00	289.50
3003-4400	GT-400 Hand Scanner POE External Adapter	each	79.00	59.25
3003-4500	GT-400 Hand Scanner Remote Power Injector	each	93.00	69.75
3003-4600	GT-400 External Wireless N Adapter	each	139.00	104.25
3003-2060	Infrared Thermal Sensor	each	950.00	712.50
	Hardware Support and Maintenance			
3004-205	Hardware Support & Maintenance (Annual Contract)	each	N/A	Calculated: 18% of total hardware cost
3004-215	Hardware Support & Maintenance (Product Addition)	each	N/A	Pro-rated calculation based on the remainder of contract term
	Professional Services			25%
3004-305	Implementation Services (Per Hour)	each	225.00	168.75
3004-306	Implementation Services - Small Org / 99 emp & under (Per Hour)	each	165.00	123.75



HOSTING AGREEMENT

This Hosting Agreement ("Hosting Agreement") is a Contract Document in connection with the Oklahoma Statewide Contract No. 1114 pursuant to 62 O.S. §34.11.1 (the "Contract") and entered into between Data Management, Inc. ("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.
- 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

**ATTACHMENT E.4 TO THE OKLAHOMA STATEWIDE CONTRACT ("SW1114") WITH
DATA MANAGEMENT, INC.**

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.

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- 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 or provide SOC 2 reports and/or pen testing summaries, upon Customer's request. 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

**ATTACHMENT E.4 TO THE OKLAHOMA STATEWIDE CONTRACT ("SW1114") WITH
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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 or Data Breach Notification: 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.
- d. If Vendor has reasonable belief or actual knowledge of a Data Breach, Vendor shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

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

- a. Vendor, unless stipulated otherwise, shall promptly notify the Customer identified contact within 24 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

**ATTACHMENT E.4 TO THE OKLAHOMA STATEWIDE CONTRACT ("SW1114") WITH
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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

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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,

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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.

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 SQL database 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 or 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.

**ATTACHMENT E.4 TO THE OKLAHOMA STATEWIDE CONTRACT (“SW1114”) WITH
DATA MANAGEMENT, INC.**

- 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.