



**STATE OF OKLAHOMA STATEWIDE CONTRACT WITH MICHAEL BAKER
INTERNATIONAL, INC. (DATAMARK)**

This State of Oklahoma Statewide Contract ("Contract") is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services and Michael Baker International, Inc. (Datamark) ("Supplier") and is effective as of the date of last signature to this Contract.

Purpose

The State is awarding this Contract to Supplier for the provision of creating and maintaining GIS data that will be used to provide location and routing data for Next Generation 9-1-1(NG911) services in Oklahoma., as more particularly described in certain Contract Documents. Supplier submitted a proposal which did contain exceptions to the Solicitation and did not request any portion of the bid to be held confidential. This Contract memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Supplier.

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

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation No. 0900000517, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Statewide Terms, Attachment C;
 - 2.4. Information Technology Terms, Attachment D;
 - 2.5. Pricing Sheet, Attachment E-1;
 - 2.6. Incorporation of Hosting Agreement, Attachment E-2;
 - 2.7. Incorporation of Software as a Service (SAAS) Agreement, Attachment E-3;
 - 2.8. Incorporation of Schedule A Annual License Fee, Attachment E-4;
 - 2.9. Incorporation of Schedule B Point of Contact, Attachment E-5;
 - 2.10. Value-Add Services, Attachment E-6; and
 - 2.11. Incorporation of Negotiated Exceptions to Contract, Attachment F.

3. The parties additionally agree:

- 3.1. The parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.
- 3.2. Revision to the Bid submitted as a best and final offer is attached hereto as Attachment E-1 through E-6. Attachment E-2 through E-5 are incorporated herein.
- 3.3. Revisions to terms and documents initially proposed in the Bid are contained in Attachment F titled: Negotiated Exceptions.

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

MICHAEL BAKER INTERNATIONAL,
INC. (DATAMARK)

By:



Name:

D. Jerry Moore

Title:

Chief Information Officer

Date:

Nov 4, 2022

By:



Dan Kienny (Nov 2, 2022 18:40 CDT)

Name:

Dan Kienny

Title:

President Consulting & Tech. Solutions

Date:

Nov 2, 2022

ATTACHMENT A
SOLICITATION NO. 0900000517

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

PURPOSE

The Contract is awarded as a non-mandatory statewide contract for creating and maintaining GIS data that will be used to provide location and routing data for Next Generation 9-1-1(NG911) services in Oklahoma. Oklahoma currently has 129 Public Safety Answering Points (PSAP) that maintain GIS based 911 data. The migration to NG911 requires that this data needs to be transferred to the new State of Oklahoma Geographic Information NG911 and Addressing Standard in section C. Not all the 129 PSAP's will require the services of this contract but should they choose to select a Supplier of this contract the Supplier will follow the mandatory minimum requirements outlined in Section C.1. of the Bidder Instruction.

Scope

OEM is looking to provide location and routing data for Next Generation 9-1-1 services in Oklahoma. The scope of this contract has been designed to meet the minimum requirements necessary for local PSAP's to transfer their existing 911 data to the State Geographic Information Standard (GIS). There may be cases where the local PSAP does not have a workable 911 GIS dataset. In that case, the Supplier will provide services under this contract to fully develop a functional, working Enhanced 911 (E911) and NG911 dataset that conforms to the State Geographic Information Standard (GIS). It is understood that each PSAP's current GIS data and capabilities vary greatly across the State of Oklahoma due to a historical lack of an E911 GIS standard. There will be three phases to the bid assessment, creation and/or remediation and validation. All services for all phases must be provided by a single provider. The pricing sheet includes the necessary maintenance tools and/or service agreements that may be needed by the local entity to maintain the remediated data. The pricing sheet also includes the cost for field work that may be needed or requested to visually confirm the work is accurate.

1. Contract Term and Renewal Options

The initial Contract term, which begins on the effective date of the Contract, is one year and there is one (1) one-year options to renew the Contract.

2. Certain Contract requirements and terms are set forth below as

Exhibit 1 (Price sheet) and

Exhibit 2 – Appendix A (GUIDELINES FOR MAINTENANCE OF MUNICIPAL BOUNDARY GIS FILES) & Appendix B (9-1-1 PSAP BOUNDARY CHANGE REQUEST).

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

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

Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Addendum.

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

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

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

4 **Definitions**

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

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

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

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

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

5 Pricing

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

6 Ordering, Inspection, and Acceptance

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

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

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

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

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

7 Invoices and Payment

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

The following terms additionally apply:

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

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

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

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

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

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

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

9 Compliance with Applicable Laws

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

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

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

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

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

10 Audits and Records Clause

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

11 Confidentiality

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

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

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

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

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

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

12 Conflict of Interest

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

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

13 Assignment and Permitted Subcontractors

13.1 Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.

13.2 Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

13.3 If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to

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

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

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

14 Background Checks and Criminal History Investigations

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

15 Patents and Copyrights

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

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

16 Indemnification

16.1 Acts or Omissions

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

16.2 Infringement

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

16.3 Notice and Cooperation

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

16.4 Coordination of Defense

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

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

16.5 Limitation of Liability

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

17 Termination for Funding Insufficiency

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

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

18 Termination for Cause

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

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

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

19 Termination for Convenience

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

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

20 Suspension of Supplier

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

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

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

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

22 Certification Regarding State Employees Prohibition From Fulfilling Services

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

23 Force Majeure

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

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

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

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

24 Security of Property and Personnel

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

25 Notices

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

If sent to the State:

State Purchasing Director
2401 N. Lincoln Blvd., Suite 116
Oklahoma City, Oklahoma 73105

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

Purchasing Division Deputy General Counsel
2401 N. Lincoln Blvd., Suite 116
Oklahoma City, Oklahoma 73105

26 Miscellaneous

26.1 Choice of Law and Venue

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

26.2 No Guarantee of Products or Services Required

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

26.3 Employment Relationship

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

26.4 Transition Services

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

26.5 Publicity

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

26.6 Open Records Act

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

26.7 Failure to Enforce

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

26.8 Mutual Responsibilities

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

26.9 Invalid Term or Condition

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

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

26.10 Severability

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

26.11 Section Headings

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

26.12 Sovereign Immunity

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

26.13 Survival

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

26.14 Entire Agreement

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

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

26.15 Gratuities

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

26.16 Import/Export Controls

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

ATTACHMENT C

OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

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

2. Orders and Addendums

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

3. Termination for Funding Insufficiency

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

4. Termination for Cause

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

5. Termination for Convenience

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

6. Contract Management Fee and Usage Report

6.1 Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract

management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

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

6.3 All Contract Usage Reports shall meet the following criteria:

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

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

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

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

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

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

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

1 Definitions

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

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

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

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

2 Termination of Maintenance and Support Services

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

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

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

3 Compliance and Electronic and Information Technology Accessibility

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

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

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

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

5 Offshore Services

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

6 Compliance with Technology Policies

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

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

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

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

7 Emerging Technologies

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

8 Extension Right

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

9 Source Code Escrow

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

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

10 Commercial Off The Shelf Software

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

11 Ownership Rights

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

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

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

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

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

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

12 Intellectual Property Ownership

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

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

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

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

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

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

13 Hosting Services

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

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

14 Change Management

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

15 Service Level Deficiency

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

16 Notices

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

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

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

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

Appendix 1 to State of Oklahoma Information Technology Terms

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

A. Customer Data

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

B. Data Security

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

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

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

C. Security Assessment

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

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

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

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

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

d. Document all Security Incidents and their outcomes.

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

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

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

F. **Notices**

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

Chief Information Security Officer

3115 N. Lincoln Blvd

Oklahoma City, OK 73105

and

servicedesk@omes.ok.gov.

G. Supplier Representations and Warranties

Supplier represents and warrants the following:

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

H. Indemnity

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

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

I. Termination, Expiration and Suspension of Service

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

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

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

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

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

c. a combination of the two immediately preceding options.

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

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

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

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

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

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

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

Appendix 2 to State of Oklahoma Information Technology Terms

INTRODUCTION

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

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

CJIS SECURITY POLICY REQUIREMENTS GENERALLY

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

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

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

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

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

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

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

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

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

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

Attachment E-1: PRICING

Exhibit 1- NG911 GIS Pricing sheet.

State of Oklahoma Emergency Management NG9-1-1 GIS data migration			
Section	Resource Title or Role	Rate per Hour	Estimate LOE
Initial Assessment of GIS data and Capabilities	GIS Technician GIS Analyst Senior GIS Analyst Technical Manager QA/QC Lead Project Manager Public Safety SME/Advisor Principal-In-Charge	GIS Technician: \$95 GIS Analyst: \$110 Senior GIS Analyst: \$126 Technical Manager: \$142 QA/QC Lead: \$147 Project Manager: \$158 Public Safety SME/Advisor: \$179 Principal-In-Charge: \$236	LOE will vary by PSAP based on population, quality and completeness of existing data; and other factors. Rough order of magnitude estimate is approximately 60 hours or \$7,000 per PSAP.
Mandatory Minimum Requirements for GIS Data Remediation	GIS Technician GIS Analyst Senior GIS Analyst Technical Manager QA/QC Lead Project Manager Public Safety SME/Advisor Principal-In-Charge	GIS Technician: \$95 GIS Analyst: \$110 Senior GIS Analyst: \$126 Technical Manager: \$142 QA/QC Lead: \$147 Project Manager: \$158 Public Safety SME/Advisor: \$179 Principal-In-Charge: \$236	LOE will vary by PSAP based on population, quality and completeness of existing data; and other factors. Rough order of magnitude estimate for a PSAP with 10,000 to 20,000 population is approximately 240 hours or \$35,000.
Validation of Final Data	GIS Technician GIS Analyst Senior GIS Analyst Technical Manager QA/QC Lead Project Manager Public Safety SME/Advisor Principal-In-Charge	GIS Technician: \$95 GIS Analyst: \$110 Senior GIS Analyst: \$126 Technical Manager: \$142 QA/QC Lead: \$147 Project Manager: \$158 Public Safety SME/Advisor: \$179 Principal-In-Charge: \$236	LOE will vary by PSAP based on population, quality and completeness of existing data; and other factors. Rough order of magnitude estimate is approximately 28 hours or \$4,500 per PSAP.
Other	GIS Technician GIS Analyst Senior GIS Analyst Technical Manager QA/QC Lead Project Manager Public Safety SME/Advisor Principal-In-Charge	GIS Technician: \$95 GIS Analyst: \$110 Senior GIS Analyst: \$126 Technical Manager: \$142 QA/QC Lead: \$147 Project Manager: \$158 Public Safety SME/Advisor: \$179 Principal-In-Charge: \$236	Other additional custom services, as needed, will be provided at the hourly rates and a LOE.
Supplemental pricing	Resource Title or Role	Rate (hour, mile, etc)	
Field work	GIS Technician GIS Analyst Senior GIS Analyst Technical Manager QA/QC Lead Project Manager Public Safety SME/Advisor Principal-In-Charge	GIS Technician: \$95 GIS Analyst: \$110 Senior GIS Analyst: \$126 Technical Manager: \$142 QA/QC Lead: \$147 Project Manager: \$158 Public Safety SME/Advisor: \$179 Principal-In-Charge: \$236	LOE for field work will vary by PSAP based on a variety of factors. Specific LOE and budget estimates will be generated based on specific field work needs of each PSAP as determined during prior phases of the project.
Maintenance tools	GIS Technician GIS Analyst Senior GIS Analyst Technical Manager QA/QC Lead Project Manager Public Safety SME/Advisor Principal-In-Charge	GIS Technician: \$95 GIS Analyst: \$110 Senior GIS Analyst: \$126 Technical Manager: \$142 QA/QC Lead: \$147 Project Manager: \$158 Public Safety SME/Advisor: \$179 Principal-In-Charge: \$236	DATAMARK VEP Validator Annual Subscription Cost: Population less than 50,000: \$7,500 Population 50,000 to 99,999: \$12,500 Population 100,000 to 249,999: \$17,500 Population 250,000 to 499,999: \$20,000 Population 500,000 to 999,999: \$25,000 DATAMARK Verify Field Verification Annual Access Cost: Population less than 50,000: \$2,500 Population 50,000 to 99,999: \$3,500 Population 100,000 to 249,999: \$4,500 Population 250,000 to 499,999: \$5,500 Population 500,000 to 999,999: \$6,500 DATAMARK VEP MSAG Generator Annual Cost: Population less than 50,000: \$2,500 Population 50,000 to 99,999: \$3,500 Population 100,000 to 249,999: \$4,500 Population 250,000 to 499,999: \$5,500 Population 500,000 to 999,999: \$6,500

			DATAMARK VEP Editor Annual Subscription Cost: Population less than 50,000: \$10,500 Population 50,000 to 99,999: \$12,500 Population 100,000 to 249,999: \$2,500 Population 250,000 to 499,999: \$30,500 Population 500,000 to 999,999: \$47,500 DATAMARK VEP Geofencing Cost: Per Jurisdiction: \$1,500 DATAMARK VEP CloudAssign Annual Subscription Cost: Population less than 50,000: \$12,500 Population 50,000 to 99,999: \$14,500 Population 100,000 to 249,999: \$22,500 Population 250,000 to 499,999: \$32,500 Population 500,000 to 999,999: \$47,500
Maintenance Service contract	GIS Technician GIS Analyst Senior GIS Analyst Technical Manager QA/QC Lead Project Manager Public Safety SME/Advisor Principal-In-Charge	GIS Technician: \$95 GIS Analyst: \$110 Senior GIS Analyst: \$126 Technical Manager: \$142 QA/QC Lead: \$147 Project Manager: \$158 Public Safety SME/Advisor: \$179 Principal-In-Charge: \$236	Maintenance tool maintenance is included in the annual subscription costs identified above. LOE for ongoing GIS data maintenance will vary by PSAP based on a variety of factors. Specific LOE and budget estimates will be generated based on specific needs needs of each PSAP as determined during prior phases of their project.

VALUE-ADDED PRODUCTS AND/OR SERVICES PRICING

Value Added Options	Population less than 50,000	Population 50,000 to 99,999	Population 100,000 to 249,999	Population 250,000 to 499,999	Population 500,000 to 999,999
Strategic Planning and Implementation Plan	Costs typically vary by population size. The hourly rates from Exhibit I will be used to provide these services. Specific cost estimates can be generated after completion of prior phases of the project.				
Address Comparison and Evaluation (ACE)	Costs typically vary by population size. The hourly rates from Exhibit I will be used to provide these services. Specific cost estimates can be generated after completion of prior phases of the project. Optional cost of 3rd party address dataset(s) not included.				
Boundary Assessment and Facilitation Services	Boundary Services costs are derived from the number of neighboring jurisdictions. Specific cost estimates can be generated after completion of prior phases of the project. The base cost is \$15,000.00 and \$2,500.00 for each additional County bordering the client county.				
GIS Data Support Services	Costs typically vary by population size. The hourly rates on from Exhibit I will be used to provide these services. Specific cost estimates can be generated after completion of prior phases of the project.				

ATTACHMENT E-2: HOSTING AGREEMENT



OKLAHOMA
Office of Management
& Enterprise Services

State of Oklahoma Hosting Agreement

**ATTACHMENT E-2
(Attachment B to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH MICHAEL BAKER INTERNATIONAL
RESULTING FROM SOLICITATION NO. 0900000417)**

HOSTING AGREEMENT

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

I. Definitions

- a. “Customer Data” shall mean all data supplied by or on behalf of Customer in connection with the Contract, excluding any confidential information of Vendor. In connection with the services required in response to Solicitation Number 90000417 Customer Data will include public safety GIS data consisting but not limited to Street Centerlines, address points, and emergency service boundaries and other Public Data.
- b. “Data Breach” shall mean the unauthorized access by an unauthorized person that results in the access, use, disclosure or theft of Customer Data.
- c. “Non-Public Data” shall mean Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.
- d. “Personal Data” shall mean Customer Data that contains 1) any combination of an individual’s name, social security numbers, driver’s license, state/federal identification number, account number, credit or debit card number and/or 2)

ATTACHMENT E-2: HOSTING AGREEMENT

contains electronic protected health information that is subject to the Health Insurance Portability and Accountability Act of 1996, as amended.

- e. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the hosted environment used to perform the services.

II. Customer Data

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

III. Data Security

ATTACHMENT E-2: HOSTING AGREEMENT

- a. Vendor will use commercially reasonable efforts, consistent with industry standards, to provide security for the hosted environment and Customer Data and to protect against both unauthorized access to the hosting environment, and unauthorized communications between the hosting environment and the Customer's browser. Vendor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Vendor applies to its own personal data and non-public data of similar kind.
- b. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Vendor is responsible for encryption of Personal Data.
- c. Vendor represents and warrants to the Customer that the hosting equipment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Vendor will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Vendor will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Vendor, Vendor will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Vendor has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Vendor is responsible for costs incurred by Customer for Customer to remediate the virus.
- d. Vendor shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Vendor shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Vendor shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Vendor's obligations under the Contract.
- e. Vendor shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.
- f. Vendor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. Vendor may remove its proprietary information from the redacted version. A Service

ATTACHMENT E-2: HOSTING AGREEMENT

Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

IV. Security Assessment

- a. The State requires any entity or third-party vendor hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Vendor submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the Contract, including renewals, constitutes a material breach.
- b. To the extent Vendor requests a different sub-contractor than the third-party hosting vendor already approved by the State, the different sub-contractor is subject to the State's approval. Vendor agrees not to migrate State's data or otherwise utilize a different third-party hosting vendor in connection with key business functions that are Vendor's obligations under the Contract until the State approves the third-party hosting vendor's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party hosting vendor does not meet the State's requirements under the State Certification and Accreditation Review, Vendor acknowledges and agrees it may not utilize such third-party vendor in connection with key business functions that are Vendor's obligations under the Contract, until such third party meets such requirements.

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

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

ATTACHMENT E-2: HOSTING AGREEMENT

practicable, harmful effects of Security Incidents that are known to Vendor; and
(iv) documents all Security Incidents and their outcomes.

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

- a. Vendor, unless stipulated otherwise, shall promptly notify the Customer identified contact within 2 hours or sooner, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach. Vendor shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- b. Unless otherwise stipulated, if a Data Breach is a direct result of Vendor's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – (2), (3) and (4) not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Vendor based on root cause.

If a Data Breach is a direct result of Vendor's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

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

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

And

Chief Information Security Officer
3115 N. Lincoln Blvd

ATTACHMENT E-2: HOSTING AGREEMENT

Oklahoma City, OK 73105

And

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

For immediate notice which does not constitute written notice:

OMES Help Desk

405-521-2444

helpdesk@omes.ok.gov

Attn: Chief Information Security Officer

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

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

IX. Indemnity

ATTACHMENT E-2: HOSTING AGREEMENT

- a. Vendor's Duty of Indemnification. Vendor agrees to indemnify and shall hold the State of Oklahoma and State, its officers, directors, and employees, and agents harmless from all liabilities, claims, damages, losses, costs, and expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees) (collectively "Damages") (other than Damages that are the fault of Customer) arising from or in connection with Vendor's material breach of its express representations and warranties or other material obligations in this Hosting Agreement and the Contract. If a third party claims that any portion of the products or services provided by Vendor under the terms of the Contract or this Hosting Agreement infringes that party's patent or copyright, Vendor shall defend and indemnify the State of Oklahoma and Customer against the claim at Vendor's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State of Oklahoma and/or Customer. The State of Oklahoma and/or Customer shall promptly notify Vendor of any third party claims and to the extent authorized by the Attorney General of the State, allow Vendor to control the defense and any related settlement negotiations. If the Attorney General of the State of Oklahoma does not authorize sole control of the defense and settlement negotiations to Vendor, Vendor shall be granted authorization to equally participate in any proceeding related to this section but Vendor shall remain responsible to indemnify Customer and the State of Oklahoma for all associated costs, damages and fees incurred by or assessed to the State of Oklahoma and/or Customer. Should the software become, or in Vendor's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated under this Hosting Agreement, Vendor may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing. However, Vendor will not be required to so defend or indemnify the State or Customer if the claim results from State or Customer's knowing alteration of products or services, in that such alteration created the infringement upon any presently existing U.S. letters patent or copyright

X. Termination and Suspension of Service:

- a. In the event of a termination of the Contract, Vendor shall implement an orderly return of Customer Data in a mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of Customer Data.
- b. During any period of service suspension, Vendor shall not take any action to intentionally erase any Customer Data.
- c. In the event of termination of any services or agreement in entirety, Vendor shall not take any action to intentionally erase any Customer Data for a period of:

ATTACHMENT E-2: HOSTING AGREEMENT

- i. 10 days after the effective date of termination, if the termination is in accordance with the contract period
- ii. 30 days after the effective date of termination, if the termination is for convenience
- iii. 60 days after the effective date of termination, if the termination is for cause

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

- d. The State shall be entitled to any post termination assistance generally made available with respect to the services.
- e. Vendor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer.

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

ATTACHMENT E-2: HOSTING AGREEMENT

Signature Block

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

VENDOR:

[insert vendor name]

[insert printed name and title]

Date

STATE:

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

[insert printed name and title]

Date

ATTACHMENT E-3

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

Software as a Service Agreement SAMPLE

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

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

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

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

1. Definitions.

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

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

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

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

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

State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Services:

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

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

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

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

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

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

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

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

2.7. RESERVED

3. Authorization and State Restrictions.

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

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

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

3.4. Service Use and Data Storage.

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

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

4. State Obligations.

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

5. Availability.

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

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

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

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

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

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

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

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

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

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

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

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

7. Security.

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

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

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

8. Fees; Invoices; Payment Terms.

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

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

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

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

8.2. RESERVED.

8.3. RESERVED.

8.4. RESERVED.

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

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

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

8.7. RESERVED.

9. Intellectual Property Rights.

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

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9.2. State Data; Resultant Data. As between State and Provider, State is and will remain the sole and exclusive owner of all right, title and interest in and to all State Data and all Resultant Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 9.3 hereto.

9.3. Consent to Use State Data, Resultant Data. State hereby irrevocably grants all such rights and permissions in or relating to State Data and Resultant Data: (a) to Provider, its Subcontractors and the Provider Personnel as are necessary or useful to perform the Services; and (b) to Provider as are necessary or useful to enforce this SaaS Agreement and exercise its rights and perform its hereunder.

10. Confidentiality

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

10.2. Exclusions. Confidential Information does not include information that : (a) was rightfully known to the State without restriction on use or disclosure prior to such information's being disclosed or made available to the State in connection with this SaaS Agreement; (b) was or becomes generally known by the public other than by the State's or any of its Representatives' noncompliance with this SaaS Agreement; (c) was or is received by the State on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to

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

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

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

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

11. Term and Termination.

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

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

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

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

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

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

12. Representations and Warranties.

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

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

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

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

12.3. RESERVED.

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

13. RESERVED.

14. Limitations of Liability.

14.1. With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Provider for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.. Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Provider or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Provider or its employees, agents or subcontractors.

14.2. The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether State has accepted a product or service. The parties agree that Provider has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain

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between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

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

15. Force Majeure.

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

Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Provider cannot cause delivery of a product or service in a timely manner to meet the business needs of State.

15.2. Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Provider's system or any of Provider's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

16. Miscellaneous.

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

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

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

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

If to Provider:

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

If to State:

If sent to the State:
State Purchasing Director
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

With a copy, which shall not constitute notice, to:
Purchasing Division Deputy General Counsel
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

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

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

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

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

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

ATTACHMENT E-4

Attachment E-4 Schedule A

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

MILESTONE PAYMENT SCHEDULE

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

Invoices shall be addressed to:

ATTACHMENT E-5

**Attachment E-5
Schedule B**

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

PROJECT MANAGERS & POINTS OF CONTACT

Attachment E-6: OFFER OF VALUE-ADDED PRODUCTS AND/OR SERVICES

DATAMARK is pleased to include the following additional value-added GIS data services to Clients throughout Oklahoma to further assess and evaluate their GIS data and data management environment, define, and manage NG9-1-1 GIS boundaries, and increase the support options for the proposed GIS data solutions. *Per RFP Section 8.1 E., please see separate file for pricing.*

- Strategic Planning and Implementation Plan
- Address Comparison and Evaluation (ACE)
- Boundary Assessment and Facilitation Services
- GIS Data Support Services

Strategic Planning and Implementation Plan

DATAMARK's Strategic Planning services evaluate your current public safety, addressing, and GIS data environment, enabling us to deliver future state recommendations and create an implementation plan for developing accurate, reliable GIS workflows, addressing and data. Strategic Planning services are delivered in the following phases:

Strategic Planning: Current State Assessment and Gap Analysis

DATAMARK performs a Current State Assessment and Gap Analysis of our client's addressing and GIS data, data environment, and management processes to assess GIS data readiness for Next-Generation 9 1 1 (NG9-1-1). The Current State Assessment and Gap Analysis evaluates Client GIS data, GIS and addressing workflows, processes, and the GIS environment to provide an accurate Gap Analysis and needs assessment of the Client's GIS data and GIS data objectives.

Current State Assessment

The DATAMARK team conducts interviews with technical staff, internal stakeholders, and external stakeholders to develop a comprehensive understanding of the addressing and GIS data environment and GIS management processes. During the Current State Assessment, DATAMARK compares data management practices and workflows to NENA standards to determine readiness for deployment in current/legacy 9-1-1 and NG9-1-1 environments.

Gap Analysis

DATAMARK performs a Gap Analysis on NG9-1-1 related data to determine NG9-1-1 readiness and adherence to NENA NG9-1-1 standards. We assess the Client's GIS and public safety data, including MSAG and ALI, for data quality using a comprehensive series of validations. The results of these validations are delivered in a formal review with the Client.

DATAMARK conducts a formal review of the results of the Current State Assessment and Gap Analysis. This review will include the findings of the Current State Assessment and the results of the data validations performed during the Gap Analysis. The results of the Current State Assessment and Gap Analysis are used to develop Future State Recommendations. We will work with the Client to discuss how the results impact your GIS data objectives and how they may be presented to support your GIS data objectives, data management goals, and NG9-1-1 GIS data readiness.

CLIENT TASKS/RESPONSIBILITIES

- Provide copy of current GIS data to DATAMARK for validation checks
- Provide documentation of GIS data workflows, address management, and public safety applications
- Accept report of the Current State Assessment
- Provide introductions to key personnel for DATAMARK outreach

DATAMARK DELIVERABLES

- Conduct interviews with client and stakeholders
- Perform validations on client GIS data
- Deliver results of Current State Assessment and Gap Analysis and review with client

Strategic Planning: Future State Recommendations

The results of this assessment are then used to create and document Future State Recommendations to achieve the client's GIS data objectives, data management goals, and NG9-1-1 GIS data readiness. Following completion of the Strategic Planning services, DATAMARK formally reviews the results of the Current State Assessment and Gap Analysis and Future State Recommendations with the client.

DATAMARK develops Future State Recommendations based on the gap analysis and needs assessment, interviews, and data validations performed during the Current State Assessment. DATAMARK will work with the project stakeholders to document GIS data objectives and data management goals. Recommendations are clearly defined and align to the GIS data objectives, specifically addressing the GIS stakeholders' goals, management processes, workflow, and quality issues. Recommendations are documented and reviewed with project stakeholders prior to release of the final report.

Future State Recommendations can be used to justify funding and grant requests, define deliverables for GIS data projects, determine needs for additional staffing, and develop the scope of services for location data projects and RFPs. DATAMARK's recommendations clearly identify the steps needed to resolve issues identified in the Current State Assessment, define the solutions and services that will improve the GIS data environment, and optimize data management workflows.

DATAMARK provides clients and stakeholders with a report which concisely details each of the Future State Recommendations for developing reliable high-quality public safety GIS data and creating efficient, consistent, and GIS data management processes.

Future State Recommendations require the completion of a Current State Assessment and Gap Analysis and are required to develop the Implementation Plan. The Implementation Plan, described in detail in the next section, defines the stakeholders, resources, schedule, and deliverables to implement our Future State Recommendations.

CLIENT TASKS/RESPONSIBILITIES

- Complete a Current State Assessment and Gap Analysis and receive results from DATAMARK
- Accept final report of Future State Recommendations

DATAMARK DELIVERABLES

- Deliver Future State Recommendations to client

Implementation Plan

For clients requiring additional assistance implementing Future State Recommendations, DATAMARK's experienced GIS and addressing professionals will develop a comprehensive Implementation Plan the recommendations provided by our team. The Implementation Plan identifies the key stakeholders, resource staffing requirements, addressing and GIS technologies, processes, workflows, and deliverables to successfully put Future State Recommendations into action.

The Implementation Plan is developed in close coordination with Client personnel and any external stakeholders. DATAMARK conducts hands-on workshops with client team members and project stakeholders to prioritize the most important needs, identifying:

- Resourcing required to implement each stage of the plan and responsible entities
- Technology resources required to support the plan
- Deliverables and timing for each stage of the implementation

Implementation Plan objectives are based on the Future State Recommendations and developed following the SMART philosophy. Each objective is Specific, Measurable, Assignable, Realistic, and Time-related. The Implementation Plan will also consider:

- Client requirements
- Time constraints
- Other critical projects
- Resource availability

DATAMARK conducts follow-up meetings with Client team members and project stakeholders to review the Implementation Plan and project schedule. Development of an Implementation Plan requires the completion of Current State Assessment and Gap Analysis, and Future State Recommendations.

CLIENT TASKS/RESPONSIBILITIES

- Complete and receive results of the Current State Assessment and Gap Analysis as well as Future State Recommendations
- Accept completed Implementation Plan

DATAMARK DELIVERABLES

- Facilitate workshop sessions with client staff and external stakeholders
- Deliver completed Implementation Plan to client
- Formal review of the Implementation Plan with the client

Address Comparison and Evaluation (ACE)

The DATAMARK team will perform an Address Comparison and Evaluation (ACE) to compare a master address source to other sources containing address records and identify potentially missing address data. DATAMARK will verify the Client's address data against highly accurate location data, returning a report of the results and a table of missing addresses with the data.

The team will work with the Client to identify which address sources are the best fit for use in the analysis. The Client may provide up to five (5) data sources such as parcel or utility databases, waste management records, etc. for the DATAMARK team to compare to their master address dataset. ACE supports additional commercial

address data sources which may be identified prior to initiation; additional fees may apply if they are procured by DATAMARK.

During the ACE, DATAMARK assigns a Weighted Confidence Score to each address in the master address source, based on its recurrence across the supplementary data sources and validation against commercial location data. This score allows us to assess the validity of address candidates identified as missing from the master address database.

After completing the ACE, DATAMARK provides a summary report of the results of the ACE and a table of potentially missing address candidates in tabular or spatial format. This table includes subaddress information (i.e. apartment, suite, etc.) identified in the analysis. DATAMARK will review the table to provide a breakdown of their confidence levels to prioritize investigation and placement within the master address database by the Client. Placement of missing address point candidates in the master address database is not included with the ACE service.

CLIENT TASKS/RESPONSIBILITIES

- Provide master address database
- Provide up to five (5) spatial or tabular address data sources
- Review ACE results and report of missing address candidates

DATAMARK DELIVERABLES

- Provide report of the ACE process and summary of findings
- Provide feature class or tabular list of potentially missing address candidates, including subaddress data
- Procure additional commercial data to supplement ACE if necessary, following discussions with client

Boundary Assessment and Facilitation Services

The DATAMARK team will facilitate individual workshops between the Client and their neighboring PSAPs to discuss the placement of PSAP, Provisioning Boundary, and Emergency Service Boundaries (ESB). The workshops will include representatives responsible for agreeing to the boundary placement between the neighboring PSAPs. In its role as a consultant, the DATAMARK team will act as a neutral participant.

At the conclusion of the workshops, DATAMARK will provide a detailed report outlining workshop topics, description of areas discussed, and a summary of action items and/or decisions made as it relates to the placement of the boundaries.

Virtual Kickoff Meeting

The DATAMARK project manager will schedule a virtual meeting with the Client project manager to discuss the approach of the facilitated workshops, identify the role each participant will play, and what information is required, from whom, and when.

Data Collection and Assessment (Prior to Workshop)

The DATAMARK team will request from each participating PSAP GIS files to perform an assessment prior to the scheduled workshop(s).

Facilitated Workshop: PSAP Boundary & Data Maintenance Authority – Decision Making Process

The DATAMARK project manager will schedule a workshop between the Client and each of the participating PSAPs.

The DATAMARK team will present to the group the maps prepared during the Data Collection and Assessment Phase. DATAMARK's role during the workshop is to operate the map, display areas of boundaries disagreement, provide best practice guidance, facilitate a workable solution, and document areas of interest during the meeting. Documentation, including best practice instruction, is provided back to the Client after the facilitated workshop(s). The Facilitated Workshop process is an important learning process for all participants. It is recommended each participating PSAP conduct a similar exercise with each of their adjoining neighbors.

Summary Boundary Facilitation Report

A summary report to the Client will provide an opportunity to review the decision-making assistance process as well as lessons learned. As part of the Summary Report, The DATAMARK team will prepare a document that details each step in the process and the outcome of each Facilitated Workshop.

CLIENT TASKS/RESPONSIBILITIES

- Provide the names and contact information of neighboring PSAPs (used for meeting invitations and data requests) to DATAMARK
- Host the workshop(s) and finding a suitable location
- Provide the Client GIS data for use in facilitated workshop(s). Data is required as a GIS format
- Make the PSAPs boundary adjustments per the resolution decisions from the workshops and following up with neighboring jurisdictions for their boundary adjustments confirmation

DATAMARK DELIVERABLES

- Facilitate a virtual project kickoff with the Client project manager
- Facilitate sending workshop invitations and requesting GIS data of neighboring PSAPs
- Facilitate workshop(s) using a digital map to foster conversation and provide expertise on NENA standards and best practices and GIS best practice workflows
- Document each workshop as meeting minutes which will include areas of discussion, boundary remediation decisions, and best practice guidance
- Draft a final report with compiled documentation from each workshop(s)

GIS Data Support Services

DATAMARK's GIS professionals provide Data Support Services to clients requiring additional expertise from trusted advisors to support their GIS data management operations. Data Support Services are offered in packages of annual support hours or may be contracted separately for specific tasks, aligned to the Client's operational requirements, budget, and funding considerations.

GIS Data Support is delivered by experienced GIS professionals and includes data, process, and workflow assessments, GIS and NG9-1-1 consultation services, and training in GIS and NG9-1-1 topics. DATAMARK will work closely with the Client to develop a scope of work for individual data support services through collaborative review of data support requirements and objectives. Our scope of work will provide an estimated number of hours of support services, enabling the Client to select the appropriate package of annual support hours or develop a deliverable-based contract for specific services to be performed.

ATTACHMENT – F: Negotiated Exceptions

ATCH. - F
(Attachment A
to Addendum 1
to

STATE OF OKLAHOMA CONTRACT WITH MICHAEL BAKER INTERNATIONAL
RESULTING FROM SOLICITATION NO. 0900000417)

Negotiated Exceptions to the Solicitation

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

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

ATTACHMENT – F: Negotiated Exceptions

RFP Section	Exception
A. General Provisions, A.40 Failure to Provide	<p>Amend and change language to read:</p> <p>The Supplier's repeated failure to provide defined services in accordance with the standard of care, without reasonable basis as determined in the sole discretion of the State CIO, shall constitute a material breach of the Supplier's obligations, which may result in partial or whole cancellation of the Contract.</p>
A. General Provisions, A.45.1 Ownership Rights	<p>Amend and change language to read:</p> <p>Any software developed by the Supplier under this Agreement is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on the Utilities, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Utilities, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Utilities embodied in or delivered to the State in conjunction with the products.</p>
A. General Provisions, A.45.2 Ownership Rights	<p>Amend and change language to read:</p> <p>Except for any Utilities or Software or Services described within the Supplier's SaaS Agreement, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.</p>
A. General Provisions, A.45.8 Ownership Rights	<p>Addition of Section A.45.8 is included and reads:</p> <p>It is understood and agreed that this section 45 does not apply to the Software as discussed within Supplier's SaaS Agreement.</p>

ATTACHMENT – F: Negotiated Exceptions

RFP Section	Exception
A. General Provisions, A.46 Ownership Rights	<p>Addition of “under this Agreement” resulting in the following language of the first paragraph:</p> <p>If required under applicable Oklahoma law relating to customized computer software developed or modified exclusively for a State Entity under this Agreement, the Supplier shall have a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, with the escrow agent including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following.</p>
B. Special Provisions, B.3 Warrants Supplier	<p>Original language of B.3 remains without change to language in RFP.</p>
B. Special Provisions, B.6 Commercial Off-The-Shelf (Cots) Software	<p>Original language of B.6 remains without change to language in RFP.</p>
B. Special Provisions, B.8 Ownership	<p>Original language of B.8 remains without change to language in RFP.</p>
B. Special Provisions, B.9	<p>Reject the addition of the proposed language of B.9 in vendor exceptions.</p>
B. Special Provisions, B.10	<p>Reject the addition of the proposed language of B.10 in vendor exceptions.</p>
B. Special Provisions, B.11	<p>Reject the addition of the proposed language of B.11 in vendor exceptions.</p>








Execution Version_SW1177_Michael Baker Intl.

Final Audit Report

2022-11-04

Created:	2022-11-02
By:	Cooper Catlege (cooper.catlege@omes.ok.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhPIOlmsW93KqulesmhlB72UDfysVwxlv

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-  Document created by Cooper Catlege (cooper.catlege@omes.ok.gov)
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-  Document emailed to Dan Kieny (dan.kieny@mbakerintl.com) for signature
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