



STATE OF OKLAHOMA STATEWIDE CONTRACT WITH Databank IMX, LLC

This State of Oklahoma Statewide Contract #1007 - Enterprise Content Management (“Contract”) is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services and Databank IMX, LLC (“Supplier”) and is effective as of the date of last signature to this Contract. The initial term of the Contract shall be for one (1) year with four (4) one-year options to renew.

Purpose

The State is awarding this Contract to Supplier for the provision of Enterprise Content Management (ECM) Solutions, Document Scanning and Conversion Services, and Scanning/Imaging Hardware included within the three (3) categories on the Exhibit#1 to provide Oklahoma agencies and affiliate customers an effective and efficient way to obtain a variety of Document Management and Storage products and services, as more particularly described in certain Contract Documents. Supplier submitted additional terms and exceptions to the Contract. This Contract memorializes the agreement of the parties with respect to the negotiated terms of the Contract that is being awarded to Supplier.

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

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation No. EV00000249, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Statewide Contract Terms, Attachment C;
 - 2.4. Information Technology Terms, Attachment D;
 - 2.5. Pricing, Attachment E-1;
 - 2.6. EULA, Attachment E-2;
 - 2.7. Value Add, Attachment E-3; and
 - 2.8. Negotiated Exceptions to Contract, Attachment F.
3. The parties additionally agree:

- 3.1. Except for any 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.
- 3.2. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.
- 3.3. To the event of any conflict in terms, or inconsistencies, between Attachment E-1 through E-3 and the State's terms in Attachments A-D, the State's terms in Attachments A-D shall prevail. The State does not agree to any additional duties, obligations, or liabilities, other than the negotiated exceptions outlined in Attachment F.
- 3.4. All representations made by Supplier in their submitted bid, are incorporated into this Contract.

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**

DATABANK IMX, LLC

By:  Joe McIntosh (Jun 26, 2024 16:53 CDT)

By:  Lynn M. Bell (Jun 26, 2024 11:37 EDT)

Name: Joe McIntosh

Name: Lynn M. Bell

Title: CIO

Title: VP, Revenue Operations

Date: Jun 26, 2024

Date: Jun 26, 2024

ATTACHMENT A
SOLICITATION NO. EV00000249
SW1007- Enterprise Content Management (ECM)

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 for Enterprise Content Management (ECM) Solutions, Document Scanning and Conversion Services, and Scanning/Imaging Hardware included within the three (3) categories on the Exhibit#1 to provide Oklahoma agencies and affiliate customers an effective and efficient way to obtain a variety of Document Management and Storage products and services.

1. Contract Term and Renewal Options

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

2. Scope of Work

Certain Contract requirements and terms are attached hereto as Exhibit 1 and incorporated herein.

Exhibit#1

EV00000249 for SW1007

Oklahoma Office of Management and Enterprise Services (OMES) Information Services Division (ISD) intends to contract for Enterprise Content Management (ECM) Solutions, Document Scanning and Conversion Services, and Scanning/Imaging Hardware included within the three (3) categories below to provide Oklahoma agencies and affiliate customers an effective and efficient way to obtain a variety of Document Management and Storage products and services.

The State of Oklahoma's objectives are to reduce current expenses with price protected offers while optimizing services to participating agencies and affiliates.

Historical Sales

FY20	FY21	FY22	3 Year Total
\$1,057,762	\$846,588	\$2,510,801	\$4,415,151

Bidders may respond to the requirements in one, two, or more of the following categories:

Category 1 – Document Imaging and Conversion Services

Category 2 – Enterprise Content Management Software Systems

Category 3 – Scanning/Imaging Hardware Solutions

Section A is a **required** section and must be satisfactorily completed before the Bidders response can move on to Section B for the individual category evaluation.

Section A

1. Documentation

Any Bid shall include, as applicable, hosting provisions, Service Level Agreements (SLA's), Billing Information, Documentation, Training, Account Team/Support Provision, Escalation Process and Pricing for each product or service.

Such provisions, SLA's and other information are subject to negotiation and additional provisions related to hosting services and SLA's may be required prior to any award being issued.

- a) A Service Level Agreement (SLA) outlines the minimum service that a customer may expect for services, warranties, and support.
- b) Billing Information outlines what information is provided in billing and how it is delivered.
- c) Documentation outlines how detailed documents of services that are provided to entities on an on-going basis to include services by location and account information can be obtained.
- d) 4. Training outlines the general requirements for providing training for implementing and using the solution at the End-User level and at Administrative/Operational Personnel levels
- e) Account Team and Support Provisions outline the Suppliers capabilities of providing world class support and account service.
- f) Escalation Process outlines the predetermined levels of escalation in the event of an emergency.

2. Bidder Information

Provide the number of years your company has sold the products/services requested in this solicitation to Oklahoma state agencies, local governments, independent school districts, and institutions of higher education.

3. Risk

Define risks associated with the products and services being offered and include the action plans in place to mitigate these risks.

4. Migration and Transition Plans

Discuss the process in place for transitioning any part of the resulting contract to a new Supplier. This includes hardware, software, licenses, knowledge transfer, documentation, and coordination of efforts.

5. References

Provide three (3) references where a solution of similar size and scope has been deployed. References provided must contain a contact person with full contact information (i.e., current employer, telephone number, mailing address and e-mail address).

Section B

1. Category 1 - Document Imaging and Conversion Services

- a) The State seeks services to electronically scan, digitize and index data for conversion from paper or microfilm/microfiche to an electronic media format. For example, this service could include interfacing with an existing system, image enhancement, document preparation, preservation, archiving, formatting, indexing secure document destruction and storage.
- b) Describe the scanning solutions including stand-alone scanners available from your company and provide pricing on the **price sheet as Exhibit #2**.
- c) The Supplier must provide secure storage for project media during the course of a project to protect against theft and damage. Describe the environment used for secure storage.
- d) Describe the process used to ensure documents are securely transported and stored.
- e) Provide information on the facilities used to store project media including physical security, fire protection and environmental controls etc. either as a storage option and/or during the term of a project.

2. Category 2 - Enterprise Content Management Software Systems

- f) The State seeks a Supplier to provide a Commercial-Off-The-Shelf (COTS) Enterprise Content Management (ECM) solution, including professional services that provides a full range of ECM functions – capture, store, search, collaborate, manage, and archive for use by State Entities to manage content such as documents, email, images, reports, and other unstructured documents.
- g) Describe how your proposed solution will meet the State's objectives and indicate whether your solution is an on-premises or cloud-based solution or both.
- h) Include a detailed explanation how the solution is licensed. Include the functionality provided with each end-user license type and a description of each module available.
- i) Discuss what systems the solution integrates such as PeopleSoft, Microsoft, Application Programming Interface (API) support, Oracle, other ECM applications, etc...
- j) Identify and describe your project management methodology.
- k) Discuss the distinct features of your solution that make it easy to use, scalable and secure.
- l) Describe how incoming documents are captured. Include consideration of faxes, e-mail, and print.
- m) Discuss the following as it relates to the features provided in your solution:
 - 1. Supported Platforms
 - 2. Collaboration Features
 - 3. Search Features
 - 4. Meta-data Standards
 - 5. Reports and Report Management
 - 6. Monitoring of Workflow and Activity Queues

7. Ad-hoc Workflows

3. Category 3 - Imaging Hardware and Associated Software

The State seeks a Supplier to provide Imaging Hardware/Software for a range of projects or processes that include stand-alone solutions, or that are part of an ECM solution. The software in this category is specific to the functionality of the hardware being proposed.

- a) Describe the scanning/imaging capabilities and include consideration of the following:
 1. Batch processing capacity
 2. Distributed workgroup capture
 3. Quality control and rescanning
 4. Simplex/duplex capacity
 5. Resolution
 6. Document preparation
 7. Indexing
 8. Routing
 9. Support for OCR, ICR, OMR, and barcode
 10. Storage requirements
 11. Identify which image formats are supported. Include discussion of standards supported (e.g., TIFF, JPEG2000, and PDF/A).
- b) Geographic Support – Discuss what areas of the state where you can provide hardware support.
- c) Training and Manuals – Discuss what training is provided and if manuals or other training materials are available at no charge to Oklahoma.

Section C

1. Hosting – If applicable

Answer the following questions related to a Supplier-hosted system and an Agency-hosted system respectively. If either option is not applicable with your system, please answer N/A:

Supplier Hosted:

- a) Provide data showing system uptime and availability over the course of at least the last year.
- b) Provide estimates based on historical data regarding how much scheduled downtime can be expected.
- c) Indicate how clients will connect to your hosted servers (i.e., public Internet, TLS, SSL, point-to-point VPN, etc.)
- d) Indicate what part(s) of your system you offer to host (e.g., database server, Web server, etc.)
- e) Describe which standards or best practices you follow regarding the security of your hosting environment. Do you regularly undergo any industry standard, third-party audits and If so, how often?

Agency Hosted:

- a) Minimum server specification requirements
- b) Recommended server configuration (i.e., number of servers and their roles)
- c) Supported server operating system(s)
- d) Supported server database(s)
- e) Suppliers preferred method of gaining remote access to the server(s) for the purposes of support and maintenance.
- f) Describe the mechanism by which clients will connect to your systems server(s).

2. Lease Agreements – Optional

In addition to purchases, OMES - ISD and any Supplier awarded a contract as a result of this RFP may agree to provisions that allow leasing of the products offered under the resulting contract. OMES - ISD is seeking the option to obtain a Lease that provides for paying for the use of equipment, not the ownership. Payments that are spread out over time and the equipment will be returned at lease end. The Supplier shall provide any required leasing terms with the response.

3. Value-add - Optional

Provide information on other products and services that may be offered by the Supplier that are within the scope of this solicitation and provide pricing. The State may award value-add products and services at its sole discretion.

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

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

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

1 Scope and Contract Renewal

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

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

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

2 Contract Effectiveness and Order of Priority

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

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

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

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

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

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

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

3.1 The Contract may only be modified, amended, or expanded by an Addendum. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.

3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.

4 **Definitions**

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

4.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.

4.2 **Addendum** means a mutually executed, written modification to a Contract Document.

4.3 **Amendment** means a written change, addition, correction or revision to the Solicitation.

4.4 **Bid** means an offer a Bidder submits in response to the Solicitation.

- 4.5 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.6 **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract Documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 4.7 **Contract Document** means this document; any master or enterprise agreement terms entered into between the parties that are mutually agreed to be applicable to the Contract; any Solicitation; any Contract-specific terms; any Supplier's Bid as may be negotiated; any statement of work, work order, or other similar mutually executed ordering document; other mutually executed documents and any Addendum.
- 4.8 **Customer** means the entity receiving goods or services contemplated by the Contract.
- 4.9 **Debarment** means action taken by a debaring 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. §1352 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://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>
- 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.

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 204
Oklahoma City, Oklahoma 73105

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

Purchasing Division Deputy General Counsel
2401 North Lincoln Boulevard, Suite 204
Oklahoma City, Oklahoma 73105

26 Miscellaneous

26.1 Choice of Law and Venue

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

26.2 No Guarantee of Products or Services Required

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

26.3 Employment Relationship

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

26.4 Transition Services

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

26.5 Publicity

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

26.6 Open Records Act

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

26.7 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State or a

Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

26.8 Mutual Responsibilities

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

26.9 Invalid Term or Condition

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

26.10 Severability

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of

this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

26.11 Section Headings

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

26.12 Sovereign Immunity

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

26.13 Survival

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

26.14 Entire Agreement

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

26.15 Gratuities

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

26.16 Import/Export Controls

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

ATTACHMENT C

OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

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

2. Orders and Addendums

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

3. Termination for Funding Insufficiency

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

4. Termination for Cause

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

5. Termination for Convenience

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

6. Contract Management Fee and Usage Report

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

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

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

6.3 All Contract Usage Reports shall meet the following criteria:

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

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

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

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

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

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

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

Definitions

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

- 1.7 Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.
- 1.8 Personal Data** means Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.
- 1.9 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.10 State CIO** means the State Chief Information Officer or authorized designee.
- 1.11 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 1.12 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.
- 1.13 Work Product** means any and all deliverables produced by Supplier for Customer under a statement of work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other

programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (i) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or statement of work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or a statement of work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Supplier personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2 Termination of Maintenance and Support Services

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

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

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

3 Compliance and Electronic and Information Technology Accessibility

State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set

forth at <https://oklahoma.gov/omes/services/information-services/accessibility-standards.html>. Supplier shall provide a Voluntary Product Accessibility Template (“VPAT”) describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

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

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

4.1 Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the property of the Customer.

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

5 Offshore Services

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

6 Compliance with Technology Policies

6.1 The Supplier agrees to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at:

<https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

Supplier’s employees and subcontractors shall adhere to the applicable State IT

Standard Methodologies and Templates including but not limited to Project Management, Business Analysis, System Analysis, Enterprise and IT Architecture, Quality, Application and Security Methodologies and Templates as set forth at:

<https://oklahoma.gov/omes/services/information-services/policy-standards-publications.html>

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.
- 6.3** Supplier shall comply with the CJIS Security Policy as more particularly described at Appendix 2 attached hereto and incorporated herein.

7 Emerging Technologies

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

8 Extension Right

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

9 Source Code Escrow

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

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;

- 9.4 The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5 The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6 The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7 Supplier's ceasing of maintenance and support of the software; or
- 9.8 Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 Commercial Off the Shelf Software

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

11 Ownership Rights

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

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

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as "Work Made for Hire", Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive,

irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

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

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 Intellectual Property Ownership

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

- 12.1** As between Supplier and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier hereby agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is hereby effectively transferred, granted, conveyed, assigned and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third-Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.
- 12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further

documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier's signature due to the dissolution of Supplier or Supplier's failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier's agent and Supplier's attorney-in-fact to act for and in Supplier's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying

the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.

- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third-Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third-Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third-Party Intellectual Property that may be embodied or reflected in the Work Product.
- 12.9** Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.

12.10 To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

12.11 If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 Hosting Services

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

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

14 Change Management

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

15 Service Level Deficiency

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

16 Notices

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

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

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

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

Appendix 1 to State of Oklahoma Information Technology Terms

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

A. Customer Data

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

B. Data Security

1. Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and

unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

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

C. Security Assessment

1. The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.
2. Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

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

1. Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
2. Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e., HIPAA requires notice to be provided within 24 hours).
3. Supplier shall:

1. Maintain processes and procedures to identify, respond to and analyze Security Incidents;
 2. Make summary information regarding such procedures available to Customer at Customer's request;
 3. Mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Supplier; and
 4. Document all Security Incidents and their outcomes.
4. If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

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

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

F. Notices

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

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

and

servicedesk@omes.ok.gov

G. Supplier Representations and Warranties

Supplier represents and warrants the following:

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

H. Indemnity

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of

Customer, arising from or in connection with Supplier's breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party's patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

I. Termination, Expiration and Suspension of Service

1. During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.
2. In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and as determined by the Customer:
 - a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;
 - b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or
 - c. a combination of the two immediately preceding options.
3. Supplier shall not take any action to intentionally erase any Customer Data for a period of:
 - a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;

- b.** 30 days after the effective date of termination, if the termination is for convenience; or
- c.** 60 days after the effective date of termination if the termination is for cause.

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

- 4.** The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.
- 5.** Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

Appendix 2 to State of Oklahoma Information Technology Terms

INTRODUCTION

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

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

CJIS SECURITY POLICY REQUIREMENTS GENERALLY

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

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

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

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

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

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;
2. the general policies in §4;

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

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

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

Policy Requirement Checklist

Compliance checklist –

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

Attachment E-1: Pricing

Exhibit#2 -Price sheet for EV00000249 - SW1007

State of Oklahoma

Document Imaging & Conversion Services			
	List Price	% off List Discount	Oklahoma Price
Document Indexing	\$45 Per Hour	24.5	\$33.98
Scanning Services	\$.15 Per Image	24.5	\$0.11
Document Preparation	\$45 Per Hour	24.5	\$33.98
Data Entry	\$45 Per Hour	24.5	\$33.98
Data to Disk	\$45 Per Hour	24.5	\$33.98
Storage Costs	\$.50 Per Box Per Month	24.5	\$0.38
Confidential Destruction of Paper Documents	\$6.50 Per Box	24.5	\$4.91
Conversion of Microfilm	\$2 Per Frame	24.5	\$1.51
Upload converted records to ECM	\$275 Per Hour	24.5	\$207.63
Pick-up, delivery and handling	\$3.00 Per Mile	24.5	\$2.27
Project Set Up	\$275 Per Hour	24.5	\$207.63
Project Management	\$275 Per Hour	24.5	\$207.63
Intelligent Document Processing	\$.30 Per Image	24.5	\$0.23

*Add rows as necessary

Attachment E-1: Pricing

Exhibit#2 - Price sheet for EV00000249 - SW1007
State of Oklahoma

Enterprise Content Management Software Systems					
Product Name	Part No.	Product Description	List Price	% off List Discount	Oklahoma Price
Seat Licenses					
Named User Client (1-100)	CTIPN_SUBS	Provides retrieval, viewing, printing, and management of documents for a	\$ 366.00	20%	\$ 292.80
Named User Client (101-200)	CTIPN_SUBS	Provides retrieval, viewing, printing, and management of documents for a	\$ 288.00	20%	\$ 230.40
Named User Client (201+)	CTIPN_SUBS	Provides retrieval, viewing, printing, and management of documents for a	\$ 240.00	20%	\$ 192.00
Concurrent User Client (1-100)	CTIPC_SUBS	Provides retrieval, viewing, printing, and management of documents.	\$ 672.00	20%	\$ 537.60
Concurrent User Client (101-200)	CTIPC_SUBS	Provides retrieval, viewing, printing, and management of documents.	\$ 576.00	20%	\$ 460.80
Concurrent User Client (201+)	CTIPC_SUBS	Provides retrieval, viewing, printing, and management of documents.	\$ 460.00	20%	\$ 368.00
Workflow Named Client	WLIPN_SUBS	Provides electronic document routing through a configurable work	\$ 672.00	20%	\$ 537.60
Workflow Named User	WLIPN_SUBS	Provides electronic document routing through a configurable work	\$ 528.00	20%	\$ 422.40
Workflow Named User	WLIPN_SUBS	Provides electronic document routing through a configurable work	\$ 432.00	20%	\$ 345.60
Workflow Named User	WLIPN_SUBS	Provides electronic document routing through a configurable work	\$ 384.00	20%	\$ 307.20
Workflow Named User	WLIPN_SUBS	Provides electronic document routing through a configurable work	\$ 336.00	20%	\$ 268.80
Workflow Named User	WLIPN_SUBS	Provides electronic document routing through a configurable work	\$ 288.00	20%	\$ 230.40
Workflow Concurrent User (1-20)	WLIPC_SUBS	Provides electronic document routing through a configurable work	\$ 1,056.00	20%	\$ 844.80
Workflow Concurrent User (21-50)	WLIPC_SUBS	Provides electronic document routing through a configurable work	\$ 864.00	20%	\$ 691.20
Workflow Concurrent User (51-100)	WLIPC_SUBS	Provides electronic document routing through a configurable work	\$ 768.00	20%	\$ 614.40
Workflow Concurrent User (101-300)	WLIPC_SUBS	Provides electronic document routing through a configurable work	\$ 672.00	20%	\$ 537.60
Workflow Concurrent User (300-1000)	WLIPC_SUBS	Provides electronic document routing through a configurable work	\$ 572.00	20%	\$ 457.60
Workflow Concurrent User (1000+)	WLIPC_SUBS	Provides electronic document routing through a configurable work	\$ 528.00	20%	\$ 422.40
WorkView Named User (1-20)	VLIPN_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 432.00	20%	\$ 345.60
WorkView Named User (21-50)	VLIPN_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 384.00	20%	\$ 307.20
WorkView Named User (50-100)	VLIPN_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 336.00	20%	\$ 268.80
WorkView Named User (101-300)	VLIPN_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 288.00	20%	\$ 230.40
WorkView Named User (301-1000)	VLIPN_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 240.00	20%	\$ 192.00
WorkView Named User (1001+)	VLIPN_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 192.00	20%	\$ 153.60
WorkView Concurrent User (1-20)	VLIPC_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 720.00	20%	\$ 576.00
WorkView Concurrent User (21-50)	VLIPC_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 624.00	20%	\$ 499.20
WorkView Concurrent User (50-100)	VLIPC_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 576.00	20%	\$ 460.80
WorkView Concurrent User (101-300)	VLIPC_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 528.00	20%	\$ 422.40
WorkView Concurrent User (301-1000)	VLIPC_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 480.00	20%	\$ 384.00
WorkView Concurrent User (1001+)	VLIPC_SUBS	Provides the ability to create custom applications in OnBase to track	\$ 432.00	20%	\$ 345.60
Modules as required		OnBase has numerous add on modules for additional functionality that	Varies	20%	Varies
Related Services					
Training			\$ 250.00	20.0%	\$212.50
Support			\$ 250.00	20.0%	\$212.50
Annual Maintenance OR Subscription			Varies	20.0%	
Implementation			\$ 250.00	20.0%	\$212.50
Professional Services			\$ 250.00	20.0%	\$212.50

*Add rows as necessary

Combined EULA and OnBase Subscription Agreement

End User Subscription Agreement for Software and Maintenance and Support

This End User Subscription Agreement for Software and Maintenance and Support (“Agreement”) is made between DataBank IMX, LLC, a Delaware Limited Liability Company (“Solution Provider”), located at 458 Pike Road, Huntingdon Valley, PA 19006, and State of Oklahoma (“User”), located at 2401 N Lincoln Blvd. Oklahoma City, OK 73105, with respect to the licensing of the Software (as defined below) Software and the provision of Maintenance and Support (as defined below), for the Software.

1. DEFINED TERMS: All capitalized terms used in this Agreement shall have the meanings ascribed them in this Agreement:

“Delivery” means: (i) the electronic downloading of the Software onto User’s systems, (ii) the Software being made available by Solution Provider to User for electronic download onto User’s systems; or (iii) the delivery by Hyland to User of a Production Certificate for such Software module(s) by Hyland either shipping (physically or electronically) the Production Certificate to User or making the Production Certificate available for electronic download by User (including through one of Hyland’s authorized solution providers).

“Documentation” means: (1) to the extent available, the “Help Files” included in the Software; (2) if no such “Help Files” are included in the Software, such other documentation published by Hyland, in each case, which relate to the functional, operational or performance characteristics of the Software.

“Effective Date” means the date this Agreement is signed by the last party that signs this Agreement, as determined based on the dates set forth after their respective signatures.

“Error” means any defect or condition inherent in the Software which is reported by User in accordance with this Agreement and which is confirmed by Solution Provider, that causes the Software to fail to function in any material respects as described in the Documentation.

“Error Correction Services” means Solution Provider’s reasonable efforts to correct an Error, which may be effected by a reasonable workaround.

“Hyland” means Hyland Software, Inc. or one of its affiliates, and its successors and assigns.

“Maintenance and Support” means for the Software, (i) Error Correction Services; (ii) Technical Support Services; and (iii) the availability of Upgrades and Enhancements in accordance with this Agreement.

“Production Certificate” means: license codes, a license certificate, or an IFM file issued by Hyland or its Solution Provider and necessary for User to activate Software for User’s production use.

“Prohibited Act” or “Prohibited Acts” means any action taken by User that is: (i) in violation of Section 3 of this Agreement; or (ii) in violation of or contrary to Section 4 of this Agreement.

“Resolution” means Solution Provider provides User with a reasonable workaround, correction, or modification that solves or mitigates a reported Error.

“Software” means (i) Hyland’s proprietary software products described on Exhibit A attached hereto and other Hyland proprietary software products licensed by User from Solution Provider, including any third party software bundled by Hyland together with Hyland’s proprietary software products as part of a unified product; and (ii) all Upgrades and Enhancements of the software products described in clause (i) which User properly obtains under this Agreement, Software does not include ShareBase.

“Subscription Fees” means periodic fees for the licensing of Software under this Agreement and for Maintenance and Support for such Software, and payable by User to Solution Provider.

“Retired Software”, means at any particular time during a maintenance period covered by this Agreement, any Software product or version of the Software licensed by User from Solution Provider under this Agreement which is identified as being retired on Hyland’s applicable secure end user web site, currently <https://www.hyland.com/community>. The effective date of such change will be twelve (12) months from the date Hyland initially posts the status change on its end user web site, and User will receive notice as a registered user of Hyland’s applicable secure end user web site.

Attachment E-2

“Technical Support Services” means telephone or online technical support related to problems reported by User and associated with the operation of any Software, including assistance and advice related to the operation of the Software.

“Upgrades and Enhancements” means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software that Solution Provider makes available to User or to Solution Provider’s end users generally during any maintenance period under this Agreement to correct Errors or deficiencies or enhance or change the capabilities of the Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate product offerings, new modules, or re-platformed Software.

2. **Reserved.**
3. **LICENSE:**

3.1 Subject to User’s payment in full of the Subscription Fees and any other amounts due and payable under this Agreement, and subject further to User’s compliance with this Agreement, Solution Provider grants to User a revocable, non-exclusive, non-assignable (except as provided in this Agreement), limited license to the Software, in machine-readable object code form only, and the associated Documentation, solely for use:

(a) by User internally, and only for storing, processing and accessing User’s own data; and

(b) subject to Section 3.7 below, by a third party contractor retained by User as a provider of services to User (“Contractor”), but only by the Contractor for storing, processing and accessing User’s own data in fulfillment of the Contractor’s contractual obligations as a service provider to User.

The Software and associated Documentation is licensed for use by a single organization and may not be used for the processing of third-party data as a service bureau, application service provider or otherwise. User shall not make use the Software or associated Documentation in any manner not expressly permitted by this Agreement. Software subject to a regulatory control may only be installed in the country identified as the end user location in the purchase order. The Software may be located and hosted on computer servers owned and controlled by a third party. Such third party hosting provider shall be considered a Contractor, and subject to the requirements of Section 3.7 below.

3.2 Use Restriction. Each module of the Software is licensed for a specific type of use, such as concurrently or on a specified workstation or by a specified individual and the Software may control such use. Software products that are volume-based may: (i) no longer function if applicable volume limits have been exceeded; (ii) require User to pay additional fees based on User’s volume usage; and/or (iii) include functionality which monitors or tracks User usage and reports that usage. User may not circumvent or attempt to circumvent this restriction by any means, including but not limited to changing the computer calendars. Use of software or hardware that reduces the number of users directly accessing or utilizing the Software (sometimes called “multiplexing” or “pooling” software or hardware) does not reduce the number of Software licenses required. The required number of Software licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware. User is prohibited from using any software other than the Software Client modules or a Software application programming interface (“API”) to access the Software or any data stored in the Software database for any purpose other than generating reports or statistics regarding system utilization, unless Solution Provider has given its prior written consent to User’s use of such other software and User has paid to Solution Provider Subscription Fees with respect to such access. User further agrees that the Software shall not be copied and installed on additional servers unless User has purchased a license therefore, and the number of users of the Software shall not exceed the number of users permitted by the Software Client licenses purchased by User.

3.3 Production and Test Systems. User shall be entitled to use one (1) production copy of the Software licensed and one (1) additional copy of the production environment licensed for customary remote disaster recovery purposes which may not be used as a production system concurrently with the operation of any other copy of the Software in a production environment. Subject to the payment of any additional applicable license fees or subscription fees, User shall be entitled to license a reasonable number of additional copies of the production environment licensed Software to be used exclusively in a non-production environment and solely for the purposes of experimenting and testing the Software, developing integrations between the Software and other applications that integrate to the Software solely using integration modules of the Software licensed by User under this Agreement, and training User’s employees on the Software (“Test Systems”). User may be required to provide to Solution Provider certain information relating to User’s intended use of such Test Systems such as the manufacturer, model number, serial number and installation site. Solution Provider reserves the right to further define the permitted use(s) and/or restrict the use(s) of the Test Systems. User’s sole recourse in the event of any dissatisfaction with any Software in any non-production system is to stop using such Software and return it to Solution Provider, provided that, to the extent that User is using the Test System for the purposes of testing an Upgrade or Enhancement of the Software prior to implementing the same in User’s production environment, then User may contact Solution Provider for the provision of Maintenance and Support as described in this Agreement. User shall not make any copies of the Software not specifically authorized by this Section.

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3.4 Evaluation Software. From time to time User may elect to evaluate certain Software modules (“Evaluation Software”) for the purpose of determining whether or not to purchase a production license of such Evaluation Software. Evaluation Software is licensed for User’s use in a non-production environment. Notwithstanding anything to the contrary, as to any Evaluation Software, the Agreement and the limited license granted hereby will terminate on the earliest of: (a) last day of the evaluation period specified in the accepted purchase order delivered for such Evaluation Software; or (b) immediately upon the delivery of written notice to such effect by Solution Provider to User. Upon expiration or other termination of such period, User immediately shall either (y) discontinue any and all of use of the Evaluation Software and related Documentation and remove the Evaluation Software; or (z) deliver a purchase order for purchase of such Evaluation Software.

3.5 Third Party Licenses. The Software may be bundled with software owned by third parties, including but not limited to those manufacturers listed in the Help About screen of the Software. Such third party software is licensed solely for use within the Software and is not to be used on a stand-alone basis. Notwithstanding the above, User acknowledges that, depending on the modules licensed, the Software may include open source software governed by an open source license, in which case the open source license (a copy of which is provided in the Software or upon request) may grant you additional rights to such open source software. Additionally, in the case of such software to be downloaded and installed on a mobile device, if such software will be downloaded from the application market or store maintained by the manufacturer of the mobile device, then use of such software will be governed by the license terms for the software included at the applicable application store or market or presented to User or User’s user in the software, and this Agreement will not govern such use.

3.6 Integration Code. If applicable, Software also includes all adapters or connectors created by Hyland and provided to you by Solution Provider as part of an integration between the Software and a third party line of business application (“Integration Code”). Software also includes any desktop host or other content services software provided by Hyland and downloaded on a user’s computer used to extend functionality in Hyland’s products. Such Integration Code and desktop host may only be used in combination with other Software and in accordance with the terms of this Agreement.

3.7 Contractor Use Agreement. User agrees that if it desires to allow a Contractor to do any of the following:

(a) make use of the Software configuration tools, Software administrative tools or any of the Software’s application programming interfaces (“APIs”);

(b) make use of any training materials or attend any training courses, either online or in person, in either case related to the Software; or

(c) access any of Hyland’s secure websites (including, but not limited to, users.onbase.com, teamonbase.com, training.onbase.com, demo.onbase.com, and Hyland.com/Community), either through Contractor’s use of User’s own log-in credentials or through credentials received directly or indirectly by Contractor;

then, User must cause such Contractor to execute a use agreement with Hyland in a form available for download at Hyland’s Community website (“Contractor Use Agreement”). User understands and agrees that: (x) User may not allow a Contractor to do any of the foregoing if such Contractor has not signed a Contractor Use Agreement, and (y) Contractors may use the Software only in compliance with the terms of this Agreement, and (z) User is responsible for such compliance by all Contractors that do not execute a Contractor Use Agreement. User agrees that it shall indemnify Hyland from and against all claims, liabilities, losses, damages and costs, including, but not limited to, reasonable attorneys’ fees and court costs, which are suffered or incurred by Hyland and arise from or in connection with the breach or noncompliance with the terms of this Agreement by any Contractor that does not sign a Contractor Use Agreement.

3.8 No High Risk Use. The Software is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted. The Software is not designed or intended for use in any situation where failure or fault of any kind of the Software could lead to death or serious bodily injury to any person, or to severe physical or environmental damage (“High Risk Use”). User is not licensed to use the Software in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include utilization of the Software for administrative purposes, as an information resource for medical professionals, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non- controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function. User agrees not to use, distribute or sublicense the use of the Software in, or in connection with, any High Risk Use." User agrees to indemnify and hold harmless Solution Provider from any third-party claim arising out of User’s use of the Software in connection with any High Risk Use.

3.9 Audit Rights. Upon reasonable notice to User, Solution Provider shall be permitted access to audit User’s use of the Software solely in order to determine User’s compliance with the licensing and pricing terms this Agreement, including, where

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applicable, to measure User's volume usage. Additionally, if requested by Solution Provider in connection with Software licensed on a volume basis, User shall provide reports that show User's volume usage. User shall reasonably cooperate with Solution Provider with respect to its performance of such audit. User acknowledges and agrees that User is prohibited from publishing the results of any benchmark test using the Software to any third party without Hyland's prior written approval, and that User has not relied on the future availability of any programs or services in entering into this Agreement.

3.10 AnyDoc. The optional AccuZip component of the OCR for AnyDoc and AnyDoc EXCHANGEit Software products contains material obtained under agreement from the United States Postal Service (USPS) and must be kept current via an update plan provided by Solution Provider to maintain User's continued right to use. The USPS has contractually required Solution Provider to include "technology which automatically disables access to outdated [zip code] products." This technology disables only the AccuZip component and is activated only if AccuZip is not updated on a regular and timely basis. Solution Provider regularly updates the zip code list as part of Maintenance and Support for the AccuZip module.

3.11 The Software may contain functionality that allows User to access, link or integrate the Software with User's applications or applications or services provided by third parties. Solution Provider has no responsibility for such applications or services, websites or content and does not endorse any third party web sites, applications or services that may be linked or integrated through the Software; any activities engaged in by User with such third parties is solely between User and such third party.

3.12 With respect to certain Software products licensed for use in a healthcare setting, pricing for the Software is based upon the number of Studies and Non-DICOM Objects that are generated annually by User using the Software and pricing will be adjusted based on such usage. For the purposes of this Agreement, "Study" or "Studies" means a collection of one of or more images generated for a single patient which is identified by a study instance unique identifier (SUID) and "Non-DICOM Object" means a collection of one of or more images or documents which are not identified by an SUID and are stored as a single file. For clarification, the number of Studies and Non-DICOM does not include any pre-existing Studies that are migrated into the Software. During the term of the Agreement, following receipt of a written request from Hyland, User shall promptly provide to Hyland reasonable access to Hyland to enable Hyland to report to User in writing the number of Studies and Non-DICOM Objects generated by User during the reporting period identified by Hyland (the "Hyland Reported Number"). User shall have the right to review and object in writing to such Hyland Reported Number. If User objects to the Hyland Reported Number, the parties shall cooperate in good faith to attempt to resolve the dispute within ten (10) days of User's objection. If, within twenty (20) days of User's objection, the parties are not able to resolve the dispute, either party may submit such dispute to a mutually agreed upon independent third party, who shall act as an independent consultant ("Independent Consultant").

4. OWNERSHIP AND PROHIBITED CONDUCT:

4.1 Ownership. Solution Provider's direct and indirect suppliers, including Hyland, own the Software and Documentation, including, without limitation, any and all worldwide copyrights, patents, trade secrets, trademarks and proprietary and confidential information rights in or associated with the foregoing. The Software and Documentation are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Software or Documentation are transferred to User. User agrees that nothing in this Agreement or associated documents gives it any right, title or interest in the Software or Documentation, except for the limited express rights granted in this Agreement. User acknowledges and agrees that, with respect to Hyland's end users generally, Hyland has the right, at any time, to change the specifications and operating characteristics of the Software and Hyland's policies respecting Upgrades and Enhancements (including but not limited to its release process). THIS AGREEMENT IS NOT A WORK FOR HIRE AGREEMENT. At no time shall User file or obtain any lien or security interest in or on any components of the Software or Documentation.

4.2 Prohibited Conduct. User agrees not to: (a) remove copyright, trademark or other proprietary rights notices that appear on or during the use of the Software or Documentation; (b) sell, transfer, rent, lease or sub-license the Software or Documentation; (c) alter or modify the Software or Documentation; or (d) reverse engineer, disassemble, decompile or attempt to derive source code from the Software or Documentation, or prepare derivative works therefrom.

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5. MAINTENANCE AND SUPPORT:

5.1 Maintenance and Support Terms. Subject to the payment of Subscription Fees, except with respect to Retired Software, Solution Provider will provide Maintenance and Support in accordance with this Section 5.

5.1.1 Technical Support Services. Solution Provider will provide telephone or online technical support related to problems reported by User and associated with the operation of any Software, including assistance and advice related to the operation of the Software. Technical Support Services are not available for Retired Software.

5.1.2 Error Correction Services. With respect to any Errors in the Software which are reported by User and which are confirmed by Solution Provider, in the exercise of its reasonable judgment, Solution Provider will use its reasonable efforts to correct the Error, which may be effected by a reasonable workaround. Solution Provider shall promptly commence to confirm any reported Errors after receipt of a proper report of such suspected Error from User. Solution Provider may elect to correct the Error in the current available or in the next available commercially released version of the Software and the Resolution may require the User to implement an Upgrade and Enhancement to obtain the correction. Error Correction Services are not available for Retired Software.

5.1.3 Reporting Policies and Procedures Applicable to Technical Support Services and Error Correction Services. In requesting Technical Support Services and Error Correction Services, User will submit such requests in accordance with Service Provider's current reporting procedures. Maintenance and Support generally will be available during the hours of 8 a.m. to 5 p.m., CST Time, Monday through Friday, excluding holidays, or as otherwise provided by Solution Provider to its end users, by on-line connectivity, telephonically or both. In the case of reporting an Error, User will provide Solution Provider with as much information and access to systems as reasonably possible to enable Solution Provider to investigate and attempt to identify and verify the Error. User will work with Solution Provider support personnel during the problem isolation process, as reasonably needed. User will notify Solution Provider of any configuration changes, such as network installation/expansion, Software upgrades, relocations, etc.

5.1.4 Upgrades and Enhancements. Solution Provider will provide, in accordance with Hyland's then current policies, as set forth from time to time on Hyland's secure end user web site (currently www.hyland.com/community), all Upgrades and Enhancements, if and when released during the term of this Agreement. Upgrades and Enhancements are not available for Retired Software.

5.2 Exclusions.

5.2.1 Generally. Solution Provider is not responsible for providing, or obligated to provide, Maintenance and Support under this Agreement: (1) in connection with any Errors or problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the Software, or from any error or defect in any configuration of the Software, which activities in any such case were undertaken by any party other than Solution Provider or Hyland; (2) in connection with any Error if Solution Provider (directly or through Hyland) has previously provided corrections for such Error, which User fails to implement; (3) in connection with any Errors or problems that have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than third party software embedded in the Software by Hyland), hardware or any system or networking utilized by User; (4) if the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; or (5) if any party other than Solution Provider or Hyland has provided any services in the nature of Maintenance and Support to User with respect to the Software. Maintenance and Support does not include any services that Solution Provider may provide in connection with assisting or completing an upgrade of Software with any available Upgrade and Enhancement.

5.2.2 Excluded Software and Hardware. This Agreement does not govern, and Solution Provider shall not be responsible for, the maintenance or support of any software other than the Software or for any hardware or equipment of any kind or nature, whether or not obtained by User from Solution Provider.

5.3. Certain Other Responsibilities of User.

5.3.1 Operation of the Software and Related Systems. User acknowledges and agrees that it is solely responsible for the operation, configuration, supervision, management and control of the Software and all related hardware and software (including the database software). User is solely responsible for: obtaining or providing training for its personnel; taking appropriate measures to isolate and backup or otherwise archive its computer systems, programs, data or files; and instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use.

5.3.2 Access to Premises and Systems. User shall make available reasonable access and use of User's premises, and online access to User's computer hardware, peripherals, Software and other software as Solution Provider deems necessary to diagnose and correct any Errors or to otherwise provide Maintenance and Support. Accordingly, User shall install and maintain means of

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communication and the appropriate communications software as mutually agreed upon by Solution Provider and User and an adequate connection with Solution Provider and Hyland to facilitate Solution Provider's on-line Maintenance and Support. Such right of access and use shall be provided at no cost or charge to Solution Provider or Hyland.

5.4 Professional Services for Projects Not Covered by Technical Support Services or Error Correction Services. If User requests professional services which are outside the scope of Technical Support Services or Error Correction Services, User agrees that such services shall not be covered by this Agreement and such services only shall be engaged pursuant to a separate services agreement.

5.5 Implementation of Upgrades and Enhancements to Regulated Products. User acknowledges and agrees that for regulatory compliance purposes, Solution Provider may be required to engage Hyland under a services agreement to implement Upgrades and Enhancements to a regulated product. If Hyland offers a self-service option for implementing Upgrades and Enhancements to a regulated product, and the User chooses this option, User agrees to comply with the training, reporting, and documentation requirements established by Hyland to ensure that the implementation is performed and documented as required by applicable regulations.

6. Reserved.

7. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES:

7.1 Software Warranty. For a period of sixty (60) days from and including a Software module has been Delivered to User, Solution Provider warrants to User that such Software module, when properly installed and properly used, will function in all material respects as described in the Documentation. The terms of this warranty shall not apply to, and Solution Provider shall have no liability for any non-conformity related to: (a) any Retired Software modules; or (b) any Software module that has been (i) modified by User or a third party, (ii) used in combination with equipment or software other than that which is consistent with the Documentation, or (iii) misused or abused.

7.2 Remedy. Solution Provider's sole obligation, and User's sole and exclusive remedy for any non-conformities of the express limited warranties under Section 7.1 shall be as follows: provided that, within the applicable period, User notifies Solution Provider in writing of the non-conformity, Solution Provider will either (a) repair or replace the non-conforming Software module, which may include the delivery of a reasonable workaround for the non-conformity; or (b) if Solution Provider determines that repair or replacement of the Software module is not practicable, then terminate this Agreement with respect to the non-conforming Software module, in which event, upon compliance by User with its obligations under Section 2.3 of this Agreement, Solution Provider will refund any portion of the Subscription Fees paid prior to the time of such termination with respect to such Software.

7.3 DISCLAIMER OF WARRANTIES.

7.3.1 EXCEPT FOR THE WARRANTIES PROVIDED BY SOLUTION PROVIDER AS EXPRESSLY SET FORTH IN SECTION 7.1, SOLUTION PROVIDER AND HYLAND (INCLUDING HYLAND'S SUPPLIERS), MAKE NO WARRANTIES OR REPRESENTATIONS REGARDING ANY SOFTWARE, INNOVATIONS, INFORMATION, MAINTENANCE AND SUPPORT OR ANY OTHER SERVICES PROVIDED UNDER THIS AGREEMENT. SOLUTION PROVIDER AND HYLAND (INCLUDING HYLAND'S SUPPLIERS) DISCLAIM AND EXCLUDE ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. SOLUTION PROVIDER AND HYLAND (INCLUDING HYLAND'S SUPPLIERS) DO NOT WARRANT THAT ANY SOFTWARE OR MAINTENANCE AND SUPPORT PROVIDED WILL SATISFY USER'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE PROVIDED UNDER THIS AGREEMENT WILL BE UNINTERRUPTED. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SOLUTION PROVIDER AND HYLAND DO NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.

7.3.2 USER SPECIFICALLY ASSUMES RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE AND MAINTENANCE AND SUPPORT TO ACHIEVE ITS BUSINESS OBJECTIVES.

7.3.3 SOLUTION PROVIDER MAKES NO WARRANTIES WITH RESPECT TO ANY SOFTWARE USED IN ANY NON-PRODUCTION SYSTEM AND PROVIDES ANY SUCH SOFTWARE "AS IS."

7.3.4 No oral or written information given by Solution Provider, its agents, or employees shall create any additional warranty. No modification or addition to the limited warranties set forth in this Agreement is authorized unless it is set forth in writing, references this Agreement, and is signed on behalf of Solution Provider by a corporate officer.

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8. Reserved.

9. Reserved.

10. Reserved.

11. GENERAL PROVISIONS:

11.1 Notices: Unless otherwise agreed to by the parties in a writing signed by both parties, all notices required under this Agreement shall be deemed effective when made in writing and sent to each other by either: (A) reputable overnight courier, specifying next day delivery to the address specified below or (B) email to the address below or such other email address provided by User, without receipt of a notice of failed delivery.

Solution Provider:

DataBank
458 Pike Road
Huntingdon Valley, PA 19006
ATTN: Office of the CFO (Contract Compliance Administrator)
Email: ContractCompliance@DataBankimx.com
Phone: 800-873-9426

User:

11.2 Governing Law; Jurisdiction: This Agreement and any claim, action, suit, proceeding or dispute arising out of this Agreement shall in all respects be governed by and interpreted in accordance with the substantive laws of the State of Oklahoma (and not the 1980 United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transaction Act, each as amended), without regard to the conflict of laws provisions thereof. Venue and jurisdiction for any action, suit or proceeding arising out of this Agreement shall vest exclusively in the federal or state courts of general jurisdiction located in Oklahoma County, Oklahoma.

11.3 Interpretation: The headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. All defined terms in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of the terms “hereunder,” “herein,” “hereby” and similar terms refer to this Agreement.

11.4 Waivers: No waiver of any right or remedy on one occasion by either party shall be deemed a waiver of such right or remedy on any other occasion.

11.5 Reserved.

11.6 Binding Effect; No Assignment: This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may assign, transfer or sublicense all or part of this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity without the prior written consent of the other party; provided that such consent shall not be unreasonably withheld in the case of any assignment or transfer by a party of this Agreement in its entirety to the surviving entity of any merger or consolidation or to any purchaser of substantially all of such party’s assets that assumes in writing all of such party’s obligations and duties under this Agreement. Any assignment made without compliance with the provisions of this Section 11.6 shall be null and void and of no force or effect.

11.7 Severability: In the event that any term or provision of this Agreement is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, the court considering the same will have the power and is hereby authorized and directed to limit such scope, duration or area of applicability, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited. Subject to the foregoing sentence, in the event any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this Agreement.

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11.8 Independent Contractor: The parties acknowledge that Solution Provider is an independent contractor and that it will be responsible for its obligations as employer for those individuals providing any services.

11.9 Export: Any Software or Documentation provided under this Agreement are subject to export control laws and regulations of the United States and other jurisdictions. User agrees to comply fully with all relevant export control laws and regulations, including the regulations of the U.S. Department of Commerce and all U.S. export control laws, including, but not limited to, the U.S. Department of Commerce Export Administration Regulations (EAR), to assure that the Software or Documentation is not exported in violation of United States of America law or the laws and regulations of other jurisdictions. User agrees that it will not export or re-export the Software or Documentation to any organizations or nationals in the United States embargoed territories of Cuba, Iran, Iraq, North Korea, Sudan, Syria or any other territory or nation with respect to which the U.S. Department of Commerce, the U.S. Department of State or the U.S. Department of Treasury maintains any commercial activities sanctions program. User shall not use the Software or Documentation for any prohibited end uses under applicable laws and regulations of the United States and other jurisdictions, including but not limited to, any application related to, or purposes associated with, nuclear, chemical or biological warfare, missile technology (including unmanned air vehicles), military application or any other use prohibited or restricted under the U.S. Export Administration Regulations (EAR) or any other relevant laws, rules or regulations of the United States of America and other jurisdictions.

11.10 U.S. Government End Users: To the extent applicable to User, the terms and conditions of this Agreement shall pertain to the U.S. Government's use and/or disclosure of the Software, and shall supersede any conflicting contractual terms or conditions. By accepting the terms of this Agreement and/or the delivery of the Software, the U.S. Government hereby agrees that the Software qualifies as "commercial" computer software within the meaning of ALL U.S. federal acquisition regulation(s) applicable to this procurement and that the Software is developed exclusively at private expense. If this license fails to meet the U.S. Government's needs or is inconsistent in any respect with Federal law, the U.S. Government agrees to return this Software to Solution Provider. In addition to the foregoing, where DFARS is applicable, use, modification, reproduction, release, display, or disclosure of the Software or Documentation by the U.S. Government is subject solely to the terms of this Agreement, as stated in DFARS 227.7202, and the terms of this Agreement shall supersede any conflicting contractual term or conditions.

11.11 Injunctive Relief: The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to Confidential Information and intellectual property rights will not be adequate for aggrieved party's protection and, accordingly, the aggrieved party shall have the right to seek, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement.

11.12 English Language Controls: This Agreement was originally prepared in the English language. Although Solution Provider may provide one or more translations of this Agreement into another language, and you may actually sign one of those translations, this is done solely for your convenience. The English language version of this Agreement will control for all purposes in the case of any conflict or discrepancy between the English language version and any translations.

11.13 Counterparts: This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute one and the same instrument.

11.14 Expenses: Except as otherwise specifically provided herein, each party shall bear and pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

11.15 Third Parties: Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto, any rights or remedies by reason of this Agreement; provided, however, that third party suppliers of software products bundled with the Software are third party beneficiaries to this Agreement as it applies to their respective software products. Notwithstanding the foregoing, User and Solution Provider expressly acknowledge and agree that Hyland is a third party beneficiary of this Agreement and shall be entitled to enforce this Agreement to the full extent of the law as if Hyland were a party hereto. Hyland shall be afforded all remedies available to any party to this Agreement under the terms hereof or under applicable law.

[Signature page to follow]

[Signature page]

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

COMPANY LEGAL NAME ("Customer")	DataBank IMX, LLC, a Delaware Limited Liability Company ("Solution Provider")
By (Signature): _____	By (Signature): _____
Legal Name: _____	Legal Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT A

DATABANK ONBASE SUBSCRIPTION AGREEMENT (Template/Example)

This DataBank OnBase Subscription Agreement (“Agreement”) is made and entered into effective as of the date that the last party to sign this Agreement has executed the same (as indicated by the date entered by such party with its signature below), the “Effective Date” and continues until **EXPIRATION DATE** by and between DataBank IMX, LLC, a Delaware Limited Liability Company (hereinafter referred to as "DataBank"), with its principal offices located at 458 Pike Road, Huntingdon Valley, PA 19006, and CUSTOMER NAME HERE (“Customer”), having an address of CUTSOMER ADDRESS HERE.

1. PRICE

Customer shall pay the total amount of **\$0.00**. Customer shall pay the Subscription Fee in the amounts and on the dates set out below in the Subscription Table during the term of the Agreement.

SUBSCRIPTION TABLE

Product	SUBSCRIPTION FEE AMOUNT AND PAYMENT DUE DATE		Term
Software* licensed: Data Management Package Software (DMPIPIE)	\$0.00	Payment Due By:	
	\$0.00		
	\$0.00		
	\$0.00		
	\$0.00		

*See Attachment A for Included Software

2. DEFINED TERMS

Capitalized terms used in this Agreement and not defined in this Agreement are used herein with the same meanings as such terms have under the End User License Agreement for Subscription Software, entered into between Customer and Hyland Software Inc. (“EULA”).

3. SUBSCRIPTION ORDERS; ACCEPTANCE OR REJECTION

Customer shall submit a written Subscription order to DataBank for the Subscription of the right to use all components of the Subscription Software. Any Subscription order submitted by Customer is subject to acceptance or rejection by DataBank. When this Agreement is signed by DataBank, it shall represent DataBank’s acceptance of Customer’s commitment to subscribe to and use the Subscription software covered under this Agreement.

4. PRICES, INVOICING AND PAYMENT

4.1. Prices and Invoicing.

4.1.1.Subscription Fee. Payment of Subscription Fee under this Agreement shall be made in accordance with the Subscription Table in Section 1 of this Agreement.

4.1.2.Receipt of Invoices; Correction. All invoices shall be sent electronically by DataBank to

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Customer to the attention of "Accounts Payable," or to such other person or department as Customer may specify from time to time by written notice to DataBank. In the event any invoice contains an under billing error which is discovered by DataBank, DataBank may issue a new invoice to correct the error.

4.2. Extended Support Fees (ESF)

4.2.1. ESF Obligation. Customer acknowledges and agrees that in addition to the Subscription and/or Maintenance Fee, extended support services may be subject to Extended Support Fees (ESF).

4.2.2. Payment of ESF. Any applicable Extended Support Fees (ESF) shall be invoiced and are due in accordance with the terms specified in the respective invoice.

4.3. Payment of Invoices. Subject to Section 4.4 below, Customer shall pay invoices in accordance with the Subscription Table in Section 1 of this Agreement.

4.4. Resolution of Invoice Disputes. If Customer believes that an invoice contains an error, then Customer shall notify DataBank in writing that it disputes all or any portion of an amount invoiced. Any amounts not timely disputed in accordance with the preceding sentence shall be deemed to be undisputed and shall be payable in accordance with Section 4.3. With respect to any amounts that are timely disputed, both parties will use commercially reasonable efforts to resolve the dispute within thirty (30) calendar days of DataBank's receipt of the notice. If any amount remains disputed in good faith after such 30-day period, either party may escalate the disputed items to the parties' respective executive management to attempt to resolve the dispute. The parties agree that at least one of each of their respective executives will meet (which may be by telephone or other similarly effective means of remote communication) within ten (10) calendar days of any such escalation to attempt to resolve the dispute. If the parties are unable to resolve the dispute in accordance herewith, either party thereafter may file litigation in a court of competent jurisdiction in accordance with the terms of this Agreement in order to seek resolution of the dispute.

4.5. Reserved.

4.6. Reserved.

4.7. U.S. Dollars. All fees and charges under this Agreement shall be determined, invoiced and paid in U.S. dollars.

5. Reserved.

6. NOTICES

Day to day communications regarding the Products and Services should be provided to the employees involved in the Statement of Work or identified account manager. Any legal notices or consents pursuant to this Agreement shall be in writing and shall be sent to the Parties at the following physical addresses and shall be deemed to have been duly given on the date delivered in person, or sent overnight delivery service, courier service, electronic mail, or on the date of the third business day after deposit, postage prepaid, in the United States Mail via Certified Mail, return receipt requested:

If to DATABANK:	DATABANK
	458 Pike Road
	Huntingdon Valley, PA 19006

Attachment E-2

ATTN: Contract Compliance
Email: ContractCompliance@databankimx.com
Phone: 800-873-9426

If to CUSTOMER:

Customer Name
Customer Address
Attn:
Email:
Phone

7. LICENSE OF SOFTWARE AND THIRD PARTY SOFTWARE

- 7.1. The Hyland EULA with Customer shall govern the rights to use the OnBase Software Licenses supplied under this Agreement.
- 7.2. In the event Customer is utilizing DataBank's or Hyland's cloud hosting services, an increase in the quantity of licenses may result in a corresponding increase in storage volume and computing infrastructure resources within your hosted environment provided by DataBank or Hyland.

8. GOVERNING LAW

The laws of the State of Oklahoma govern all matters related to this Agreement, without giving effect to the principles of conflict of law. Venue and jurisdiction for any litigation related to this Agreement must be in those courts located in Oklahoma County, Oklahoma.

[Signature page to follow]

[Signature page]

Customer specifically represents and warrants that Customer has read and understands all parts of the DataBank OnBase Subscription Agreement prior to entering into the Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

<p>Customer Name ("CUSTOMER")</p> <p>By (Signature): _____</p> <p>Legal Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>Databank IMX, LLC, a Delaware Limited Liability Company ("DataBank")</p> <p>By (Signature): _____</p> <p>Legal Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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Attachment E-3: Value Add

Value-add - Optional

Provide information on other products and services that may be offered by the Supplier that are within the scope of this solicitation and provide pricing. The State may award value-add products and services at its sole discretion

In addition to Hyland OnBase products and services, DataBank provides a range of complimentary solutions that can operate independently or hand-in-hand with OnBase. We are happy to provide additional information for projects that could benefit from one of our additional solutions.



Often utilized as a robust capture tool for SharePoint applications, Knowledge Lake focuses on helping customers win at processing their transactional content in the cloud. That means removing longstanding constraints around data classification and capture, content searchability, and system integration, to name a few. The cloud has given us the capability to address these age-old challenges in a new way-not just for our 2 million licensed users on SharePoint but for organizations using any document management system or content repository. DataBank offers a seamless integration between Knowledge Lake and OnBase for a "better-together" approach to enterprise capture.



Eco-Mail is an enterprise software provider that digitizes an organization's physical mail. Their solution eliminates sorting in the mailroom and physical delivery to recipients facilitates remote work by both individuals and groups. In addition to tremendous cost savings, Eco-Mail streamlines operations; improves process, audit and compliance controls; and allows businesses to be more flexible and responsive. Downstream scanning, duplication, and interoffice mail are virtually eliminated. Eco-Mail provides a unified platform solution that provides secure, auditable, intelligent digital mail distribution from mailroom to integration with each customer's existing line-of-business systems. The platform supports every department in an organization and is user configurable to meet specific workflow, document identification and data extraction requirements. Eco-Mail is more than just a digital delivery, it is an Enterprise-Wide Digital Transformation.



A popular enhancement to Microsoft 0365 initiatives, Nintex is a company for process intelligence and automation. Today more than 10,000 public and private sector organizations across 90 countries turn to the Nintex Process Platform to accelerate progress on their digital transformation journeys by quickly and easily managing, automating and optimizing business processes. Learn more by visiting www.nintex.com and experience how Nintex and its global partner network are shaping the future of Intelligent Process Automation (IPA).



Deluxe's innovative payments, data and marketing solutions help you Accelerate Growth, Enable Payments and Empower relationships while integrating with the OnBase EDMS platform. They propel your business forward with data-driven customer acquisition and multi-platform marketing toolkits; accelerate customer acquisition through our targeted data driven marketing campaigns and build brands through our customized, brand compliant web storefronts, promotional products, print services, and retail packaging services. Enable Payments - technology solutions enable you to send and process payments more easily. With Deluxe, you can optimize your order to cash processes with Lockbox, integrated receivables and bill pay, as well as improve your payer and payee experience with our secure and convenient check products and flexible digital payments.

**Attachment F to
STATE OF OKLAHOMA CONTRACT WITH DATABANK IMX, LLC.
RESULTING FROM SOLICITATION NO. EV00000249**

Negotiated Exceptions to the Solicitation

The Solicitation is hereby amended as set forth below and supersedes all prior Exceptions submitted by **DataBank IMX, LLC.** or discussed by the parties.

ANY REQUESTED EXCEPTIONS NOT APPEARING BELOW HAVE BEEN DECLINED BY THE STATE

RFP Section	Exception
Attachment B - General Terms, Section 8.1, Maintenance of Insurance, Payment of Taxes, and Workers' Compensation	<p>Section 8.1B is hereby deleted in its entirety and replaced with the following:</p> <p>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 \$1,000,000 per occurrence;</p>
Attachment B - General Terms, Section 8.1, Maintenance of Insurance, Payment of Taxes, and Workers' Compensation	<p>Section 8.1C is hereby deleted in its entirety and replaced with the following:</p> <p>C. Automobile Liability Insurance with limits of liability of not less than \$1,000,000 combined single limit each accident;</p>
Attachment B - General Terms, Section 10.2, Audits and Records Clause	<p>Section 10.2 is hereby deleted in its entirety and replaced with the following:</p> <p>10.2 The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of three (3) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. At the end of the three (3) year period, Supplier shall give the Customer the option to receive the records before deletion. 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 three (3) year retention period, whichever is later.</p>

RFP Section	Exception
<p>Attachment B - General Terms, Section 19.1, Termination for Convenience</p>	<p>Section 19.1 is hereby deleted in its entirety and replaced with the following:</p> <p>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 sixty (60) 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.</p>
<p>Attachment B - General Terms, Section 25, Notices</p>	<p>The following shall be added to Section 25:</p> <p>If to DataBank:</p> <p>DataBank 458 Pike Road Huntingdon Valley, PA 19006 ATTN: Office of the CFO (Contract Compliance Administrator) Email: ContractCompliance@DataBankimx.com Phone: 800-873-9426</p>
<p>Attachment D – Information Technology Terms, Appendix 1, Section I, Termination, Expiration and Suspension of Service</p>	<p>Appendix 1, Section I (3.) is hereby deleted in its entirety and replaced with the following:</p> <p>3. Supplier shall not take any action to intentionally erase any Customer Data, for a period of:</p> <p>a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;</p> <p>b. 30 days after the effective date of termination, if the termination is for convenience; or</p> <p>c. 60 days after the effective date of termination if the termination is for cause.</p> <p>After such period, Supplier shall, unless legally prohibited, required by regulation or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.</p>

RFP Section	Exception
<p>Attachment D – Information Technology Terms, Appendix 1, Section I, Termination, Expiration and Suspension of Service</p>	<p>The following is hereby added to Appendix 1, as Section I (6.):</p> <ol style="list-style-type: none"> 6. Upon termination, Customer shall initiate communication with DataBank regarding the removal of their data. DataBank shall make reasonable efforts to communicate the impending data deletion through two separate notice attempts, and the customer’s non-response within 30 days from the second notice absolves DataBank of any liability or obligation to maintain or preserve the Customer Data beyond the aforementioned period. Customer explicitly acknowledges and agrees that they are solely responsible for ensuring the accuracy of the legal notices outlined above. The Storage Charge shall remain applicable so long as Customer has not complied with this subsection. Access granted to DataBank Cloud pursuant to this Agreement shall terminate automatically and Customer shall immediately cease accessing or attempting to access DataBank Cloud. <ol style="list-style-type: none"> I. Following the date of termination of this Agreement, DataBank will remove all Customer identification codes and passwords necessary to access DataBank Cloud and attest that they have been terminated or deactivated. Customer shall initiate communication with DataBank regarding the removal of their data within 30 days of the aforementioned access termination. If Customer fails to initiate communication within this time period, DataBank shall make commercially reasonable efforts to communicate the impending data deletion. Failure to respond within 30 days of the second notice attempt will be construed as an acceptance and confirmation by the customer that DataBank is authorized to delete or destroy, to the extent technologically feasible, all Customer Data associated with the terminated services. Customer explicitly acknowledges and agrees that they are solely responsible for ensuring the accuracy of the legal notices. II. Notice of Data Export Charge upon Termination. Upon termination, it is understood that there will be a charge for exporting data from the DataBank Cloud. This Data Export Charge will cover the costs associated with the secure extraction and transfer of the Customer’s data to a specified destination. The Customer agrees to provide advance notice of termination as defined in the first paragraph under the appropriate Termination section in Attachment B. The Customer agrees to provide a

RFP Section	Exception
	<p>minimum of 90 days' advance notice from the anticipated data export date.</p> <p>III. Data Export Charge. Supplier acknowledges that there will be no charge for the return of data to the Customer. In the event that the data is transferred to another vendor, both parties agree to negotiate in good faith for a mutually agreed price to facilitate the transition of the data. The Data Export Charge, stipulated as part of this process, is payable by the Customer within a period of 45 business days from the issuance of the invoice date. Failure to remit payment within the prescribed timeframe may result in additional charges or penalties, subject to applicable law.</p> <p>IV. Data Export Compliance: Data Export Compliance. The Customer acknowledges that the export of data is subject to compliance with relevant laws, regulations, and contractual obligations. DataBank will make reasonable efforts to assist the Customer in meeting these obligations.</p>