



## **STATE OF OKLAHOMA STATEWIDE CONTRACT WITH HP Inc.**

This State of Oklahoma Statewide Contract #1034 - Managed Print Services (“Contract”) is entered into between the State of Oklahoma by and through the Office of Management and Enterprise Services ("State") and HP Inc. (“Supplier”) and is effective as of the date of last signature to this Contract. The initial term of the Contract shall be for 1 year with four (4) one-year options to renew.

### **Purpose**

The State is awarding this Contract to Supplier for the provision of managed print services, as more particularly described in certain Contract Documents. Supplier submitted a proposal containing exceptions to the Solicitation and Supplier submitted additional terms. 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, Attachment A;
  - 2.2. General Terms, Attachment B;
  - 2.3. Statewide Contract Terms, Attachment C;
  - 2.4. Information Technology Terms, Attachment D;
  - 2.5. EULA for HP Papercut Software, Attachment E1;
  - 2.6. HP Service Level Agreement, Attachment E2;
  - 2.7. HP Value Add, Attachment E3;
  - 2.8. HP Pricing, Attachment E4;
  - 2.9. Negotiated Exceptions to Contract, Attachment F;
  - 2.10. Amendment Template for SOWs, Attachment F1.
3. The parties additionally agree:

- 3.1. revisions to terms and documents initially proposed in the Bid are contained in Attachment E1-E4.
- 3.2. Except for 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.
- 3.3. Unless mutually agreed to in writing by the Chief Information Officer utilizing Attachment F-1, no Contract Document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State. If Supplier is acting as a reseller, any third-party terms provided are also subject to the foregoing.
- 3.4. 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.
- 3.5. Supplier is required to ensure that any software or information technology resold complies with applicable law and the Compliance and Electronic and Information Technology Accessibility clause in the Contract. This includes providing the State with a Voluntary Product Accessibility Template ("VPAT"). If the software or information technology is not compliant, Supplier holds an affirmative obligation to ensure that the software or information technology becomes compliant or provide notice to the State that the software or information technology cannot be made complaint and why.
- 3.6. In the event of any conflict in terms, or inconsistencies, contained in Supplier's documents, Attachment E-1 through E-3 and the States terms, Attachments A-D, the State's terms in Attachments A-D prevail. The State does not agree to any additional duties, obligations, or liabilities contained in any of Supplier's documents.

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.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

5.

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

**HP INC.**

By:   
Joe McIntosh (Sep 20, 2024 17:05 CDT)

By:   
Rick Mendoza (Sep 20, 2024 10:13 MDT)

Name: Joe McIntosh

Name: Rick Mendoza

Title: CIO

Title: Contracts Specialist

Date: Sep 20, 2024

Date: Sep 20, 2024

**ATTACHMENT A**  
**SOLICITATION NO. EV00000190**

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 State of Oklahoma, Office of Management and Enterprise Services (OMES) Information Services Division (ISD) seeks solicitation responses for suppliers for the following categories:

1. Managed Print Services
2. Multi-Function Devices
3. 3D Printers
4. Production Print Copy Systems
5. Wide Format Print Systems
6. Commercial In-Plant Print Shop
7. Commercial Printing Services

**Scope**

The solution will be responsible for print services and systems as detailed in Exhibit 1.

**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 one-year options to renew the Contract.

**2. Contract Requirements**

Certain Contract requirements and terms attached hereto as Exhibits 1, 2, 3, and 4 are incorporated herein.

## **ATTACHMENT B**

### **STATE OF OKLAHOMA GENERAL TERMS**

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

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

#### **1 Scope and Contract Renewal**

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

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

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

## **2 Contract Effectiveness and Order of Priority**

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

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

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

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

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

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

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

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

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

### **4 Definitions**

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

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

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

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

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

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

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

prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or

(b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

## **5 Pricing**

**5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.

**5.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.

**5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

## **6 Ordering, Inspection, and Acceptance**

**6.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.

**6.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

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

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

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

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

**6.4** Product warranty and return policies and terms provided under any Contract Document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like

product.

## **7 Invoices and Payment**

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

The following terms additionally apply:

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

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

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

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

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

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

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

## **9 Compliance with Applicable Laws**

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

- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
- G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
- H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at [www.dhs.gov/E-Verify](http://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/omes/services/information-services/policy-standards-publications.html>. Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier’s employees, agents and subcontractors.

**9.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.

**9.4** In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific

**mandatory**

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

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

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

## **10 Audits and Records Clause**

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

## **11 Confidentiality**

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

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

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

assignees, agents,

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

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

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

## **12 Conflict of Interest**

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the

**State. Prompt disclosure is required under this section if the activity or interest is**

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

### **13 Assignment and Permitted Subcontractors**

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

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

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

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

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

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

#### **14 Background Checks and Criminal History Investigations**

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

#### **15 Patents and Copyrights**

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

Supplier under the Contract infringes that party's patent, intellectual property,

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

## **16 Indemnification**

### **16.1 Acts or Omissions**

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

### **16.2 Infringement**

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

### **16.3 Notice and Cooperation**

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

### **16.4 Coordination of Defense**

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

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

## **16.5 Limitation of Liability**

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

## **17 Termination for Funding Insufficiency**

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

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

**17.3** The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

## **18 Termination for Cause**

**18.1** Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.

**18.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.

**18.3** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence

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

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

## **19 Termination for Convenience**

**19.1** The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.

**19.2** Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service

but

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

## **20 Suspension of Supplier**

**20.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.

**20.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

**20.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

## **21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

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

**the Contract.**

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

**22 Certification Regarding State Employees Prohibition From Fulfilling Services**

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

**23 Force Majeure**

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

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

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

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

## **24 Security of Property and Personnel**

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

## **25 Notices**

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

### **If sent to the State:**

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

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

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

## **26 Miscellaneous**

### **26.1 Choice of Law and Venue**

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

**26.2 No Guarantee of Products or Services Required**

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

**26.3 Employment Relationship**

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

**26.4 Transition Services**

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

**26.5 Publicity**

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

## **26.6 Open Records Act**

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

## **26.7 Failure to Enforce**

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

## **26.8 Mutual Responsibilities**

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

## **26.9 Invalid Term or Condition**

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

term or

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

#### **26.10 Severability**

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

#### **26.11 Section Headings**

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

#### **26.12 Sovereign Immunity**

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

#### **26.13 Survival**

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

#### **26.14 Entire Agreement**

The Contract Documents taken together as a whole constitute the entire

agreement between the parties. No statement, promise, condition,

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

#### **26.15 Gratuities**

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

#### **26.16 Import/Export Controls**

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

## **ATTACHMENT C**

### **OKLAHOMA STATEWIDE CONTRACT TERMS**

#### **1. Statewide Contract Type**

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

#### **2. Orders and Addendums**

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

#### **3. Termination for Funding Insufficiency**

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

**4. Termination for Cause**

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

**5. Termination for Convenience**

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

**6. Contract Management Fee and Usage Report**

**6.1** Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the

right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

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

**6.3** All Contract Usage Reports shall meet the following criteria:

- i. Electronic submission in Microsoft Excel format to [strategic.sourcing@omes.ok.gov](mailto: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 118  
Oklahoma City, Oklahoma 73105

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

## ATTACHMENT D

### STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

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

#### 1 Definitions

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

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

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

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

## **2 Termination of Maintenance and Support Services**

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

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

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

## **3 Compliance and Electronic and Information Technology Accessibility**

State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at <https://oklahoma.gov/omes/services/information-services/is/policies-and-standards/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/is/policies-and-standards.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 for Hire", Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

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

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

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

## **12 Intellectual Property Ownership**

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

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

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

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

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

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

## **13 Hosting Services**

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

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

#### **14 Change Management**

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

#### **15 Service Level Deficiency**

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

#### **16 Notices**

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

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

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

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

## **Appendix 1 to State of Oklahoma Information Technology Terms**

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

### **A. Customer Data**

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

### **B. Data Security**

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

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

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

### **C. Security Assessment**

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

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

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

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

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

d. Document all Security Incidents and their outcomes.

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

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

1. Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

2. Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.

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

F. **Notices**

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

Chief Information Security Officer

3115 N. Lincoln Blvd

Oklahoma City, OK 73105

and

servicedesk@omes.ok.gov.

## **G. Supplier Representations and Warranties**

Supplier represents and warrants the following:

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

## **H. Indemnity**

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

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

## **I. Termination, Expiration and Suspension of Service**

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

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

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

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

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

c. a combination of the two immediately preceding options.

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

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

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

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

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

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

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

## Appendix 2 to State of Oklahoma Information Technology Terms

### INTRODUCTION

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

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

### CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information (“CJI”). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency (“CJA”) and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3<sup>rd</sup> 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

## End User License Agreement (EULA)

### 1. AGREEMENT

This End User License Agreement is between PaperCut Software Pty Ltd (ACN 650 500 413) of Level 1, 3 Prospect Hill Rd, Camberwell, Victoria, 3124, Australia (PaperCut), and: 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 ("State"):

- a. if there has been no charge for the license (an Evaluation License), the company or other entity that installed the Software for the purpose of the evaluation; or
- b. if there has been a charge for the license (a Production License), the company or other entity that applied for the Production License as set out in the Company Details tab on the Website.

### 2. DEFINITIONS (the definitions below are only applicable to this document and shall not supersede definitions in SW1034H)

**Affiliate** means an entity owned by, controlling, controlled by, or under common control with, directly or indirectly, an entity. For this purpose, one entity "controls" another entity if it has the power to direct the management and policies of the other entity (for example, through the ownership of voting securities or other equity interest, representation on its board of directors or other governing body, or by contract), including any subdivision of the State or any other entity entitled to make purchases off of an Oklahoma statewide contract.

**Agreement** means the terms and conditions in this End User License Agreement, and, if this is a Production License any details in the Contract Details, as may be amended if both parties agree in writing.

**Authorised Platform** means servers, workstations, printers, multi-function devices and mobile devices that are owned, leased or controlled by You or Your Affiliates on which the Software is designed to be used.

**Confidential Information** means any non-trivial, non-public information, however recorded, preserved, disclosed or communicated (whether directly, indirectly, orally or by writing), disclosed by either party or its Representatives to the other party or its Representatives in connection with this agreement that is or, ought to have been, understood by the parties using reasonable business judgment, to be confidential. State agencies are subject to the Oklahoma Open Records Act and supplier acknowledges information marked confidential will be disclosed to the extent permitted under the Open Records Act. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9. Notwithstanding the foregoing, Supplier's 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.

**Contract Details** means the details of any transaction for a Production License that relate to the Software license, including the maximum number of Users (or other license metric that is applicable to the particular Software program), the Maintenance & Support service and applicable Fees (excluding travel and taxes). to which You have otherwise agreed in writing with PaperCut.

**Discloser** means the party that makes a disclosure of Confidential Information.

**Effective Date** means:

- a. for an Evaluation License, the first date of installation of the Software on any of Your Authorized Platforms; or
- b. for a Production License, the date the State installs the license.

**Evaluation License** means the right to use the Software in accordance with clause 4.1.

**Expiration Date** means the last day of the production license period you may use the software.

**Fees** means the amount payable for the relevant Software license, the Maintenance & Support service or other items acquired under the Agreement, as applicable, exclusive of Taxes.

**Fixed Term** means the period between the Effective Date and the Expiration Date.

**Intellectual Property Rights** means copyright, moral rights, trade mark, design rights, service marks, patent, semiconductor or circuit layout right, trade secrets, know-how, database rights or other rights in the nature of intellectual property rights (whether registered or unregistered), or any right to registration of such rights, existing anywhere in the world, or protected by statute from time to time, whether created before, on or after the Effective Date.

**License Key** means any form of license file, lock, password or other mechanism that may be used to control access to, or manage

use of, the Software.

**PaperCut Marks** means all trademarks, service marks, logos or other words or symbols identifying the Software, Maintenance & Support service, PaperCut Customer Care service or PaperCut's business (whether owned by PaperCut or any PaperCut Affiliate), and all trademarks, service marks, logos or other words or symbols identifying any third party software that is licensed by the third party to PaperCut and integrated in the Software.

**Maintenance & Support** means the services described in clause 5.

**Production License** means the right to use the Software in accordance with clause 4.2.

**Recipient** means the party that receives a disclosure of Confidential Information.

**Representatives** means the employees, agents, contractors of a party, or those of any Affiliate, and the professional representatives of a party providing advice in relation to this Agreement, including the lawyers, bankers, auditors, accountants and insurers of a party.

**Software** means the object code version of PaperCut's software program made available to You, and any Updates and Upgrades that may be made available to You by PaperCut in its discretion, under this Agreement. The term Software does not include any beta, pre-release or other special release programs.

**Support Policies** means PaperCut's document that describes the policies, processes and scope of support services for the Software, as are posted on the Website under the heading 'Support'. The Support Policies may be updated by PaperCut in its discretion from time to time unless said update substantially changes the terms of this Agreement. However, no unilateral change in the Support Policies shall increase the burdens or change the obligations of the State under this Agreement.

**Taxes Reserved.**

**Update** means any bug fixes, patches or workarounds for the Software that have been produced primarily to overcome defects in the Software without significantly altering the functionality of the Software.

**Upgrade** means a version of the Software that has been produced primarily to extend, alter or improve the Software by providing additional functionality or performance enhancements (whether or not defects are also corrected). Upgrades do not include any software that is marketed by PaperCut as a different product. PaperCut shall determine in its discretion whether any software is an Upgrade or a different product.

**User** means an identifier (individual's name or generic term such as "purchasing officer") that is listed as a user in the Software's database. Any User that is defined by a generic term may only be used by a single individual. All Users from You and/or Your Affiliates who have identifiers listed as users in the Software's database are included in aggregate in the total number of Users.

**Variation** means any addition, deletion or substitution to any part of this Agreement that is made in accordance with this Agreement.

**You (and Your)** refer to the other party to this Agreement, being the entity that is the licensee of the Software.

**Vendor** means the entity/reseller providing PaperCut products to the State under the Oklahoma Statewide Contract.

**Website** means PaperCut's website from which You can acquire the Software, Maintenance & Support service, additional Software programs, add more Users or other license usage or extended Your Maintenance & Support service.

### 3. AGREEMENT AND LICENSE

3.1 In the case of an Evaluation License, the person that installs the Software and clicks "I Agree" during the installation process warrants to PaperCut that he/she has authority to enter into this Agreement on behalf the entity that is his/her employer.

3.2 In the case of a Production License, the person that clicked "I Agree" during the sign-on process warrants to PaperCut that he/she has authority to enter into this Agreement on behalf of the entity that was entered into the Company Details tab on the Website during the sign-on process.

3.3 By using the Software You accept this Agreement as from the Effective Date, and acknowledge that the parties are bound by the terms and conditions of the Agreement and Oklahoma Statewide Contract No. 1034H.

3.4 PaperCut may send a "proof of purchase" confirmation email or other document (Order Confirmation) after You acquire a Production License, summarizing the Contract Details. If You do not notify PaperCut in writing of any discrepancy in the Contract Details as set out in the Order Confirmation within seven (7) calendar days of receiving it, then you accept the Contract Details as set out in the Order Confirmation.

3.5 PaperCut will abide Oklahoma's privacy policy as agreed to in Oklahoma Statewide Contract No. 1034H.

#### Evaluation

3.6 If You requested a free-of-charge Evaluation License for the Software (via the Website or other means), then PaperCut will make the Software available for You to download from the Website, subject to Your acceptance of this Agreement. If You accept this Agreement then You acquire an Evaluation License, from the Effective Date until the license is terminated in accordance with clause 3.7. There is no Fee payable for an Evaluation License.

3.7 PaperCut does not provide Maintenance & Support services for Evaluation Licenses, but may, in its discretion, provide

assistance, advice and error correction services to support Your evaluation of the Software.

### **3.8 A Evaluation License:**

- a. terminates automatically after 40 days from the Effective Date, unless extended by agreement with PaperCut;
- b. will be terminated if the Agreement terminates in accordance with clause 12.

### **Upgrading to a Production License**

**3.9** You may upgrade an Evaluation License to a Production License and agreeing to pay the relevant Fees. You may also order Maintenance & Support services at the same time. The Production License and any Maintenance & Support service will be provided on the terms and conditions of this Agreement. In the case of a Production License, PaperCut will provide You with a License Key to enable You to use the Software.

### **Production License**

**3.10** Where you acquire a Production License by agreeing to the Contract Details with PaperCut, including by completing the Contract Details in the sign-on process, then You acquire a license for the Software in accordance with clause 4.2 and the right to receive and install any Updates for that Software that may be issued by PaperCut from time to time. the State will install updates once said update is reviewed and approved by the State for security purposes. There are no additional Fees for this right to receive Updates.

### **Limited Feature Validity of License**

The Scan to Cloud feature will only be activated with the Production License during the Maintenance & Support period. When this period ceases, the Scan to Cloud service may be deactivated.

The OCR Reader feature will only be activated with the Production License during the Maintenance & Support period. When this period ceases, the OCR Reader may be deactivated.

### **Maintenance & Support**

**3.11** Where You ordered Maintenance & Support services in the Contract Details, upon acceptance of your order, PaperCut will provide the Maintenance & Support services for 12 months from the Effective Date in accordance with clause 5.

### **Additional Licenses, Usage or Maintenance & Support.**

**3.12** If You wish to add more Software programs, add more Users or other license usage, or extended Your Maintenance & Support service – and such items are available from PaperCut at the time, You may order those items by completing and agreeing to the relevant Contract Details with the vendor.

**3.13** If You do not extend Your Maintenance & Support service so that Maintenance & Support service is provided continuously, and subsequently wish to reinstate Maintenance & Support service, then You must back pay all the Maintenance & Support service fees outstanding prior to the Maintenance & Support service being reinstated..

### **Variations**

**3.14** Subject to clauses 3.9 and 3.12, this Agreement, or any part of it, may be varied by the parties agreeing to the Variation in writing (and the Variation will be binding when both parties have signed the Variation).

## **4. LICENSES**

### **Evaluation License**

**4.1** From the Effective Date until the license is terminated in accordance with this Agreement, PaperCut grants You a non-exclusive, non-transferable, limited use license solely to install and run the Software on one or more computers that are Authorized Platforms, so You and your Affiliates can evaluate the Software to determine whether to acquire a Production License. Under this Evaluation License You and Your Affiliates may use the Software for testing and evaluation in a production environment prior to the termination of the Evaluation License.

### **Production License**

**4.2** Subject to PaperCut's receipt of the applicable Fees in accordance with the Contract Details, PaperCut grants You a non-exclusive, non-transferable, indivisible, limited use license solely to install and run the Software on one or more computers that are the Authorized Platforms, for use by You or Your Affiliates from the Effective Date until the license is terminated in accordance with this Agreement, for:

- a. up to the maximum number of Users or other license metric set out in the Contract Details, for Your internal business data processing/printing requirements in accordance with, and subject to any other limitation of use set out in, the Contract Details; and

- b. for testing, disaster recovery and backup (hot or cold), without additional Fees.
- c. For a Fixed Term Production License:
  - (i) terminates automatically at the Expiration Date, unless extended by agreement with PaperCut;
  - (ii) will be terminated if the Agreement terminates in accordance with clause 12.

### **Delivery and installation**

**4.3** PaperCut will make the Software available for download from the Website. If You specifically request, PaperCut will ship to You a physical copy of media with the software loaded on it. You are responsible for copying and installing the Software on the Authorized Platforms. You must follow any instructions provided by PaperCut when installing the Software.

### **Prohibited Actions**

**4.4** Nothing in this Agreement permits You to:

- a. use the Software to provide any facility management or service bureau service, or for the benefit of any third party (other than an Affiliate);
- b. disclose the Software or any online or hardcopy documentation related to the Software to any third party unless otherwise required by law (other than an Affiliate);
- c. adapt, translate, publish, communicate to the public, or create any derivative work or translation of the Software, unless expressly permitted by law;
- d. sub-license, lease, rent, loan, assign, novate or otherwise transfer the Software to any third party;
- e. reverse engineer, reverse compile, decompile or disassemble the object code of the Software or any part of the Software (or other underlying data), or otherwise attempt to derive the source code of the Software, except to the extent the permitted by law;
- f. use any part of the Software other than as an integrated part of the overall Software program;
- g. remove, alter or obscure any PaperCut Marks, or any proprietary or restricted use notice on the Software;
- h. allow the Software to become the subject of any charge, lien, encumbrance or security interest; or
- i. deal in any other manner with any or all of Your rights and obligations under this Agreement.

### **Compliance**

**4.5** You acknowledge and agree that the License Key may prevent, hinder or reduce availability of features where You are using the Software in excess of the usage rights that You have agreed to pay for.

**4.6** During the period of this Agreement, You must permit PaperCut, or its nominee, to inspect and have access to the Software, the usage logs in the Software, and to any records kept in connection with this Agreement, for the purposes of ensuring that You (and Your Affiliates) are complying with the terms of this Agreement. Papercut and/or its nominee agrees to comply with all applicable law, such as necessary training and background checks if accessing sensitive data. If PaperCut requires access to Your offices (or those of Your Affiliates) in order to access the Software or the relevant records then:

- a. PaperCut must provide reasonable advance notice to You;
- b. any access must be during business hours or other times agreed by You;
- c. PaperCut must use reasonable endeavors to minimize any disruption to Your business;
- d. if PaperCut uses a nominee to conduct the inspection, such nominee must not be a competitor to You and must sign a non-disclosure agreement with PaperCut that protects any information found during the inspection on terms that are no less protective than those terms that are included in clause 9 of this Agreement; and
- e. provide proof of any necessary background checks.

## **5. Maintenance & Support**

**5.1** This clause 5 applies during the period when You have acquired Maintenance & Support services for a Production License.

**5.2** If and when PaperCut makes an Update or Upgrade generally available to customers with Maintenance & Support services for the Software, the Update or Upgrade will be made available to You at no additional charge.

**5.3** If You (or any of Your employees or employees of any of Your Affiliates) believe that there is a defect in the Software, those employees should report it to Your internal support desk personnel, and Your internal support desk personnel should report it to PaperCut's support email address 24/7, or call PaperCut's support helpline during business hours. You must ensure that Your internal support desk personnel are technically competent and trained in the use of Software. They must use reasonable efforts to resolve the issue prior to contacting PaperCut for assistance.

5.4 PaperCut will use its best efforts to provide a remedy or a workaround for any defect in the Software that is reported to its support helpline in a timeframe that is reasonable, given the nature of the issue and the impact on Your business operations.

5.5 PaperCut shall have no obligation to provide Maintenance & Support services:

- a. for any Software which has not had any Update or Upgrade installed prior to the date that PaperCut has notified its customers as being the “end of life” date for that version. PaperCut shall provide its customers with at least 90 days’ written notice by posting notice on the Website of an “end of life” date for that particular version;
- b. to any adaptations, translations or derivative works made to the Software; or
- c. for any Evaluation License.

5.6 PaperCut shall have no obligation to provide Maintenance & Support services where faults arise from:

- a. misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by PaperCut), including failure or fluctuation of electrical power;
- b. failure to maintain the necessary environmental conditions for use of the Software;
- c. use of the Software in combination with any equipment or software other than Authorized Platforms;
- d. any breach of Your obligations under this Agreement; or
- e. having the Software maintained by a third party.

5.7 If it is necessary for PaperCut to attend Your (or Your Affiliates’) premises to provide Maintenance & Support services, or PaperCut determines that the work it performed in relation to a logged issue was caused by any of the items in clause 5.6, then You must pay for such work at PaperCut’s then current Fees and charges as well as any expenses (and travel time) incurred by PaperCut in performing such work.

5.8 Maintenance & Support Plus – PaperCut offers extended support services beyond standard business hours based on the same terms of support at an additional cost to You.

## 6. FEES AND TAXES

6.1 PaperCut will provide You with the ability to download the Software from our Website as an Evaluation License for use in accordance with this Agreement without charge.

## 7. TRADEMARKS

7.1 You acknowledge and agree that PaperCut is the owner and/or licensee of the PaperCut Marks. You do not acquire any right to use, or interest in, any of the PaperCut Marks. You must not at any time or in any way assert any ownership of, or any right in, the PaperCut Marks and You must not contest the right of PaperCut or any PaperCut Affiliate or any of their licensors to the use of any of the PaperCut Marks.

7.2 PaperCut will abide by the publication terms of Oklahoma Statewide Contract No. 1034H.

## 8. PROPRIETARY RIGHTS

8.1 All Intellectual Property Rights created by any person that are adaptations, translations and derivative works in the Software or related documentation, are and shall remain the exclusive property of PaperCut (and its licensors, if any) or shall vest in or be transferred to PaperCut immediately upon creation, as the case may be.

8.2 Except for the rights expressly granted by PaperCut to You under this Agreement:

- a. PaperCut and its licensors, if any, reserve all right, title and interest in and to the Software or related documentation and all Intellectual Property Rights in them;
- b. no right, title or ownership interest in or to the Software or related documentation whether by implication, estoppel or otherwise, is granted, assigned or transferred to You under or in connection with this Agreement.

8.3 Reserved.

### Third Party Proprietary Rights:

8.4 Third party software. The Software may include third party software from whom PaperCut has obtained a licensed right.

Licenses for Attributions to third party software and relevant license information are provided in the file THIRDPARTYLICENSEREADME.txt in the root folder of the Software installation. Papercut has obtained all necessary licenses for use in its software, should any third party assert an action against the State for violation of its licensing PaperCut will indemnify the State for all costs associated with the defense of the action, including the costs of asserting the right to indemnification, and will secure the licenses on behalf of the State or their equivalent to provide the same or substantially similar services under this Agreement.

## **9. CONFIDENTIAL INFORMATION**

**9.1** State agencies are subject to the Oklahoma Open Records Act and supplier acknowledges information marked confidential will be disclosed to the extent permitted under the Open Records Act. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9. Notwithstanding the foregoing, Supplier's 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. The Recipient must not use any of the Discloser's Confidential Information except in connection with the performance of its obligations specified in this Agreement.

**9.2** The Recipient must not disclose the Discloser's Confidential Information to any third party without obtaining the Discloser's prior written consent, provided that the Recipient may disclose the Discloser's Confidential Information to:

- a. its employees, agents and contractors, and those of any of its Affiliates, who have entered into a written agreement with the Recipient that is no less protective of the Discloser's Confidential Information than this Agreement provided those persons have a need to know such information for the purposes of this Agreement;
- b. to its lawyers, bankers, auditors, accountants and insurers, who have a need to know the information in order to provide professional advice to the Discloser relating to this Agreement.

**9.3** You must ensure that each person who is issued with a License Key does not disclose their License Key to any other person outside of the organization.

**9.4** The Recipient must use, and must ensure that any person to whom it is permitted by this Agreement to disclose the Discloser's Confidential Information to uses, the same measures to protect the Discloser's Confidential Information as it uses to protect its own confidential information, but in no event less than reasonable measures.

**9.5** The restrictions in this clause 9 shall not apply to information that:

- a. is independently developed by the Recipient without any access to the Confidential Information of the Discloser;

- b. becomes known to the Recipient without restriction, from a third party who, to the Recipient's knowledge, was not bound by a confidentiality agreement with the Discloser, or otherwise prohibited from disclosing the information to the Recipient, or had the right to disclose it;
- c. was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;
- d. was lawfully in the possession of the Recipient before the information was disclosed to it by the Discloser, and that was not subject to a confidentiality obligation;
- e. is or becomes part of the public domain through no act or omission of the Recipient;
- f. the parties agree in writing is not confidential or may be disclosed; or
- g. is required to be disclosed under an order or requirement of a court, administrative agency, or other governmental body (but only to the minimum extent required to comply), provided however, that PaperCut shall provide prompt notice to the State of any potential disclosure and shall use its reasonable efforts to prevent disclosure of such information..

## **Privacy**

### **9.6 The parties must:**

- a. comply with the requirements of the any privacy law in Oklahoma; and
- b. only use, manipulate, store and handle personal information for the purposes of meeting its obligations under this Agreement.

### **9.7 You warrant that:**

- a. Each individual about whom PaperCut will obtain personal information from You as a result of this Agreement has agreed to the handling and processing of his or her personal information as outlined in Oklahoma's privacy policy in the statewide contract.;
- b. You have obtained the informed consent from each individual about whom PaperCut will obtain personal information from.
- c. PaperCut, its Representatives and their permitted successors, assignees and sub-licensees may use that individual's personal information only on an as needed basis to provide necessary services under this Agreement.

**9.8** You agree that PaperCut may collect and use technical information – including but not limited to technical information about your system setup, license, and feature usage – that is gathered periodically to facilitate the provision of Software updates, product improvement, product support and other services to You. PaperCut may use this information to improve, provide, and develop our products, services and technologies. PaperCut will not disclose this information in a form that personally identifies you.

### **9.9 Obtaining Updates**

- a. By clicking the "Check for updates" button, You authorize PaperCut to gather system, version and licensing information to facilitate the provision of software updates, product support, and other services to You (if any) related to the PaperCut software.
- b. You agree that our systems may from time to time automatically update the PaperCut Mobility Software that You have installed to a newer version. This may involve the automated collection of system information. You agree to receive these automatic updates without any additional notice.

## **10. LIMITATION OF LIABILITY**

**10.1** Except as set out in this Agreement, to the extent permitted by law, and subject to clause 10.2, PaperCut's total, cumulative liability to You (and Your Affiliates) for any claim whether it be for breach of contract (including under an indemnity), in tort (including negligence), breach of statutory duty or otherwise, arising out of or in connection with the Software, the Maintenance & Support service, this Agreement or the relationship between the parties, shall be limited to \$10,000,000.00.

**10.2** Reserved.

**10.3** PaperCut will abide by the warranty included in the Statewide Contract.

**10.4** You act as an agent for Your Affiliates in respect of this Agreement and are responsible to PaperCut for their acts and omissions.

## **11. INDEMNIFICATION**

## **12. TERMINATION**

**12.1** PaperCut may immediately terminate this Agreement for cause by giving You written notice if You:

- a. breach any of the provisions of clauses 4, 6, 7.2, 8.3, 9 or 13.5;

- b. breach any other provision of the Agreement and You do not remedy it within 14 days of PaperCut providing You written notice of the breach;

- c. cease to carry on business, are unable to pay Your debts as they fall due, You enter into liquidation or have a controller, managing controller, liquidator or administrator appointed or suffer any similar event in any jurisdiction; or
- d. Reserved.

12.2 The State shall have termination rights per Oklahoma Statewide Contract No. 1034H.

12.3 If this Agreement terminates:

- a. any license for Software and its related Maintenance & Support terminates immediately;
- b. each party shall immediately return to the other – or at the other party’s request, destroy – any of the other’s Confidential Information;
- c. You must ensure that all copies of the Software installed pursuant to this Agreement are uninstalled and deleted from all hardware in your possession or control within sixty (60) days of the date this Agreement is terminated.

12.4 Any termination of this Agreement shall not prejudice, limit or restrict any other rights or remedies either party may have arising prior to such termination. To the extent permitted by law, PaperCut shall be under no obligation to refund any amounts paid by You for any of the Software or Maintenance & Support services that have been provided prior to any termination of this Agreement.

### 13. GENERAL

#### Notices

13.1 Any notice that is given under this Agreement:

- a. by PaperCut NG/MF may be:

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

And

Chief Information Officer  
2401 N. Lincoln Blvd. #300  
Oklahoma City, OK 73105

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

13.2 A notice is deemed to be received upon receipt or upon refusal of the intended party to accept the receipt of the notice.

#### Relationship of Parties

13.3 The parties to this Agreement are independent contractors. Nothing in this Agreement shall be deemed to create an agency, employment, partnership, fiduciary or joint venture relationship between the parties, constitute any party the agent of another party, nor authorize any party to make or enter into any commitments for or on behalf of any other party.

#### Compliance with Laws

13.4 Both parties must comply with all laws which are relevant to them in performing their obligations under this Agreement.

#### Assignment

13.5 You must not assign or transfer this Agreement or any rights or obligations under this Agreement, in whole or part, without the prior written consent of PaperCut.

13.6 Reserved.

**Waiver**

13.7 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**Remedies**

13.8 Except as specifically provided otherwise in this Agreement, the rights and remedies provided under this Agreement are cumulative and in addition to, and not exclusive of, any rights or remedies provided by law.

**Severability**

13.9 If any part of this Agreement is determined to be invalid, illegal or unenforceable by any court or competent authority, such part will be severed from the remainder of the Agreement and the remaining provisions will continue in force.

**Force Majeure**

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.

13.10 All clauses which naturally survive termination of the Agreement, including clauses 4.6, 7.1, 8, 9, 10, 12.3(b), 12.4 and 13, will survive termination of this Agreement.

**Export**

13.11 You acknowledge and agree that the Software may be subject to applicable export and import laws. You agree not to export the Software or any direct product thereof, directly or indirectly in violation of these laws, nor will they be used for any purpose prohibited by these laws, including nuclear, chemical or biological weapons proliferation.

**Governing Law**

13.12 If You are resident, domiciled or incorporated in the USA, this Agreement will be governed by the laws of the State of Oklahoma, USA, without regard to its conflict of law principles. The parties submit to the exclusive jurisdiction of the courts in the State of Oklahoma. You hereby agree any claims will be brought exclusively in the federal or state courts located in Oklahoma and the parties hereby irrevocably consent to the personal jurisdiction and venue of the courts located in Oklahoma for the purpose of litigating any and all such claims.

**State of Oklahoma**

By:   
Joe.McIntosh@Apr.15.2024.10:28.CDT  
Name: Joe McIntosh  
Title: CIO  
Date: Apr 15, 2024

**PaperCut Software Pty Ltd.**

By:   
Name: James Ferguson  
Title: Head of Global Finance  
Date: 12 Apr 2024

# stateofoklahoma\_execution\_version\_papercut\_eula\_sw1034h\_\_apr\_2024\_

Final Audit Report

2024-04-15

Created:	2024-04-12
By:	Courtney Templeton (courtney.templeton@omes.ok.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAnj5ZaLgCe0cHOEyIWiauhPuX9k-78nX

## "stateofoklahoma\_execution\_version\_papercut\_eula\_sw1034h\_\_apr\_2024\_" History

-  Document created by Courtney Templeton (courtney.templeton@omes.ok.gov)  
2024-04-12 - 9:02:40 PM GMT
-  Document emailed to Joe McIntosh (joe.mcintosh@omes.ok.gov) for signature  
2024-04-12 - 9:03:20 PM GMT
-  Document e-signed by Joe McIntosh (joe.mcintosh@omes.ok.gov)  
Signature Date: 2024-04-15 - 3:28:00 PM GMT - Time Source: server
-  Agreement completed.  
2024-04-15 - 3:28:00 PM GMT



## Service Level Agreements

For purchases of Multi-Function Devices and Wide Format Print Systems, the Service Level Agreement (SLA) for each device is defined by the warranty included with purchaser’s devices as selected at the time of purchase due to the variety of uplifted and extended warranty options available.

For Managed Print Services, response time service level objectives and fleet uptime service level agreements are outlined below.

### Response Time

For MPS, requested response time option for eligible HP products is specified below.

Service Level Objective	Coverage Window	Description	Measurement
<b>On-Site Repair</b>			
4-hour on-site response, standard business hours (9x5); Immediate response Time included with HP Priority Phone Support.	Service is available 9 hours per day, during Standard Coverage Hours <sup>3</sup> .	An HP authorized representative will arrive at Customer’s site to begin hardware maintenance service within 4 coverage hours after the call has been received and acknowledged by HP, provided that HP will dispatch an HP-authorized service technician onsite only if the problem has not been resolved remotely.	Measured during Standard Coverage Hours <sup>3</sup> only. For calls received after 1:00 p.m. local time, measurement of response time will be carried over to the next coverage window.

### Travel Distance and Onsite Response (Service Zones)

For any Service Zone - Urban, Rural or Remote - Response Time will be immediate via HP Priority Phone Support. HP provides break/fix support from call receipt to Diagnose Before Dispatch (DBD), which occurs within the Call Center (Remotely). The call center operates 8:00 a.m. - 5:00 p.m. central standard time. If an issue cannot be resolved remotely, HP will dispatch one of its field engineers to the customer’s site.

Figure 4. Hardware Technical Support–Simplified Call Flow Process



Figure 5. Service Level Objectives for Onsite Response

On-site Response Times		
Distance to primary HP support responsible office		Service Level Objective (SLO)
miles	kms	4 Hour SLO
<100	< 160	4 coverage hours
100-200	160-320	8 coverage hours
201-300	321-480	As agreed at time of order
>300	>480	As agreed at time of order

<sup>3</sup> Standard Coverage Hours: 8:30 a.m. - 5:30 p.m. site local time, Monday - Friday excluding public holidays at site location.



## **Fleet Uptime SLA**

HP will use reasonable efforts to provide a Fleet Uptime SLA equal to 97% average calculated on a monthly basis. A minimum SLA Fleet of fifty (50) is required to be installed and deployed as a prerequisite to begin and continue tracking and calculating Fleet Uptime SLA. In addition, there shall be one full calendar year quarter following installation and deployment of the SLA Fleet, known as a stabilization quarter, before calculation of Fleet Uptime SLA shall begin.



## Section Ten: Offer of Value-Added Products and/or Services

In addition to the included services, HP can offer additional services that can be quoted upon request based on the deal size and specific fleet requirements. Cost may vary depending on required customization of the services.

### Carbon Neutral Service

HP can help you estimate the total carbon emissions from your printing solution using our proprietary Sustainable Impact Reporting and Analytics (SIRA) tool. You can support high-quality carbon offset projects, such as biodiversity reserves, wind power projects, and native forest regeneration that are verified by trusted partners and meet the UN SDG for Climate Action.

Co-benefits of these projects include advancement of UN SDGs such as No Poverty, Clean Water and Sanitation, Quality Education, Gender Equality, and Decent Work and Economic Growth.

HP MPS covers carbon emissions from a customer's HP printing solution due to:

- Raw material extraction
- Manufacturing
- Transportation
- Use of HP printers through to end of service, paper, and Original HP supplies

Our carbon neutral program meets stringent requirements. Lifecycle assessments (LCA)—verified by an independent third party to conform to ISO 14040 and ISO 14044—are used to understand the total carbon footprint for HP printing and imaging devices, paper, and supplies. Using this data, along with the information unique to each customer, we calculate the total carbon emissions for a customer's fleet. Third parties verify the program and aid in the delivery of high-quality carbon offsets.

### Discovery and Design

In addition to the initial assessment service, customer can select the custom Discovery and Design Service.

The State and HP will work together to develop a solid future-state design that provides improved device capabilities and fleet optimization, enhances end-user productivity, and meets customer's business objectives and needs.

There are three phases to the HP Discovery and Design Service:

- Planning the scope of the discovery effort
- Discovery of current state fleet of devices, which can be onsite and/or remote
- Design and validation of the future-state fleet of devices

Key benefits from the service include:

- Predictable costs—Defining the design criteria and print policy governing customer's environment can optimize the successful implementation of the future-state fleet designed to meet all specifications.



- Improved staff productivity and satisfaction—Following HP’s formal discovery methodology increases the mutual understanding of customer’s business objectives, current fleet, and end-user and operational requirements.
- Lay out pre-requisites for Digital Transformation using MPS as the cornerstone. Implementing a future state that allows for enhancement of workflow optimization digitally.

### Print Security Advisory Service (PSAS)

HP provides a Security Advisor to work with Customer IT and Security professionals to complete a 3-day onsite imaging and printing security risk and vulnerability evaluation.

They document and analyse their findings and make recommendations and options to reduce risk and update the security policy in a Print Security Assessment report. (Typically takes 10 working days. Additional days will be charged on a time and material basis.)

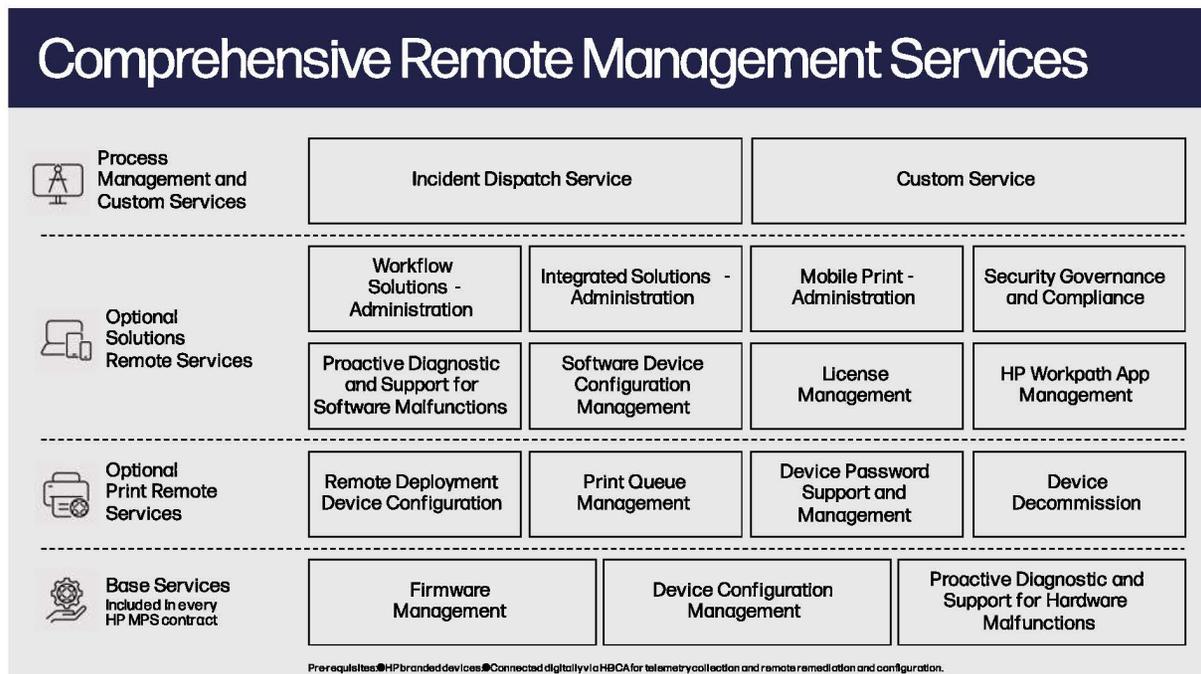
Key Impacts:

- Protect customer business identifying customer print security risks
- Baseline customer’s security profile for print infrastructure
- Recommend activities to reduce security risks

### Remote Management Services

HP’s Remote Management Services provides a combination of skilled personnel and secure remote access for the State’s HP-managed fleet under a HP Managed Print Services (MPS) contract. It maximizes the availability of printing resources while minimizing the disruption to operations, helping to reduce support costs, improve productivity, and increase security.

Figure 6. Different Types of Remote Management Services





Remote Management Services can be provided dependent upon the State’s business and IT operational needs. The State and HP experts can determine which remote management services need to be included.

**Fleet Reduction Allowance Service (Fleet Flexibility)**

HP Fleet Flexibility is an option that allows alignment of the print fleet size to a changing business environment although devices are under an integrated financing. Twelve months after deployment, the State can work with the HP Client Success Manager to exercise the Fleet Flexibility option for MPS agreements.

**Benefits**

- Reduce Costs
  - Have the flexibility to adjust fleet size and remove under-utilized assets based on changes to the organization’s business needs
  - Manage investment risk associated with volatile economic factors—the State can be released from a portion of the contract commitment
  - Enjoy financial flexibility without hidden fees or penalties—removal costs are amortized over the life of the MPS agreement instead of incurred as a one-time early termination fee
- Improve Staff Productivity and Satisfaction
  - Simplify management of fleet downsizing logistics

Provisions for Fleet Flexibility are included in a MPS Statement of Work (SOW) and are included in the overall MPS solution price so the State does not incur additional fees or penalties at the time of removal. The State is only responsible for the cost of packing, shipping, and returning the hardware to HP.

This option will be set for a pre-defined percentage of the HP-provided, HP-branded devices in the fleet. The Fleet Flexibility option may be exercised twelve (12) months after deployment, removing up to ten percent (10%) of the HP-provided, HP-branded devices.

**Table 2. Fleet Adjustment Allowance**

Term of MPS Statement of Work	Downsizing Percentage Available	Comments
12 Months	None	Not Available
24 Months	5 to 10%	Up to 10% of the fleet can be downsized
36 Months	5 to 10%	Up to 10% of the fleet can be downsized (10% allowed in year 2 and 3)
48 Months	5 to 10%	A maximum of 20%, but no more than 10% in years 2, 3, and 4
60 Months	5 to 10%	A maximum of 20%, but no more than 10% in years 2, 3, 4, and 5

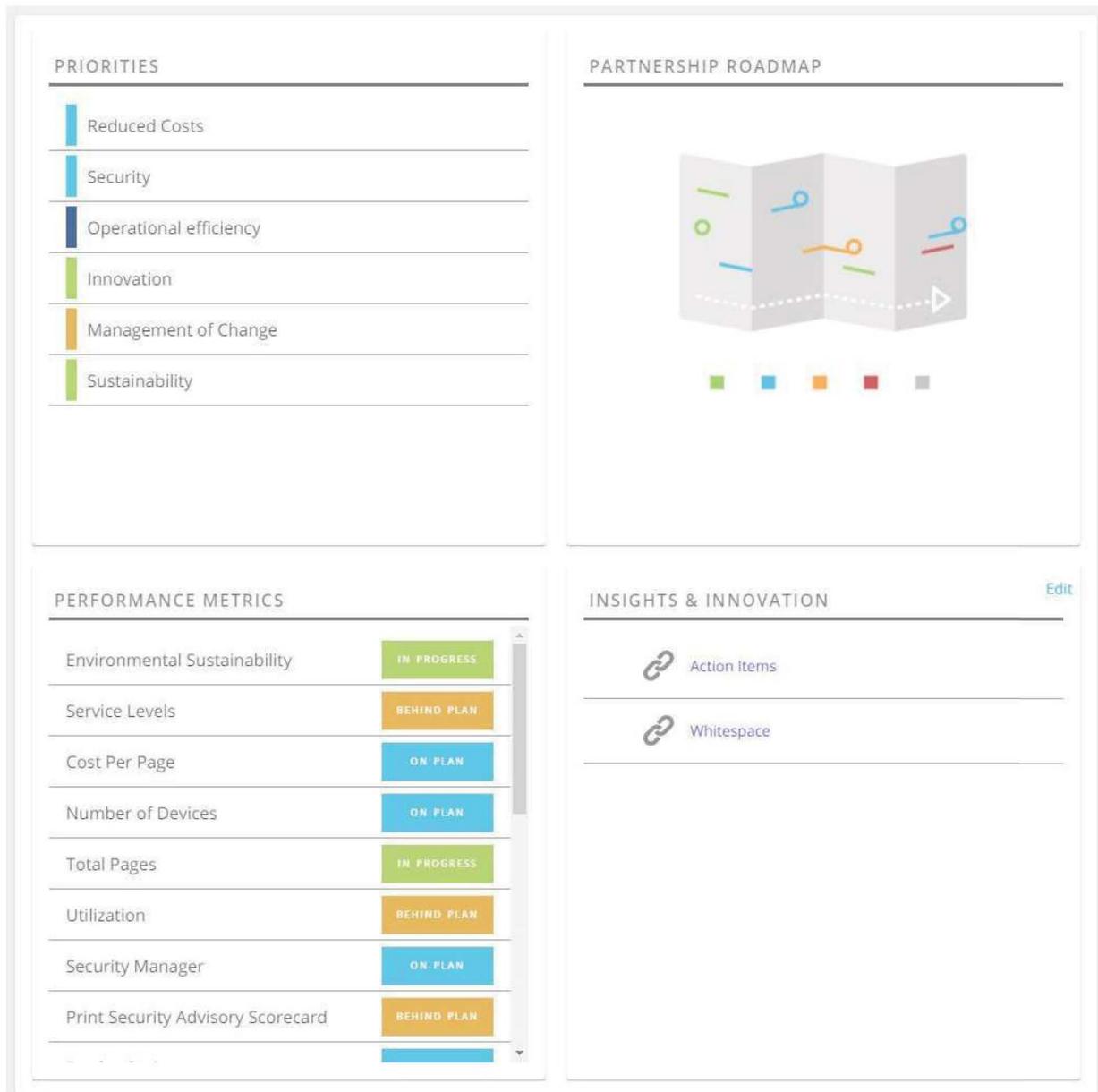
The number of products available for removal is calculated based on the Fleet Adjustment Allowance percentage and the actual number of devices deployed by the date of the downsizing event, since this may vary from the number of devices initially contracted for at the time of the SOW signature. Downsizing parameters may include limitations by product or family type. Returning accessories only is excluded from the Fleet Flexibility service.

## Value Management Office

The Value Management Office (VMO) is a dedicated program to improve the quality and outcomes of Strategic Business Reviews, which are quarterly sessions to align with customers on MPS performance.

The Strategic Business Review, powered by the VMO, is a dedicated service that enables HP clients to anticipate, track, and optimize the business impact of managed print services. This service allows customers to gather data, discover insights, and make effective business decisions about their print environments.

**Figure 7. The Strategic Business Review offers an interactive platform powered by the VMO to identify, quantify, and track value that aligns to your priorities and goals to give you visibility into the partnership with HP.**



An MPS advisor collaborates with the customer to understand its priorities and goals, establish value, align decisions to desired outcomes, and identify areas that HP can provide service, including:



- An interactive Partnership Roadmap creation
- Identification and tracking of Key Performance Indicators
- Insights into your print environment for strategic business decisions

Choose a category: ALL \* Edit

**ENVIRONMENTAL SUSTAINABILITY**

IN PROGRESS  
STRATEGIC

Showing the sustainability impact (paper savings) of duplexing, digital scan, and pull print abandoned pages  
 Ex: 2.7M sheets of paper saved over last 12 months (\$48K cost avoidance)

[MORE...](#)

**SERVICE LEVELS**

BEHIND PLAN  
OPERATIONAL

Measuring key performance indicators and SLAs such as Fleet Uptime, Onsite Response Time, and Time to Repair  
 Ex: Average uptime = 99.5%, Avg response = 85%, Avg Time to repair = 35 business hours. Showing improvement in response time (5% compared to previous year)

[MORE...](#)

**COST PER PAGE**

ON PLAN  
STRATEGIC

Tracking invoicing month over month, cost per page, and avoided cost compared to baseline CPP  
 Ex: Average CPP last 12 months \$0.045, 10% decrease compared to previous year  
 \$100K avoided cost compared to baseline CPP

[MORE...](#)

**NUMBER OF DEVICES**

ON PLAN  
OPERATIONAL

Number of devices in the fleet over time  
 Ex: Optimization of devices occurring during refresh, fleet size will be reduced by 40%

**TOTAL PAGES**

IN PROGRESS  
OPERATIONAL

Tracking print volume each month  
 Ex: Page volume is decreasing year over year, fluctuations in print volume during year is seasonal

**UTILIZATION**

Measuring device usage compared to recommended volume per model along with the highest and lowest utilized devices

Objective: All Completed In Progress On Plan Behind Plan At Risk Longer Term Edit

Opportunity for Workflow Automation Example Filter

Highlights

Next Steps

Resources

---

Workflow Assessment can help identify current paper intensive workflow, high areas of copy usage, and areas to implement a workflow automation solution such as Capture and Route

Benefits: Drive down print usage and increase productivity of users by reducing time spent managing document content

State of Oklahoma

Managed Print Services			HP Inc. - Additional Comments
	Unit - Each, CPC, Monthly, etc.	Cost per Unit	Cost per Unit
Implementation	Per Device (One Time)	\$ 340.00	Includes HW installation/set up and basic end-user training.
Remote Device Monitoring	Monthly per Device	\$ 5.30	The below Base RMS (Remote Management Services) provide a combination of skilled personnel (a remotely located engineer) and secure remote access to do the following: -Firmware Management Service -Device Configuration Management -Proactive Diagnostic and Support for Hardware Malfunctions ☐
Support/Maintenance	CPC Mono	\$ 0.02330	Includes supplies & supplies delivery (excluding paper), 4 hours break/fix Service Level Agreement, preventive Maintenance kits & Priority Phone Support.☐
	CPC Color	\$ 0.10905	
Training (extra/custom)	Hourly Rate	\$ 175.00	Standard training is included in the Implementation charge. However, additional/onsite training can be included using the listed hourly rate.
Change Management	Per Device (One Time)	\$ 500.00	HP will provide a Transition Project Manager that will help coordinate the change of the current fleet status to the future fleet by providing an implementation plan and defining key milestones and schedules in accordance with customer needs.
Account Management	Monthly per Device	\$ 43.50	Post-award, HP will provide a Client Success Manger (CSM) who will be the lead for implementation of the contract and the primary HP interface with the assigned contact for the contract. The CSM manages the contract to ensure compliance with terms and conditions, including Quarterly Business Reviews and customer satisfaction covering the entire Authorized User-HP experience. The CSM also acts as the escalation point of contact.
Help Desk	Included on Support & Maintenance	\$ -	
Project Management	Monthly	\$ 585.00	HP will perform quarterly sessions to align with customers on the performance of MPS; these Strategic Business Reviews (SBR) sessions are accompanied by an interactive platform powered by the Value Management Office (VMO) to identify, quantify, and track value that aligns to your priorities and goals to give you visibility into the partnership with HP. This service allows you to gather data, discover Insights, and make effective business decisions about your print environment.
Professional Services - Device Decommissioning (RMS)	Monthly per Device	\$ 1.23	At the end of the device term, or if a device with a hard disk drive ("HDD") requires exchange, HP will remotely access the device's Embedded Web Server (EWS) menu and erase all data on the HDD.
Asset Tracking	Monthly per Device	\$ 1.60	Customers can obtain detailed device information through HP Device Control Center (DCC) or Express Decision Portal (EDP) which are a web-based interfaces accessible to the customer with a login and password provided by HP.
<b>Software</b>			
-SW Professional Services	Hourly Rate	\$ 260.00	
-HP Access Control Print 1-99 Dev E-LTU (1A415AAE)	Per license (One Time)	\$ 222.05	Secure Pull Print and Authentication with Job Accounting, Policy Print, and Delegation
-HP Access Control Print 100-499 Dev E-LTU (1A416AAE)	Per license (One Time)	\$ 199.68	Secure Pull Print and Authentication with Job Accounting, Policy Print, and Delegation
-HP Access Control Print 500-999 Dev E-LTU (1A417AAE)	Per license (One Time)	\$ 177.41	Secure Pull Print and Authentication with Job Accounting, Policy Print, and Delegation
-HP Access Control Print 1,000+ Dev E-LTU (1A418AAE)	Per license (One Time)	\$ 155.17	Secure Pull Print and Authentication with Job Accounting, Policy Print, and Delegation
-HP AC Scan Pro 1-99 Device E-LTU(20U55AAE)	Per license (One Time)	\$ 432.85	Advance Scan to Destinations including Cloud
-HP AC Scan Pro 100-499 Device E-LTU(20U56AAE)	Per license (One Time)	\$ 389.57	Advance Scan to Destinations including Cloud
-HP AC Scan Pro 500-999 Device E-LTU(20U57AAE)	Per license (One Time)	\$ 346.29	Advance Scan to Destinations including Cloud
-HP AC Scan Pro 1000-1999 Device E-LTU(20U58AAE)	Per license (One Time)	\$ 303.01	Advance Scan to Destinations including Cloud

The provided table includes support and services only, HW is not included.

State of Oklahoma  
1 to 30 FY20

Executive Order	107 Item
Manufacture	17
Health	Included Below
State Board of Health	Included Below
State Board of Health - 2019	Included Below
Department of Health	Incl
Department of Health - 2019	Incl
Department of Health - 2020	Incl
Department of Health - 2021	Incl
Department of Health - 2022	Incl
Department of Health - 2023	Incl
Department of Health - 2024	Incl
Department of Health - 2025	Incl
Department of Health - 2026	Incl
Department of Health - 2027	Incl
Department of Health - 2028	Incl
Department of Health - 2029	Incl
Department of Health - 2030	Incl

Fiscal Year	Program/Department	Description	Public Order A			Public Order B			Public Order C - Includes Maintenance - Color			Public Order C - Includes Maintenance - Mon		
			Unit Price	Quantity	Total	Unit Price	Quantity	Total	Unit Price	Quantity	Total	Unit Price	Quantity	Total
2020	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000
2021	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000
2022	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000
2023	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000
2024	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000
2025	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000
2026	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000
2027	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000
2028	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000
2029	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000
2030	Order Support	Order Support	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000	\$ 1,100.00	300	\$ 330,000



















**BID PACKET SECTION FOUR: REQUESTED EXCEPTIONS TO TERMS  
SOLICITATION NO. EV00000190**

The Contract is hereby amended to include the terms as set forth below and supersedes all prior terms and exceptions submitted by SHI or discussed by the parties.

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

Term & Section	Language
<b>BIDDER INSTRUCTIONS</b>  <b>EXHIBIT 1: SCOPE, SECTION B, PARTS AND SUPPLIES</b>	
<b>ATTACHMENT B - STATE OF OKLAHOMA GENERAL TERMS</b>	
4 Definitions, Contract Document (Section 4.3, page 3)	<p><i>Section 4.3 is modified so that Amendments also apply to the Contract deleted in its entirety and replaced with the following.</i></p> <p><b>4.3</b> Amendment means a written change, addition, correction or revision to the Contract (signed by both parties) or issued by the State to the Solicitation.</p> <p><b>A new subsection shall be added prior to 4.1 titled 4.0 to the definitions of Section 4:</b></p> <p><b>4.0</b> Acceptance of or Accepted products and services means: Hardware Products. Customer shall determine whether all hardware products delivered meet Supplier’s published specifications. Customer shall make every effort to notify Supplier within ten (10) business days following delivery, of its non-acceptance of a product. In the event Supplier has not been notified within ten (10) business days from the hardware product delivery date, the product will be deemed accepted on the eleventh (11th) business day after hardware product delivery. Further, with regard to defects discovered after acceptance, that affected hardware products will be subject to remedy in accordance with the applicable warranty purchased for that product.</p> <p><b>A new subsection shall be added prior to 4.17 titled 4.171 to the definitions of Section 4:</b></p> <p><b>4.171</b> Statement of Work means the details of the Acquisition (services, products and devices) that will be provided by Contractor to the Customer.</p>
6 Ordering, Inspection, and Acceptance (Section 6.1, page 6)	<p><i>6.1 explains when purchase cards are accepted. The additional revision identifies that a purchase order issued before the Contract is cancelled/terminated would survive.</i></p> <p><b>6.1</b> 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 (with the except as may be negotiated in a third-party Lease agreement) at the time of purchase only. 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, unless the purchase survives termination of the Contract, shall be performed unless mutually agreed in writing otherwise.</p>
6 Ordering, Inspection, and Acceptance (Section 6.2, pages 6-7)	<p><i>The third paragraph of section 6.2 is deleted in its entirety and replaced with the following:</i></p> <p>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 by the Customer or designee or ten (10) days after delivery. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.</p>

	<p><b><i>In the fourth paragraph of section 6.2, is deleted in its entirety and replaced with the following:</i></b></p> <p>If subsequent inspection affirms that the Acquisition does not meet Supplier’s specifications or that the Acquisition has a latent defect, the Supplier shall be notified in writing as soon as is reasonably practicable. The Supplier will either repair the relevant defect or replace the Acquisition. If Supplier is unable to complete the repair or replace the product within a reasonable, Supplier shall issue a refund to Customer upon the prompt return of the product to Supplier (if hardware) or upon written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. Supplier will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to Supplier.</p>
6 Ordering, Inspection, and Acceptance (Section 6.4, page 7)	<b><i>Section 6.4 has been deleted in its entirety.</i></b>
7 Invoices and Payment (Section 7.1.H, page 8)	<p><b><i>We have also clarified subsection 7.1.H as Purchase Cards are accepted only when the PO is placed and does not apply to third party lease payments.</i></b></p> <p><b>7.1.H.</b> The Supplier shall accept payment by Purchase Card (except as may be agreed to in a third party Lease agreement) when the purchase order is placed only, as allowed by Oklahoma law.</p>
8 Maintenance of Insurance, Payment of Taxes, and Workers’ Compensation (Section 8.1, pages 8-9)	<p><b><i>The change to the first paragraph of section 8.1 is to comply with HP’s standard insurance coverage.</i></b></p> <p><b>8.1</b> 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 <u>or equivalent to A-</u> or better.</p>
9 Compliance with Applicable Laws (Subsection 9.2, page 11)	<p><b><i>We have added language where HP can agree to future amendments to the Information Security Policy.</i></b></p> <p><b>9.2</b> 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 <a href="https://oklahoma.gov/omes/services/information-services/policy-standards-publications.html">https://oklahoma.gov/omes/services/information-services/policy-standards-publications.html</a> and any future amendments to the extent that these (a) align with applicable laws and NIST frameworks, and (b) align with Supplier’s own policies and standards to the extent that they meet or exceed the standards set forth above. Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier’s employees, agents and subcontractors.</p>
9 Compliance with Applicable Laws (Subsection 9.9, page 12)	<p><b><i>The edits to section 9.9 identify that matters which are material to HP’s business or financial results are reported in our 10K and other appropriate public filings.</i></b></p> <p><b>9.9</b> Supplier represents that, to the best of its knowledge, any pending litigation involving Supplier has been disclosed in Supplier’s most recent annual report on Form 10-K, as filed with the SEC and is available at: <a href="https://investor.hp.com/financials/annual-reports-and-proxies/default.aspx">https://investor.hp.com/financials/annual-reports-and-proxies/default.aspx</a>. Supplier is not aware of any other pending litigation.</p>
11 Confidentiality (Section 11.5, pages 14-15)	<p><b><i>The change to the last sentence of section 11.5, identifies that a court of competent jurisdiction would determine the necessity of injunctive relief.</i></b></p> <p><b>11.5</b> 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 seek 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.</p>

<p>14 Background Checks and Criminal History Investigations (Section 14, page 17)</p>	<p><b>Section 14 is modified to read as follows:</b></p> <p>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. If required, Supplier will provide the State with a description of the background check process to include any vendor's used to gather information. Supplier will further attest that each employee and subcontractor providing services has passed the background check. 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 in such an instance, customer shall pay for the additional background checks. Supplier will coordinate with the State and supplier's 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</p>
<p>16 Indemnification, 16.5 Limitation of Liability</p>	<p><b>Section 16.5 is deleted in its entirety and replaced with the following:</b></p> <p>A. EXCEPT FOR INFRINGEMENT/MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR AS OTHERWISE SET FORTH IN ANY APPLICABLE SCHEDULES, NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, SOFTWARE OR SERVICES PROVIDED HEREUNDER. EXCEPT FOR CUSTOMER'S BREACH OF PAYMENT OBLIGATIONS, NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING: (1) LOSS OF REVENUE, INCOME, PROFIT OR SAVINGS; (2) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK OR THE RECOVERY OF SUCH; (3) LOSS OF BUSINESS OPPORTUNITY; (4) BUSINESS INTERRUPTION OR DOWNTIME; OR (5) DELIVERABLES, HP PRODUCTS OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE.</p> <p>B. AS APPLICABLE UNDER OKLAHOMA LAW AND AS IT RELATES TO THIS CONTRACT, NO DIRECT OR INDIRECT LIMITATION OF LIABILITY, TO EXEMPT ONE FROM RESPONSIBILITY FOR HIS OWN FRAUD, WILLFUL INJURY TO THE PERSON OR PROPERTY OF ANOTHER OR VIOLATION OF LAW, WHETHER WILLFUL OR NEGLIGENT SHALL APPLY.</p> <p>C. SUPPLIER'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT (INCLUDING ANY PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER) SHALL NOT EXCEED THE AGGREGATE AMOUNT OF 12 MONTHS TRAILING CONTRACT REVENUE UNDER THIS CONTRACT.</p> <p>D. THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THESE LIMITATION OF LIABILITY PROVISION ARE AN AGREED-UPON ALLOCATION OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR SUPPLIER'S SALE OF</p>

	<p>PRODUCTS, SOFTWARE, OR SERVICES TO PURCHASING ENTITY, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.</p>
<p>18 Termination for Cause (Section 18.2, page 21)</p>	<p><i>We have revised Section 18.2 so that termination requires reasonable notice, though not 30-days. Also, language has been added to subsection (iii) to identify the basis for administrative errors.</i></p> <p>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.</p>
<p>19 Termination for Convenience (Section 19.2 pages 22-23)</p>	<p>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, if agreed to in an applicable Statement of Work. 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.</p>
<p>20 Suspension of Supplier (Section 20.1, page 23)</p>	<p><i>Subsection 20.1 has been modified so that suspension requires reasonable notice.</i></p> <p>20.1 Subject to the requirements of See 260 O.A.C. 115-3-21, Supplier may be subject to Suspension with 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.</p>
<p>20 Suspension of Supplier (Section 20.3, page 23)</p>	<p><i>The first sentence in Section 20.3 has been revised so that formal notice is required.</i></p> <p>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.</p>
<p>23 Force Majeure (Section 23.1, page 24)</p>	<p><i>The modifications to Section 23.1 include essential force majeure events. We have also deleted "prudently" as it is subjective.</i></p> <p>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 without limitation, fire or other similar casualty, act of God, strike, labor dispute or other industrial action not caused or contributed to by the party seeking to rely on the event, war or other violence, health crises such as pandemics, epidemics, and endemics, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event.</p> <p><i>The last sentence is revised to reflect the "commercially reasonable efforts" standard.</i></p> <p>The party shall use commercially reasonable efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.</p>

Term & Section	Language
<b>ATTACHMENT C OKLAHOMA STATEWIDE CONTRACT TERMS</b>	
1. Statewide Contract Type (Section 1.2, page 1)	<p><i>HP has modified section 1.2 to reflect HP's pricing structure. HP has included a firm fixed contract discount rate for hardware based on HP's current list price for the term of an awarded contract outlined on Exhibit 2-Pricing. Maintenance and/or MPS services pricing outlined in Exhibit 2-Pricing, is provided on a Cost Per Copy not to exceed price. Consistent in this industry and given market volatility, HP is requesting an option to seek an increase in pricing once per each contract year upon mutual agreement. Note any increase would not impact existing orders and would only be implemented after submission and approval by the State Procurement official.</i></p> <p>1.2 The Contract is a firm discount off Supplier's US List Prices (MSRP) for the products available under the Contract. Maintenance or Manage Print Service (MPS) pricing shall remain firm during the first twelve (12) months of the contract. Supplier may, once per each contract year, increase its Maintenance and/or MPS pricing upon mutual agreement. All requested price increases by Supplier for Maintenance and/or MPS services must be sent to the State and include documentation from Supplier for State approval.</p>
2. Order and Addendums (Section 2.1, page 1)	<p><i>Subsection 2.1 was modified to exclude Purchase Card payments for third party lease payments.</i></p> <p>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, except as may be agreed to in a third party Lease agreement) 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.</p>

Term & Section	Language
<b>ATTACHMENT D STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS</b>	
1 Definitions (Section 1.9, Security Incident, Page 2)	<p><i>Section 1.9 is modified as our incident response process is triggered by a successful attempt.</i></p> <p><b>1.9 Security Incident</b> means the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services.</p>
2 Termination of Maintenance and Support Services (Page 3)	<p><i>Section 2 has been modified to provide HP with notice of cancellation and to reflect payment for any renewal .</i></p> <p>2. Customer may terminate maintenance or support services upon sixty (60) days' notice without an adjustment charge, provided any of the following circumstances occur: Customer removes the product for which the services are provided, from productive use or; 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 will 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.</p>
5 Offshore Services (Page 4)	<p><i>We have added the content below to section 5 that was previously agreed by HP and the State (NASPO ValuePoint PC Contract). HP's back office administrative functions may be located offshore using the "follow-the-sun support model" and are not prohibited.</i></p> <p>5. 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.</p>

<p>6 Compliance with Technology Policies (6.1, page 4)</p>	<p><b>Section 6.1 is revised to ensure we receive current versions of the documents identified.</b></p> <p><b>6.1</b> The Supplier agrees to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at <a href="https://omes.ok.gov/s/g/files/gmc316/f/InfoSecPPG_0.pdf">https://omes.ok.gov/s/g/files/gmc316/f/InfoSecPPG_0.pdf</a>, as set in the writing available to Supplier at the time of Contract signature, and any subsequent changes via Amendment or written mutual agreement to the extent that such policies, procedures and guidelines are: (1) aligned with industry-standard security frameworks (e.g. NIST 800-53, ISO 27001, etc.); (2) do not materially increase the cost of providing Products and Services pursuant to this Agreement; (3) do not require the violation of confidentiality obligations, and (4) do not endanger Supplier security.</p> <p>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 <a href="http://eclipse.omes.ok.gov">http://eclipse.omes.ok.gov</a> as set out in the writing available to the Supplier at the time of Contract signature to the extent that such policies, procedures and guidelines are: (1) aligned with industry-standard security frameworks (e.g. NIST 800-53, ISO 27001, etc.); (2) do not materially increase the cost of providing Products and Services pursuant to this Agreement; (3) do not require the violation of confidentiality obligations,, and (4) do not endanger Supplier security.</p>
<p>11 Ownership Rights (page 6)</p>	<p>Subject to the State’s compliance with the terms of the Contract and any applicable Service Specification, the State’s payment of applicable amounts due, and Supplier’s Intellectual Property Rights in any underlying intellectual property incorporated into any Work Products or used by Supplier to perform Professional Services,</p> <p>(a) State shall own all Intellectual Property rights, including copyrights, to the portion of Work Product that consists solely of written reports, analyses and other working papers prepared solely for the State and delivered by Supplier to State in the performance of Supplier’s obligation under the Service Specification; and</p> <p>(b) For the portion of Work Product for which State does not own copyright rights in accordance with section [11 (a)] (“Licensed Work Product”), Supplier grants the State, a non-exclusive, non[1]transferrable, irrevocable (except in case of non-payment, or any breach of the Contract or any applicable Service Specification), license (without the right to sublicense), solely for the internal business use of the State or otherwise required by law, to use the Work Product in accordance with the applicable Service Specification and subject to the Contract. The State may authorize its service providers to use the Work Product, but solely on the State’s behalf, solely for the State’s internal business purposes, and the State shall be responsible for such service provider’s compliance with these restrictions.</p> <p>The Supplier reserves for itself all Intellectual Property Rights that it has not expressly granted to the State herein. The license granted in this clause 11 does not apply to: (i) any Products; or (ii) items licensed or otherwise provided under a separate agreement. Supplier is not limited in developing, using, or marketing services or products that are similar to the Work Products or Professional Services provided hereunder, any Service Specification., or, subject to the Supplier’s confidentiality obligations to the State or Customer, Supplier may use in using the Work Products or performing similar Professional Services for any other projects., but in no case shall Supplier use Work product identified in this Section 11(a), State or Customer Intellectual Property, or State or Customer Data or records or information derived therefrom without the express written permission of the State.</p> <p>The parties further agree that in a written mutually agreed upon Statement of Work or other Contract Document the Supplier in accordance with this subsection 11 may grant a transferrable license and other rights to the State and Customer.</p>
<p>12 Intellectual Property Ownership (pages 7-9)</p>	<p><b>Section 12 will be deleted in its entirety and replaced with the following:</b></p> <p>The following terms apply to ownership and rights related to the State or Customer’s Intellectual Property:</p> <p>The State and/or Customer retains its Intellectual Property Rights in materials, documents, information or other items or things it furnishes to the Supplier for use in connection with the performance of Professional Services. The State and/or Customer grants Supplier a non-exclusive, nontransferable right, under the State’s and/or Customer’s Intellectual Property Rights, to use the State/Customer-provided materials solely for the benefit of the State and/or Customer in fulfilling Supplier’s obligations under the Contract.</p>

**HP RESPONSE TO OK EV00000190 BID PACKET SECTION FIVE –  
ADDITIONAL BIDDER TERMS.**

<b>Term &amp; Section</b>	<b>Language</b>
<b>ATTACHMENT D – STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS ADDITIONAL BIDDER TERMS</b>	

10 Commercial Off the Shelf Software

Software.

- (a) License Grant. Supplier grants Customer a non-exclusive license to use the version or release of the Supplier-branded Software Product listed in a Statement of Work. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the software product or its Supporting Material. "Software Product" includes application software, firmware, operating systems, drivers, and any other types of software and may include associated media, printed materials, and online or electronic documentation. You may use the Software Product on a single HP Product. If the Software Product is provided to you via the internet and was originally licensed for use on more than one HP Product, you may install and use the Software Product only on those HP Products. You may not separate component parts of the Software Product for use on more than one HP Product. You do not have the right to distribute the Software Product. You may load the Software Product into your HP Product's temporary memory (RAM) for purposes of using the Software Product. For non-Supplier branded software, the third party's license terms will govern its use upon acceptance of those terms by the Customer. Any product not specifically described and any terms not agreed to in writing and signed by the parties shall not be permitted under this contract.
- (b) Updates. Customer may order new software versions, releases or maintenance updates ("Updates"), if available, separately or through a Supplier software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that Supplier makes them available to Customer. After upgrading, you may no longer use the original Software Product that formed the basis for your upgrade eligibility as a separate Software Product. Unless it is determined in the State's sole discretion that the update presents additional risks to the State's architecture or security infrastructure, in which case the State or Customer will roll back the update on all updated Supplier branded software to the previous or original version. Supplier shall provide reasonable assistance with the rollback to the State or the Customer upon request as part of the Professional Services offered in the applicable Statement of Work.
- (c) License Restrictions. Supplier may monitor use/license restrictions remotely and, if Supplier makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Any software recovery solution provided with/for your HP Product, whether in the form of a hard disk drive-based solution, an external media-based recovery solution (e.g. CD or DVD) or an equivalent solution delivered in any other form, may only be used for restoring the hard disk of the HP Product with/for which the recovery solution was originally purchased. The use of any Microsoft operating system software contained in such recovery solution shall be governed by the Customer's independent Microsoft License Agreement held directly with Microsoft. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer's intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble decrypt, decompile or make derivative works of any software licensed to Customer under this Agreement unless permitted by statute, in which case Customer will provide Supplier with reasonably detailed information about those activities.
- (d) License Term and Termination. Unless otherwise specified, any license granted is perpetual, provided however that if Customer fails to comply with the terms of this Agreement, Supplier may terminate the license upon written notice. Immediately upon termination, or in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to Supplier, except that Customer may retain one copy for archival purposes only.
- (e) License Transfer. Customer may not rent, lease, or lend the Software Product or use the Software Product for commercial timesharing. Customer may not sublicense, assign, transfer, rent or lease the software or software license except as expressly provided in this section and Attachments A-D1 of this Contract. Supplier-branded software licenses are generally transferable subject to the terms of this Contract. Upon such transfer, Customer's rights shall terminate and Customer shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated hardware.
- (f) License Compliance. Supplier may audit Customer compliance with the software license terms. Upon reasonable notice, Supplier may conduct an audit during normal business hours (with the auditor's costs being at Supplier's expense). If an audit reveals underpayments then Customer will pay to Supplier such underpayments. If underpayments discovered exceed five (5) percent of the contract

price, Customer will reimburse Supplier for the auditor costs.

- (g) **Software Performance.** Supplier warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. Supplier warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. Supplier does not warrant that the operation of software products will be uninterrupted or error-free or that software products will operate in hardware and software combinations other than as authorized by Supplier in Supporting Material.
- (h) **Proprietary Rights.** All intellectual property rights in the Software Product and user documentation are owned by HP or its suppliers and are protected by law, including but not limited to United States copyright, trade secret, and trademark law, as well as other applicable laws and international treaty provisions. You shall not remove any product identification, copyright notices, or proprietary restrictions from the Software Product. To the maximum extent permitted by applicable law, HP and its suppliers reserve all rights not expressly granted to you in this Section 10.
- (i) **Additional Software.** The terms of this Section 10, applies to updates or supplements to the original Software Product provided by HP unless HP provides other terms along with the update or supplement. In case of a conflict between such terms, the other terms will only prevail if agreed to in a writing signed by the parties.
- (j) **Notice of Data Collection.** Subject to the privacy requirements of Attachments A-D1 of this Contract, HP and its affiliates may collect, combine, and use device and individual user information you provide in relation to support services related to the Software Product. HP will not use this information to market to you.
- (k) **Compliance with Export Laws.** You shall comply with all laws and regulations of the United States and other countries ("Export Laws") to assure that the Software Product is not (1) exported, directly or indirectly, in violation of Export Laws, or (2) used for any purpose prohibited by Export Laws, including, without limitation, nuclear.
- (l) **THIS SECTION 10 IS A GLOBAL AGREEMENT AND IS NOT SPECIFIC TO ANY PARTICULAR COUNTRY, STATE OR TERRITORY. IF YOU ACQUIRED THE HP PRODUCT OR THE SOFTWARE PRODUCT AS A CONSUMER WITHIN THE MEANING OF RELEVANT CONSUMER LEGISLATION IN YOUR COUNTRY, STATE OR TERRITORY, THEN DESPITE ANYTHING TO THE CONTRARY IN THIS EULA, NOTHING IN THIS EULA AFFECTS ANY NON-EXCLUDABLE STATUTORY RIGHTS OR REMEDIES THAT YOU MAY HAVE UNDER SUCH CONSUMER LEGISLATION; THIS EULA IS SUBJECT TO THOSE RIGHTS AND REMEDIES.**
- (m) **RIGHTS IN THE SOFTWARE PRODUCT ARE OFFERED ONLY ON THE CONDITION THAT YOU AGREE TO ALL TERMS AND CONDITIONS OF THIS SECTION 10. BY INSTALLING, COPYING, DOWNLOADING, OR OTHERWISE USING THE SOFTWARE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS SECTION 10.**
- (n) **ANY AMENDMENT OR ADDENDUM TO THIS EULA SHALL BE IN WRITING AND SIGNED BY BOTH PARTIES. IN THE EVENT OF A CONFLICT BETWEEN ANY SUCH AMENDMENT OR ADDENDUM AND THIS EULA, THE TERMS OF THE AMENDMENT OR ADDENDUM SHALL CONTROL.**
- (o) **US Federal Government Use.** Customer shall not use software licensed under this agreement for use in the performance of a US Government prime contract or subcontract. If Customer desires to use the software licensed under this agreement for such contracts, Customer agrees additional license terms consistent with FAR standards shall be agreed to in writing.

**Attachment F-1 to  
STATE OF OKLAHOMA CONTRACT WITH  
PENSION TECHNOLOGY GROUP, LLC  
RESULTING FROM SOLICITATION NO. 0900000556**

**Template for Contract Modifications for Quotes, Statements of  
Work, or other Ordering Documents**

The parties agree to use this template as the process to formally approve any terms, conditions or clauses that are to supersede the terms and Conditions in the Contract for purposes of the applicable quote, statement of work or other ordering document.

## Contract Modifications for Quote, Statement of Work, or other Ordering Document

Solely for purposes of this ordering document, the terms and conditions of the Contract are hereby amended as set forth below. This amendment is considered an Addendum.

RFP Section	Exception/Additional Terms

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

**PENSION TECHNOLOGY GROUP, LLC**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

The **[INSERT AGENCY NAME]** is additionally executing this document to memorialize its involvement in negotiation of and its agreement with the terms of this document.

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## **Attachment D-1**

### **Information Security Requirements**

#### **1. General Information Security Requirements**

- a. No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.
- b. Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.
- c. Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.
- d. Contractor or its subcontractors agree 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>

#### **2. HIPAA Requirements**

- a. Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).
- b. If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse, and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor’s security compliance as it pertains to this contract.
- c. Business Associate Terms Definitions:
  - i. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that “PHI” and “ePHI” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business

- Associate's workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.
- ii. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
  - iii. **Covered Entity.** "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 C.F.R. 160.103.
  - iv. **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
  - v. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub- Contractor, Unsecured PHI, and Use.
- d. **Obligations of Business Associate:** Business Associate may use Electronic PHI and PHI (collectively, "PHI") solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:
- i. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
  - ii. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
  - iii. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
  - iv. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
  - v. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA's compliance and the Secretary of the Department of Health and Human Services (HHS);
  - vi. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
  - vii. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the

- form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;
- viii. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
  - ix. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
  - x. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual who's Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;
  - xi. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
  - xii. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
  - xiii. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
  - xiv. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to

- respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- xv. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and
  - xvi. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.
- e. Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:
- i. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
  - ii. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
  - iii. disclose PHI to report violations of law to appropriate federal and state authorities; or
  - iv. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;

- v. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
  - vi. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § (d)(1)].
- f. Obligations of Covered Entity
- i. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
  - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.
  - iii. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
  - iv. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
  - v. Covered Entity shall provide the minimum necessary PHI to Business Associate.
- g. Term and Termination:
- i. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
    - (1) retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
    - (2) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
    - (3) continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
    - (4) not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under "Permitted Uses and Disclosures By Business Associate" that applied prior to termination; and
    - (5) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- ii. All other applicable obligations of Business Associate under this Agreement shall survive termination.
  - iii. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D).
- h. Miscellaneous Provisions:
- i. **No Third Party Beneficiaries:** Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
  - ii. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
  - iii. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
  - iv. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
  - v. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
  - vi. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
  - vii. **Amendment:** To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s)

to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

**3. 42 C.F.R. Part 2 Related Provisions**

- a. Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:
  - i. Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
  - ii. Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of an kind;
  - iii. Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
  - iv. Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).

- v. Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
  - vi. Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
  - vii. Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
  - viii. Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;
  - ix. Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.
- b. **Data Security.** The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.
  - c. **Data Destruction.** Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.
  - d. **Use of Information.** Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.
  - e. **Redisclosure of Data.** The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

#### **4. Federal Tax Information Requirements IRS Publication 1075 (If Applicable)**

- a. **PERFORMANCE:** If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent

within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

- i. All work will be performed under the supervision of the State of Oklahoma.
- ii. The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- iii. FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- iv. FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- v. The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- vi. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- vii. All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- viii. No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- ix. Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- x. To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

- xi. In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- xii. For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- xiii. The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

#### **b. CRIMINAL/CIVIL SANCTIONS**

- i. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- ii. Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- iii. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- iv. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material

in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- v. **Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.**

c. **INSPECTION:** The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

## **5. SSA Requirements (If applicable)**

- a. **PERFORMANCE:** If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
  - i. All work will be done under the supervision of the State of Oklahoma.
  - ii. Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
  - iii. All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

- iv. No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- v. The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- vi. Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- vii. Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful assess and/or disclosure.
- viii. Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA- provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA- provided information as part of their duties.
- ix. The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- x. Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- xi. SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- xii. SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.

- xiii. If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA- provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
  - xiv. In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
  - xv. The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.
- b. **CRIMINAL/CIVIL SANCTIONS:** The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.
- i. **Civil Remedies.**
    - (1) In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of
      - 
      - (a) actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
      - (b) the costs of the action together with reasonable attorney fees as determined by the court.
    - (2) An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where

parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

ii. **Criminal Penalties**

- (1) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).
- (2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- (3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

**6. Child Support FPLS Requirements (If applicable)**

- a. Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.

- i. This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- ii. This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

**7. FERPA Requirements (If applicable)**

- a. If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

**8. CJIS Requirements (If applicable)**

**a. INTRODUCTION**

This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. 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.

**b. 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.”

**c. 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/cjissecurity-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.