



STATE OF OKLAHOMA STATEWIDE CONTRACT WITH LAKESHORE LEARNING MATERIALS, LLC

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 Lakeshore Learning Materials, LLC (“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 Infant/Toddler/Children Products, as more particularly described in certain Contract Documents. This Contract memorializes the agreement of the parties with respect to terms of the Contract that is being awarded to Supplier.

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

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Statewide Terms, Attachment C;
 - 2.4. Attachment D intentionally omitted; and
 - 2.5. Portions of the Bid, Exhibit 1.
3. The parties additionally agree:
 - 3.1. except for and information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.

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

4. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or

substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

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

**LAKESHORE LEARNING MATERIALS,
LLC**

By: *Amanda Otis*
Name: Amanda Otis
Title: Interim State Purchasing Director
Date: Jun 12, 2023

By: *Eunice Peterson*
Name: Eunice Peterson
Title: Bid Special Projects Manager
Date: Jun 9, 2023

Tim Tuck
Tim Tuck (Jun 12, 2023 09:53 CDT)

Deputy General Counsel

Jun 12, 2023

Reviewed & Approved by OMES Legal

ATTACHMENT A
SOLICITATION NO. 0900000555

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

PURPOSE

The Contract is awarded as a statewide Contract SW0360 The is releasing for a catalog contract for Infant/Toddler/Child Products.

Please Note: The following sizes of disposable diapers are available from SW001 State Use Procurement Schedule, Contract ID # 2851. Those sizes are: 6-11 lbs., 11-16 lbs., and over 23 lbs. Also, 9” x 13” disposable baby wipes, 50 wipes/tub, 12 tubs/case for a 600 total count is also available from the same State Use contract. The supplier is McCalls Chapel School, Inc. (ID # 0000079007). All entities required to go through State Use as their first line of purchasing must purchase these items from this contract. All other entities are encouraged to do so as well.

1. Contract Term and Renewal Options

The initial Contract term, which begins on Date of award one year and there are four (4) one-year options to renew the Contract.

2. Contract Obligations

2.1 Supplier obligations are set forth below at:

2.1.1. Exhibit 1 to Attachment A

2.1.2. Exhibit 2 – Cost Workbook

2.1.3. Exhibit 3 – Example Mother’s Breastmilk Nutrition and Baby/Toddler Formula, Food, & Snacks

2.1.4. Exhibit 4 – Example Bedding and Room Décor.

2.1.5. Exhibit 5 – Example Baby & Toddler Toys.

2.1.6. Exhibit 6 – Example Bath & Skincare Products.

Exhibit 1 to Attachment A

1.1. Supplier Responsibilities.

- 1.1.1.1.** The Supplier is to provide the entire portfolio of quality Infant, Toddler and Child Products in a timely and efficient manner.
- 1.1.1.2.** Suppliers are to comply with all infant formula regulatory requirements, all infant/toddler/children's clothing safety/flammability standards, all durable infant/toddler/children's product requirements/standards, as well as any other applicable safety/regulatory requirements for infant/toddler/child products.

1.1.2. Purchasing Process and Pricing

- 1.1.2.1.** Customers will place their own orders with the Supplier. Supplier will interact with Customers on a day-to-day basis for specific issues relating to delivery timeliness, product quality, returns, and similar concerns. Contracting Officer will be responsible for managing price changes, market basket modifications, and overall contract management.
- 1.1.2.2.** Each Exhibit lists example products; however, additional products can be purchased off the resulting contract. The brands listed are examples of the types of products needed and the listed specifications should be considered reference specifications for those products.

1.1.3. Contract Manager

- 1.1.3.1.** The Supplier will provide a Contract Manager that will work with the Contracting Officer to fully implement and manage the contract. The Supplier shall make available to the Contracting Officer, technically competent personnel to accomplish the tasks and deliverables for the implementation and management of the contract. In addition, the Supplier will have a customer service unit that is dedicated to this contract to respond to user inquiries.
- 1.1.3.2.** The Supplier will work closely with subSuppliers (if applicable) to fully implement and manage the contract.
- 1.1.3.3.** The Supplier must promptly notify the Contracting Officer in writing within ten (10) calendar days of the change.

- 1.1.3.4. The Supplier must include the name and contact information of the individual who will be the Contract Manager for the term of the contract. The Contract Manager will be responsible for operation and administration of the contract by the Supplier.

1.1.4. Contract Manager's Job Duties

- 1.1.4.1. Communications with the Customer's personnel to discuss any shortages and needed substitutions.
- 1.1.4.2. Meet with any Customer's personnel via conference call to discuss any areas of concern as needed.
- 1.1.4.3. Be available to demonstrate or provide documentation to the Contracting Officer and to the Customers' personnel new products available on the market.
- 1.1.4.4. Maintain and update the market baskets and master price lists/catalogs and review with and distribute to the different Customers on an ongoing basis.
- 1.1.4.5. Issue credit memos and arrange for return of incorrectly shipped or deficient products.
- 1.1.4.6. Resolve any problems and/or discrepancies with the order/delivery schedules.
- 1.1.4.7. Any rebate programs or special pricing promotions which have been offered from manufacturers pass on to Customer's.

1.1.5. Service Level Requirements and Expectations

1.1.5.1. Mandatory Service Level Requirements

- 1.1.5.1.1. This section of the document contains Mandatory Service Level Requirements that the Supplier is required to meet at no extra charge. Suppliers are required to indicate any inability to provide the Mandatory Service Level Requirements (as defined in the remainder of this section of the document).

- 1.1.5.1.2.** For all products sold, Supplier must be an original manufacturer, authorized distributor, or dealer authorized by manufacturer. If requested, Supplier must be able to identify an account number with the manufacturers they represent.
- 1.1.5.1.3.** Each product sold will have a minimum of manufacturer's standard warranty.
- 1.1.5.1.4.** Pricing will remain fixed for the first twelve (12) months of the contract. Requests for additional increases in pricing for contract items will be limited to once a year.
- 1.1.5.1.5.** If any prices fluctuate between the time of order and delivery, Supplier shall charge the prices in effect as of the order date.
- 1.1.5.1.6.** The Supplier will not invoice service fees or additional costs to the Customers during the term of the contract. For instance, there will be no small order, minimum order, special order, shipping (except Rush delivery as specified 1.1.5.2.10), hazardous materials, pallet, or fuel charges or surcharges.
- 1.1.5.1.7.** Delivery to End Users: Customers are located throughout the State, both within and outside of major metropolitan areas. Whenever possible, Customers will work with the Supplier to develop regular delivery schedules. All deliveries must be made on days and times acceptable to Customers.
- 1.1.5.1.8.** Suppliers are to indicate the number of business days after receipt of order for standard orders and rush orders.
- 1.1.5.1.9.** Acceptable hours for deliveries may vary by location. It is Supplier's responsibility to determine the acceptable delivery times and packing requirements for each customer at the time the first orders are placed.

1.1.5.2. Desirable Service Level Expectations

- 1.1.5.2.1.** This section of the document contains Desirable Service Level Expectations that the Supplier is expected to perform at NO extra charge. Suppliers should indicate any inability to provide the Desirable Service Level Expectations by indicating as such in

response submittal. In addition, Suppliers should propose alternatives to Desirable Service Level Expectations that cannot be met.

- 1.1.5.2.2.** The Supplier should respond to all communications no later than one business day.
- 1.1.5.2.3.** Invoice Accuracy: The Supplier should strive to achieve invoice accuracy of 100%.
- 1.1.5.2.4.** When an order is placed, the Supplier and the Customers should contact each other to set up the delivery schedule. Supplier should accommodate any required delivery frequencies, days and times, and should make every effort to accommodate Customers' preferences, as stated in this document or communicated.
 - 1.1.5.2.4.1.** The Supplier should make deliveries on dates and times acceptable to Customers. If a regular delivery day falls on a State holiday, Customers and Supplier may determine an alternate date.
 - 1.1.5.2.4.2.** The Supplier should deliver the products by the delivery date specified in any executed Attachment, Appendix, or Order referencing the Agreement. The Supplier should ensure delivery date standards are met 97% of the time.
 - 1.1.5.2.4.3.** Some Customers require inside delivery. Supplier should unload products and deliver to specified interior locations at no additional charge, if the Customer requires inside delivery. To expedite delivery, Supplier's delivery trucks should be equipped for varying dock heights.
 - 1.1.5.2.4.4.** Deliveries should be complete by the delivery date noted on the order, unless otherwise modified by mutual consent of the Customer and Supplier. Should an emergency occur, causing a delivery to be delayed until after Customer's normal delivery hours, Supplier should contact the Customer by phone no less than one (1) hour before the end of Customer's normal receiving time for late delivery approval.
 - 1.1.5.2.4.5.** Supplier is responsible for rescheduling delivery to a time acceptable to the Customer at no charge. If there is no mutually

acceptable date and time to reschedule, or if a late delivery means the Customer should need to procure products elsewhere, the Customer may cancel all or a portion of the late delivery at no charge.

- 1.1.5.2.4.6.** Customer will have final determination of whether or not to accept late deliveries.

- 1.1.5.2.5.** Non-Delivery: After notification of impending short or out-of-stock items, the Customer may cancel the balance of incomplete deliveries without penalty. Customer may purchase shorted items that cannot be supplied by the Supplier by date required elsewhere.

- 1.1.5.2.6.** Supplier should develop a plan to conduct a quarterly survey of end-users to determine the level of customer service satisfaction experienced by Customers and should conduct such a survey upon request from the Contracting Officer. Both the raw and analyzed survey results should be provided to the Contracting Officer. The following includes some of the areas to be measured on the survey: Responsiveness, Communication, Courtesy, Competence, Effectiveness, and Overall Satisfaction.

- 1.1.5.2.7.** The State encourages Suppliers to have online ordering capabilities, such as a dedicated website, to facilitate online orders.

- 1.1.5.2.8.** Respondents should be able to provide Rush Delivery to Customers within a 24-hour window.
 - 1.1.5.2.8.1.** Emergency/rush delivery requiring special shipping and handling will be at Customers' expense (with prior approval from the Customer). Rush delivery that occurs because of the Supplier's error will be at no additional cost.

 - 1.1.5.2.8.2.** All hazardous materials should be shipped per all Federal and State regulations.

 - 1.1.5.2.8.3.** All products should be shipped in a manner which will enable the receiving person(s) to easily check the shipment with the invoice. All individual units of measure (such as cases, rolls, pallets etc.) should have a clearly visible "vendor product label"

containing the Supplier's product number, manufacturer product number, and quantity per unit of measure.

- 1.1.5.2.8.4.** Suppliers are requested to provide the number of cases of similar items if possible. (e.g. if 5 cases of formula, then label should indicate case 1 of 5, case 2 of 5 and so on.)
- 1.1.5.2.8.5.** A packing slip should be included with each shipment with the following information the customer/Customer account number, customer/Customer name, customer/Customer address, ship date, purchase order number, Supplier product number per line item, line item description, quantity ordered, quantity included in the shipment, unit price, and any back ordered items.
- 1.1.5.2.8.6.** Any shipping containers which are not properly marked as per these instructions may be cause for rejection.
- 1.1.5.2.9.** Any materials delivered in poor condition, more than the amount authorized by the requisition form, or not included on the requisition form or purchase order may, at the discretion of the Customers, be returned to the Supplier at the Supplier's expense within 30 days. Credit for returned goods shall be made immediately once the Supplier receives the returned goods.
 - 1.1.5.2.9.1.** If any product is returned to a Supplier for failure of performance, the Supplier will, at the State's discretion, refund all amounts paid to the Supplier for such product or replace the product.
 - 1.1.5.2.9.2.** Within ten (10) days of written notification by the Customer, the Supplier should make arrangements for the return of the product.
 - 1.1.5.2.9.3.** The Supplier should bear all shipping and insurance costs.
 - 1.1.5.2.9.4.** Supplier should be liable for damages to the product, unless caused by fault or negligence of the Customer that occur during the return process.
- 1.1.5.2.10.** Supplier should provide for return of unopened items ordered in error for up to 30 calendar days from delivery.

- 1.1.5.2.10.1.** For all returns of unopened items or returns due to user error, returns should be provided free-of-charge if they occur at a regularly scheduled delivery time. Otherwise, Customers should be responsible for all costs associated with the preparation of the product for shipping, and all shipping costs to the Supplier's nearest service location for such returns. No additional charges are allowed, including restocking fees.
- 1.1.5.2.10.2.** Supplier should issue a credit to Customer's account as soon as items have been received by the Supplier.
- 1.1.5.3.** The Supplier should provide each of the designated Customers a single point of contact (and a backup) to handle questions and resolve problems that arise. At least one Customer Service Representative should be available during standard business hours in the Central time zone, regardless of the time zone where Supplier is located. All service representatives should have access to information to provide immediate response to inquiries concerning the status of orders (shipped or pending), delivery information, back-order information, statewide contract pricing, contracted product offerings/exclusions, contract compliance requirements, and general product information. Representatives should be available by email, or phone (local or 800 number).
- 1.1.5.4.** The Supplier should be able to provide manufacturer price lists and its own list price lists at the State's request for the State to verify all pricing. The Supplier should have its own auditing system to verify that correct pricing is being offered to the State. In addition, the State reserves the right to audit Supplier records to identify discrepancies. If discrepancies are found, at a minimum, the Supplier will refund the State the difference and may be subject to other legal remedies.
- 1.1.5.5.** Respondents should offer all rebates and special offers (including commercial and consumer offers) made available by the manufacturer, in addition to contracted pricing.
- 1.1.5.6.** The Supplier should guarantee its products to be free from defects in materials and workmanship, given normal use and care, over a minimum of the manufacturer's warranty period. The Supplier should agree to repair and/or immediately replace without charge (including freight both ways) to Customers any product or part

thereof that proves to be defective or fails within the warranty period as specified.

- 1.1.5.7.** The State should not allow any cancellation of example Cost Workbook products without an equal and acceptable replacement approved by the Contracting Officer. (Please note: the brands listed in the Cost Workbook may not be the brands awarded and are listed only to establish example product specifications and for evaluation purposes. The brands awarded on this contract may be alternate brands with equal to specifications.) Suppliers should communicate manufacturer's discontinuation of any products to the Contracting Officer in writing within five (5) business days of notification by manufacturer. In such instances, Suppliers should work with the Contracting Officer to identify and implement alternative options that will maintain or reduce costs associated with the replacements. Suppliers should be prepared to offer detailed quarterly reports if requested by the State, displaying removed products and their suggested replacements. Suppliers should offer suggested replacements of discontinued products at least 30 days prior to substitution, including replacement product number, description, and final price.
- 1.1.5.8.** If necessary to complete a shipment on time, Supplier may request a product substitution. The product substituted should be of equal or larger quantity, equal or better quality and/or grade, at no additional cost, and the Customer should accept the substitution in writing (email is acceptable) prior to delivery. Invoices shall denote all items and quantities as ordered. Any shorted items shall be noted as "out-of-stock."
- 1.1.5.9.** State personnel may inspect and verify deliveries. Products may be matched against the packing slip and order specifications. Customers may identify and reconcile delivery discrepancies of quantity or quality after delivery. Product delivered will also be inspected at time of use and is subject to refusal/return for issues of quality.
- 1.1.5.9.1.** Any cases damaged during loading or delivery will be rejected. Supplier should replace with like or acceptable product at no charge within two business days of notice.
- 1.1.5.9.2.** When receiving deliveries, Customers may inspect each item at the time of receipt and note any count discrepancies and visible damage on the Supplier's packing slip.

- 1.1.5.9.3.** Discrepancies or damages noted should be initialed by the Supplier's delivery agent.
- 1.1.5.9.4.** If, upon inspection at the time of receipt, products are found to be in unacceptable condition, Customer may refuse delivery and note reason on delivery receipt. Supplier's delivery agent shall initial any such notes.
- 1.1.5.9.5.** When satisfied that the shipment is in proper order and/or all discrepancies have been properly noted and initialed, the receiving person shall sign the Supplier's packing slip and retain a copy for their records.
- 1.1.5.9.6.** Customers reserve the right to reject all or part of a delivery.
- 1.1.5.9.7.** Supplier should allow ample time for these procedures at each delivery location.
- 1.1.5.10.** All invoices should reflect the prices and discounts established for the items on this contract for all orders placed by Customers.
- 1.1.5.10.1.** Before payment is made, the State will verify that all invoiced charges are correct as per the Contract(s). Only properly submitted invoices will be officially processed for payment. Prompt payment requires that your invoices be accurate, clear, and complete in conformity with the instructions below.
- 1.1.5.10.2.** All invoices must be itemized showing the Supplier name, remit to address, purchase order number (or purchase method and user name, if there is no purchase order), invoice number, release number if given, date of order/release, item manufacturer's name or abbreviation (if applicable), complete item description, unit of measure, quantity per unit of measure, manufacturer's product number, Supplier's catalog and/or stock numbers, contract price, quantity shipped, extended prices, shipping charges (if applicable), discounts, agency name or purchaser name, account number, and the invoice total.

- 1.1.5.10.3.** Each invoice should contain only those products covered by the purchase order or other purchase method designated on that invoice. Invoices that have pricing other than approved contract pricing will not be considered valid invoices.
- 1.1.5.11.** The Supplier should have a robust complaint resolution procedure and a clear hierarchical path a complaint takes.
- 1.1.5.12.** Supplier's representative should be available to meet at least quarterly with the Contracting Officer to discuss contract concerns. Supplier's representative should be available upon request of the Contracting Officer to evaluate contract implementation and performance, and to identify continuous improvement opportunities or market changes.
- 1.1.5.13.** Supplier should assist the Contracting Officer in preparing marketing tools to promote the contract relationship but be aware that inappropriate marketing communications sent directly to Customers will not be permitted. All marketing materials should be approved in advance by the Contracting Officer. Supplier should arrange for product demonstrations, product literature, and other informational support when requested by the Contracting Officer.
- 1.1.5.14.** Supplier should provide any necessary training for Customers on, at a minimum, the following topics: catalog access, order placement, and invoice processing. All training shall be coordinated through the Contracting Officer or Customers.
- 1.1.5.15.** In-Store Purchases: If the Supplier operates or has special arrangements with brick-and-mortar stores in the State of Oklahoma, the Supplier should extend contract pricing for in-store purchases. The Supplier will be expected to formulate a method to identify an Customer as such so that contract pricing will be made available for in-store purchases during check out.
- 1.1.5.16.** The State expects the Supplier to provide services in as many parts of the State of Oklahoma as possible.
- 1.1.5.16.1.** Southwest Oklahoma (defined as areas south of I-40 and west of I-35).

1.1.5.16.2. Southeast Oklahoma (defined as areas south of I-40 and east of I-35).

1.1.5.16.3. Northwest Oklahoma (defined as areas north of I-40 and west of I-35).

1.1.5.16.4. Northeast Oklahoma (defined as areas north of I-40 and east of I-35).

1.1.5.17. The State has developed the following Key Performance Metrics (KPM) which shall be used to measure Supplier's performance and delivery of services.

1.1.5.17.1. Reporting, response time, and fill rate are the KPMs deemed most crucial to the success of the overall desired service level. The Supplier shall ensure that the stated KPMs are met.

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 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

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

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

26 Miscellaneous

26.1 Choice of Law and Venue

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

26.2 No Guarantee of Products or Services Required

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

26.3 Employment Relationship

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

26.4 Transition Services

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

26.5 Publicity

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

26.6 Open Records Act

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

26.7 Failure to Enforce

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

26.8 Mutual Responsibilities

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

26.9 Invalid Term or Condition

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

26.10 Severability

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

26.11 Section Headings

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

26.12 Sovereign Immunity

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

26.13 Survival

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

obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

26.14 Entire Agreement

The Contract Documents taken together as a whole constitute the entire agreement between the parties. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract Document shall be binding or valid. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

26.15 Gratuities

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

26.16 Import/Export Controls

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

ATTACHMENT C

OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

- 1.1** The Contract is a 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.



OKLAHOMA
Office of Management
& Enterprise Services

EXHIBIT 1

SUPPLIER'S NAME: Lakeshore Learning Materials, LLC

PRODUCT	EXAMPLE PRODUCT MANUFACTURER/DESCRIPTION	UNIT OF MEASURE	EQUAL PRODUCT MANUFACTURER/DESCRIPTION	MANUFACTURER'S PART NUMBER	LIST PRICE	PERCENTAGE DISCOUNT	NET COST
Convertible Cribs	Oxford Baby Piermont 4-in-1 Convertible Crib	Each	Equal Product - Lakeshore Learning Material Heavy-Duty Evacuation Crib	CS467	\$599.00	5.00%	\$569.05
Convertible Cribs	DaVinci Jenny Lind 3-in-1 Convertible Crib	Each	Equal Product - Lakeshore Learning Material Heavy-Duty Evacuation Crib	CS467	\$599.00	5.00%	\$569.05
Crib with Changing Table	Dream On Me Anna 4-in-1 Full Size Crib and Changing Table Combo	Each	Equal Product - Lakeshore Learning Material Step On Up! Toddler Changing Table	AA490	\$1,499.00	5.00%	\$1,424.05
Portable & Mini Cribs	Delta Children Portable Folding Crib with Mattress			No Bid			
Portable & Mini Cribs	DaVinci Kalani Mini Crib			No Bid			
Crib & Toddler Mattresses	Serta Sertapedic Crib and Toddler Mattress			No Bid			
Crib & Toddler Mattresses	Sealy Healthy Dream Organic Cotton Cool Gel Crib and Toddler Mattress			No Bid			
Changing Tables	DaVinci Jenny Lind Changing Table	Each	Equal Product - Lakeshore Learning Material Step On Up! Toddler Changing Table	AA490	\$1,499.00	5.00%	\$1,424.05
Changing Tables	Graco Lauren Changing Table	Each	Equal Product - Lakeshore Learning Material Step On Up! Toddler Changing Table	AA490	\$1,499.00	5.00%	\$1,424.05
Dressers	Sorelle Montgomery Double Dresser			No Bid			
Dressers	Oxford Baby Piermont 7 Drawer Dresser			No Bid			
Changing Table Toppers	Sorelle Montgomery Changing Topper			No Bid			
Armoires & Chifferobes	Bertini Beckem Armoire			No Bid			
Armoires & Chifferobes	Evolur Sawyer/Napoli Chifferobe			No Bid			
Nursery Seating	Best Chairs Charleston Glider	Each	Equal Product - Lakeshore Learning Material Classroom-Safe Glider Rocker	GR290	\$599.00	5.00%	\$569.05
Nursery Seating	Best Chairs Charleston Ottoman			No Bid			
Bassinets & Cradles	HALO Essentia Series Swivel Sleeper Bassinet			No Bid			
Crib/Toddler Bed Conversion Kits	Bertini Pembroke Toddler Bed Conversion Kit			No Bid			
Night Stands	Oxford Baby London Lane Nightstand			No Bid			
Toddler Bed	Nick Jr. Paw Patrol Wooden Toddler Bed			No Bid			
Twin Beds	Oxford Kids Bridgeport Twin Bed			No Bid			
Bunk Beds	Dream On Me Cody Twin Over Twin Bunk Bed			No Bid			
Bunk Beds	Dorel Brady Twin over Full Bunk Bed			No Bid			
Desks	Disney Mickey Mouse or Minnie Mouse Art Desk with Paper Roll	400' roll w/ Paper Cutter	Equal Product - Lakeshore Learning Material Super-Safe Paper Center	LC654	\$59.99	5.00%	\$56.99
Toddler Mattress	Sealy Health Dream Organic Cotton Cool Gel Crib and Toddler Mattress			No Bid			
Twin and Full Mattresses	Signature Sleep Memory Foam 8 Inch Mattress - Twin			No Bid			

PRODUCT	EXAMPLE PRODUCT MANUFACTURER/DESCRIPTION	UNIT OF MEASURE	EQUAL PRODUCT MANUFACTURER/DESCRIPTION	MANUFACTURER'S PART NUMBER	LIST PRICE	PERCENTAGE DISCOUNT	NET COST
Twin and Full Mattresses	Signature Sleep Memory Foam 8 Inch Mattress - Full			No Bid			
Bookshelves	Teamson Fantasy Fields Enchanted Woodland Bookshelf	Each	Equal Product - Lakeshore Learning Material Space-Saver Book Tree	RR160	\$479.00	5.00%	\$455.05
Bookshelves	4 Sided Library	Each	Equal Product - Lakeshore Learning Material Classic Birch Reading Nook	HH844	\$1,179.00	5.00%	\$1,120.05
Kids Seating	Tot Tutors Focus Comfy Reading Chair with Book Storage	Each	Equal Product - Lakeshore Learning Material Just-My-Size Comfy Book Nook	AA455	\$799.00	5.00%	\$759.05
Kids Seating	Crew Furniture Juvenile Recliner	Each	Equal Product - Lakeshore Learning Material Just Like Home™ Comfy Chair	LK656	\$349.00	5.00%	\$331.55
Kids Seating	Simply Classic Rocker			No Bid			
Playroom Items	Teamson Kids Safari Rocking Horse	Each	Equal Product - Lakeshore Learning Material Wooden Boat Rocker	LC353	\$299.00	5.00%	\$284.05
Playroom Items	Tot Tutors Forever Super-Sized Toy Storage Organizer with 16 Plastic Pastel Colored Bins	46.5x15x30 w/20 Clear view bins	Equal Product - Lakeshore Learning Material Heavy-Duty 20-Cubby Unit + Clear-View Bins - Set of 20	DG233 + LM103	\$1,014.00	5.00%	\$963.30
Playroom Items	Nick Jr. Dora the Explorer Delux Toy Box			No Bid			
Playroom Items	Disney Moana Kids Activity Table and Chairs Set	Table- 24" dia & 2 Chairs- 8"h	Equal Product - Lakeshore Learning Material Toddler-Tough Table & Chairs Set	AA517	\$379.00	5.00%	\$360.05
Playroom Items	Knights Tower Play Tent	Each	Equal Product - Lakeshore Learning Material The Ultimate Fort Builder	HH938	\$59.99	5.00%	\$56.99
Playroom Items	Babyletto Spruce Tree Bookcase	Each	Equal Product - Lakeshore Learning Material Flex-Space Mobile 2-Shelf All-Purpose Storage Unit	LC962	\$899.00	5.00%	\$854.05
Playroom Items	Serta Happy Home Storage Bookcase	Each	Equal Product - Lakeshore Learning Material Flex-Space Mobile 2-Shelf All-Purpose Storage Unit	LC962	\$899.00	5.00%	\$854.05
Playroom Items	Crayola Magnetic Double-Sided Easel	Each	Equal Product - Lakeshore Learning Material Flex-Space Double-Sided Mobile Teaching Easel	LC748	\$499.00	5.00%	\$474.05
Crib Sets	Lambs & Ivy Baby Love 4 Piece Crib Bedding Set			No Bid			
Toddler Bedding	Nickelodeon Paw Patrol 4 Piece Toddler Bedding Set			No Bid			
Toddler Bedding	Disney Minnie Mouse Plush Bed Pillow			No Bid			
Kids Bedding	Peppa Pig Tweet Tweet Oink Twin Comforter Set			No Bid			
Kids Bedding	Olive Kids Trains, Planes, Trucks Full Bed Comforter Set			No Bid			
Storage and Organization	Koala Baby Willow Square Basket	Each	Equal Product - Lakeshore Learning Material Medium Dishwasher-Safe Plastic Basket - Natural (14 1/2"l x 11"w x 7 1/2"h)	LL302	\$19.99	5.00%	\$18.99
Storage and Organization	Lambs & Ivy Echo Diaper Stacker			No Bid			
Storage and Organization	Step2 Red 2-in-1 Toy Box and Art Lid	Each	Equal Product - Lakeshore Learning Material Large Lakeshore Tuff Tote (17 1/4"l x 13 3/4"w x 8"h)	WT365	\$21.99	5.00%	\$20.89
Room Décor	Twelve Timbers Elephant Plank Cut Out Wall Art			No Bid			
Room Décor	Disney Baby Finding Nemo 2 Piece Canvas Wall Art			No Bid			
Room Décor	The Peanut Shell Woodland Dreams Musical Mobile			No Bid			
Room Décor	Disney Baby - Finding Nemo - Lamp & Base - Nemo Shaped Lamp			No Bid			
Room Décor	Nickelodeon Paw Patrol Marshall Game Tall Rug	8' x 9'	Equal Product - Lakeshore Learning Material Flex-Space A Spot for Everyone Classroom Carpet for 20 Kids - 8' x 9'	LC282	\$419.00	5.00%	\$398.05
Room Décor	Disney Frozen Bed Tent	Each	Equal Product - Lakeshore Learning Material Magical Castle Bed Tent	EE134	\$129.00	5.00%	\$122.55
Room Décor	Trend Lab Dr. Seuss ABC Wall Clock			No Bid			

SUPPLIER'S NAME: Lakeshore Learning Materials, LLC

PRODUCT	EXAMPLE PRODUCT MANUFACTURER/DESCRIPTION	UNIT OF MEASURE	EQUAL PRODUCT MANUFACTURER/DESCRIPTION	MANUFACTURER'S PART NUMBER	LIST PRICE	PERCENTAGE DISCOUNT	NET COST
Car/Booster Seats	Graco SnugRide Click Connect 35 LX Infant Car Seat – Studio			No Bid			
Car/Booster Seats	Chicco Fit2™ 2-Year Rear-Facing Infant & Toddler Car Seat – Legato			No Bid			
Car/Booster Seats	Britax BOB B-Safe 35 Infant Car Seat with Base			No Bid			
Car/Booster Seats	Evenflo Chase LX Harnessed Booster Car Seat			No Bid			
Car/Booster Seats	RECARO Performance SPORT Combination Harness to Booster Car Seat			No Bid			
Strollers - All Varieties	Graco Views Stroller Travel System with SnugRide 35 LX Infant Car Seat			No Bid			
Strollers - All Varieties	Safety 1st Smooth Ride Travel System			No Bid			
Strollers - All Varieties	J is for Jeep Brand Adventure All-Terrain Jogging Stroller			No Bid			
Strollers - All Varieties	Baby Trend Navigator Lite Double Jogger Stroller			No Bid			
Strollers - All Varieties	Burley Design Solstice Jogging Stroller			No Bid			
Strollers - All Varieties	Graco FastAction™ Sport LX Stroller			No Bid			
Strollers - All Varieties	Cosco Character Umbrella Stroller			No Bid			
Strollers - All Varieties	Baby Jogger City Mini Double Stroller			No Bid			
Strollers - All Varieties	BOB 2016 Revolution Pro Duallie Stroller			No Bid			
Strollers - All Varieties	Rocket Deluxe Trailer			No Bid			
Strollers - All Varieties	Foundations Trio Sport 3-Passenger Stroller			No Bid			
Play Yards	Graco Pack 'n Play Play Yard with Cuddle Cove – Janey			No Bid			
Play Yards	Cosco Funsport Play Yard - Elephant Puzzle			No Bid			
Swings	HoneyBee Child SwingEase			No Bid			
Swings	Disney Minnie Mouse Garden Delights Full Size Swing			No Bid			
Swings	Graco DreamGlider 2-in-1 Gliding Swing and Sleeper – Rascal			No Bid			
Walkers	Dream On Me Victory Lane Activity Walker			No Bid			
Walkers	Disney Minnie Mouse Music and Lights™ Walker			No Bid			
Walkers	Classic World Wood Baby Walker with Blocks			No Bid			
Gyms & Playmats	Bright Starts 5-in-1 Your Way Ball Play™ Pink Activity Gym			No Bid			

PRODUCT	EXAMPLE PRODUCT MANUFACTURER/DESCRIPTION	UNIT OF MEASURE	EQUAL PRODUCT MANUFACTURER/DESCRIPTION	MANUFACTURER'S PART NUMBER	LIST PRICE	PERCENTAGE DISCOUNT	NET COST
Gyms & Playmats	Melissa & Doug Round the Construction Zone Work Site Rug With 3 Wooden Trucks (39 x 36 inches)	3 Plastic Vehicles	Equal Product - Lakeshore Learning Materials Kid-Tough Trucks	TR220X	\$89.50	5.00%	\$85.03
Gyms & Playmats	Galt Playnest and Gym Farm			No Bid			
Interactive Toys	Playskool Chase 'n Go Ball Popper			No Bid			
Interactive Toys	Fisher-Price Laugh & Learn Around the Town Learning Table			No Bid			
Interactive Toys	VTech Gallop & Rock Learning Pony Interactive Ride-On Toy			No Bid			
Interactive Toys	Fisher-Price Laugh & Learn Crawl-Around Learning Center	Each	Equal Product - Lakeshore Learning Materials Calming Colors® Play & Explore Sensory Ring	AA250	\$399.00	5.00%	\$379.05
Interactive Toys	VTech Musical Rhymes Book			No Bid			
Ride-Ons & Push Toys	VTech Sit-to-Stand Learning Walker	Each	Equal Product - Lakeshore Learning Materials Little Shoppers! Wooden Walker	AA252	\$169.00	5.00%	\$160.55
Ride-Ons & Push Toys	Melissa & Doug Push Along Elephant Toddler Toy for Beginning Walkers			No Bid			
Stroller & Car Seat Toys	Lamaze Clip & Go Captain Calamari			No Bid			
Stroller & Car Seat Toys	Winnie The Pooh Activity Toy			No Bid			
Rattles & Teethers	Fred & Friends Buff Baby Dumbbell Rattle	Set/4 Rattles	Equal Product - Lakeshore Learning Materials Explore & Play Activity Rattles	ER549	\$29.99	5.00%	\$28.49
Rattles & Teethers	Nuby Round Ring Ice Gel Teether			No Bid			
Rattles & Teethers	MAM BPA Free Bite and Brush Teether			No Bid			
Crib Toys	Cloud B Twilight Constellation Night Light – Turtle			No Bid			
Crib Toys	Fisher-Price Kick & Play Piano	Each	Equal Product - Lakeshore Learning Materials Little Hands Piano	FR252	\$29.99	5.00%	\$28.49
Crib Toys	Tiny Love Soothe N Groove Mobile			No Bid			
Blocks & Stacking Toys	Bruin Stacking Cups	Set/5	Equal Product - Lakeshore Learning Materials Pop & Play Dimpl™ Stacking Cups	SJH2931	\$19.99	5.00%	\$18.99
Blocks & Stacking Toys	LEGO DUPLO Deluxe Box of Fun			No Bid			
Babies/Toddlers	Wild Republic 12 inch Cuddlekin Three Toed Sloth Plush - Pale Brown			No Bid			
Babies/Toddlers	Disney Junior Goldie and Bear Mini Plush – Bear			No Bid			
Bath Toys	Munchkin Squirtin' Barnyard Friends	Set/10 Plastic	Equal Product - Lakeshore Learning Materials Soft & Squeezy Farm Animals	RA367	\$36.99	5.00%	\$35.14
Bath Toys	Skip Hop Zoo Stack N Pour Buckets			No Bid			
Bath Toys	Babies R Us Motorized Whale Fountain Bath Toy	Set/25	Equal Product - Lakeshore Learning Materials Animal Friends Bath Playset	EE386	\$19.99	5.00%	\$18.99

RFP# SW0900000	PERCENTAGE DISCOUNT OFF MANUFACTURER'S LIST PRICE
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SUPPLIER'S NAME: Lakehsore Learning Materials, LLC

EXHIBIT 3

PRODUCTS	PERCENTAGE DISCOUNT OFF MANUFACTURER'S LIST PRICE
Formula, Food, & Snack Products	No Bid
Products Utilized for Feeding Infants, Toddlers, & Children	No Bid
Other Items Not Listed Above in Exhibit 3 Example Products	No Bid

EXHIBIT 4

PRODUCT	PERCENTAGE DISCOUNT OFF MANUFACTURER'S LIST PRICE
Nursery Furniture	5.00%
Toddler/Children's Furniture	5.00%
Bedding & Room Décor	5.00%
Other Items Not Listed Above in Exhibit 2 Example Products	5.00%

EXHIBIT 5

PRODUCT	PERCENTAGE DISCOUNT OFF MANUFACTURER'S LIST PRICE
Infant/Toddler/Child Car Seats	5.00%
Strollers - All Varieties	5.00%
Baby Gear & Activities	5.00%
Baby/Toddler/Child Toys	5.00%
Other Items Not Listed Above in Exhibit 5 Example Products	5.00%

EXHIBIT 6

PRODUCT	PERCENTAGE DISCOUNT OFF MANUFACTURER'S LIST PRICE
Diaper & Potty Products	5.00%
Infant/Toddler/Child Clothes & Shoes	5.00%
Bath & Skincare Products	5.00%
Health & Child Safety Products	5.00%
Other Items Not Listed Above in Exhibit 6 Example Products	5.00%

Lakeshore Learning Contract

Final Audit Report

2023-06-12

Created:	2023-05-09
By:	Carol Williams-Downing (Carol.WilliamsDowning@omes.ok.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA6HU_k71ZO_Y47uLjapkbxrpi-9EFuHbo

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-  Document created by Carol Williams-Downing (Carol.WilliamsDowning@omes.ok.gov)
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 Agreement completed.
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