



STATE OF OKLAHOMA STATEWIDE CONTRACT WITH DELL MARKETING L.P.

This State of Oklahoma Statewide Contract No. 1041 (“Contract”) is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services and Dell Marketing L.P. (“Supplier”) and is effective as of the date of last signature to this Contract. The initial Contract term, which begins on the effective date of the Contract, is one year and there are four (4) one-year options to renew the Contract.

Purpose

The State is awarding this Contract to Supplier for the provision of software and services to support State agencies and other eligible Oklahoma Interlocal Entities, including software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration, as more particularly described in certain Contract Documents. Supplier submitted a proposal which contained exceptions to the Solicitation and additional terms. This Contract memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Supplier.

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

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation 0900000556, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Oklahoma Statewide Contract Terms, Attachment C;
 - 2.4. Information Technology terms, Attachment D;
 - 2.5. Information Security Requirements, Attachment D-1;
 - 2.6. Portions of the Bid as Revised, Attachment E;

- i. End User License Agreement, Attachment E-1;
 - ii. Pricing, Attachment E-2
 - 2.7. Negotiated Exceptions to Contract, Attachment F; and
 - 2.8. Template for Contract Modifications for Quotes, Statements of Work, or other Ordering Documents, Attachment F-1.
3. The parties additionally agree:
- 3.1. except for the Dell Technologies Security Practices – SIGLite2022v1.0 and information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.
 - 3.2. 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.
 - 3.3. 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.
 - 3.4. Supplier, as a software value added reseller, 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.

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

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

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

DELL MARKETING L.P.

By: 
Joe McIntosh (May 29, 2024 10:05 CDT)

By: 
Katherine Castillo (May 22, 2024 15:55 CDT)

Name: Joe McIntosh

Name: Katherine Castillo

Title: Paul J McIntosh

Title: Paralegal Advisor

Date: 05/29/2024

Date: 05/22/2024

ATTACHMENT A
SOLICITATION NO. 0900000556

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

PURPOSE

The Contract is awarded as a statewide contract on behalf of the Office of Management and Enterprise Services for software and services to support State agencies and other eligible Oklahoma Interlocal Entities. This Supplier will provide software, training, pre-sales assistance, documentation, installation, maintenance, support, configuration, customization, and license agreement administration.

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 [4] one-year options to renew the Contract.

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

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

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

1 Scope and Contract Renewal

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

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

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

2 Contract Effectiveness and Order of Priority

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

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

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

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

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

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

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

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

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

4 **Definitions**

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

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

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

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

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

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

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

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

5 Pricing

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

6 Ordering, Inspection, and Acceptance

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

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

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

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

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

7 Invoices and Payment

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

The following terms additionally apply:

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

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

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

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

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

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

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

9 Compliance with Applicable Laws

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

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

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

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

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

10 Audits and Records Clause

10.1 As used in this clause and pursuant to 67 O.S. §203, “record” includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.

10.2 The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

10.3 Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

11 Confidentiality

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

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

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

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

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

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

12 Conflict of Interest

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

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

13 Assignment and Permitted Subcontractors

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

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

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

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

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

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

14 Background Checks and Criminal History Investigations

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

15 Patents and Copyrights

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

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

16 Indemnification

16.1 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.

- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

16.2 Infringement

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

16.3 Notice and Cooperation

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

16.4 Coordination of Defense

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

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

16.5 Limitation of Liability

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

17 Termination for Funding Insufficiency

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

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

18 Termination for Cause

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

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

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

19 Termination for Convenience

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

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

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

20 Suspension of Supplier

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

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

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

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

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

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

22 Certification Regarding State Employees Prohibition From Fulfilling Services

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

23 Force Majeure

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

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

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

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

24 Security of Property and Personnel

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

25 Notices

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

If sent to the State:

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

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

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

26 Miscellaneous

26.1 Choice of Law and Venue

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

26.2 No Guarantee of Products or Services Required

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

26.3 Employment Relationship

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

26.4 Transition Services

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

26.5 Publicity

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

26.6 Open Records Act

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

26.7 Failure to Enforce

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

26.8 Mutual Responsibilities

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

26.9 Invalid Term or Condition

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

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

26.10 Severability

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

26.11 Section Headings

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

26.12 Sovereign Immunity

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

26.13 Survival

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

26.14 Entire Agreement

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

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

26.15 Gratuities

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

26.16 Import/Export Controls

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

ATTACHMENT C

OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

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

2. Orders and Addendums

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

3. Termination for Funding Insufficiency

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

4. Termination for Cause

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

5. Termination for Convenience

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

6. Contract Management Fee and Usage Report

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

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

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

6.3 All Contract Usage Reports shall meet the following criteria:

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

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

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

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

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

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

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

1 Definitions

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

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

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

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

2 Termination of Maintenance and Support Services

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

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

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

3 Compliance and Electronic and Information Technology Accessibility

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

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

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

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

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

5 Offshore Services

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

6 Compliance with Technology Policies

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

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

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

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

7 Emerging Technologies

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

8 Extension Right

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

9 Source Code Escrow

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

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

10 Commercial Off The Shelf Software

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

11 Ownership Rights

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

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

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

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

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

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

12 Intellectual Property Ownership

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

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

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

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

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

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

13 Hosting Services

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

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

14 Change Management

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

15 Service Level Deficiency

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

16 Notices

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

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

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

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

Appendix 1 to State of Oklahoma Information Technology Terms

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

A. Customer Data

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

B. Data Security

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

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

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

C. Security Assessment

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

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

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

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

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

d. Document all Security Incidents and their outcomes.

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

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

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

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

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

F. **Notices**

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

Chief Information Security Officer

3115 N. Lincoln Blvd

Oklahoma City, OK 73105

and

servicedesk@omes.ok.gov.

G. Supplier Representations and Warranties

Supplier represents and warrants the following:

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

H. Indemnity

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

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

I. Termination, Expiration and Suspension of Service

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

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

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

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

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

c. a combination of the two immediately preceding options.

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

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

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

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

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

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

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

Appendix 2 to State of Oklahoma Information Technology Terms

INTRODUCTION

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

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

CJIS SECURITY POLICY REQUIREMENTS GENERALLY

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

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

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

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

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

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

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

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

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

Policy Requirement Checklist

Compliance checklist –

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

Attachment 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.

- xii. 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.
- xiii. 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.
- xiv. 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.

**Attachment E-1 to
STATE OF OKLAHOMA CONTRACT WITH DELL MARKETING L.P.
RESULTING FROM SOLICITATION NO. 0900000556**

The **Dell End User License Agreement** is hereby amended as set forth below and supersedes all prior documents submitted by **DELL MARKETING L.P.** or discussed by the parties.

This End User License Agreement (“EULA”) is between the individual consumer or business entity that will use the Software (“You”) and the applicable entity identified in the “Licensor Table” located at www.dell.com/swlicensortable (“Licensor”).

This EULA governs Your use of: (a) the object code version of Dell branded software that is preinstalled on Dell hardware or otherwise provided to You pursuant to a purchase contract, quote, order form, invoice or online procurement process (each, an “Order”); (b) associated software license keys, if any (“License Keys”); (c) updates to such software (“Updates”); (d) the documentation for such software; and (e) all copies of the foregoing (collectively, “Software”). If You accept this EULA, or if You install or use the Software, then You agree to this EULA unless You already have a signed agreement with Dell Marketing L.P. or one of its affiliates (“Dell”) that includes licensing terms that govern Your use of the Software (“Pre-Existing Agreement”). If You accept this EULA or install or use the Software on behalf of a business entity, then You represent that You have authority to take those actions, and this EULA will be binding on that business entity unless the entity already has a Pre-Existing Agreement. If You do not agree to this EULA, do not install or use the Software.

If You are a business entity and You purchase Software from a third party (“Reseller”) who sublicenses the Software to You under the terms of an agreement between You and such Reseller (a “Sublicense Agreement”), then the terms of Your Sublicense Agreement with the Reseller shall govern Your use of the Software and not this EULA. Resellers may only grant rights, and must pass through conditions, consistent with this EULA. Thus, even though Your Sublicense Agreement is between you and the Reseller, by installing or using the Software, You acknowledge and agree that: (a) any license rights in the Sublicense Agreement that are greater than the license rights in this EULA shall not apply; (b) any license conditions in this EULA that are not contained in the Sublicense Agreement apply to You; (c) the limitations of liability set forth in this EULA will apply in favor of Licensor, its affiliates and suppliers despite the existence of a Sublicense Agreement; and (d) Licensor is a third-party beneficiary of the Sublicense Agreement and is entitled to exercise and enforce all of the Reseller’s rights and benefits under that Sublicense Agreement.

If You purchase Software as an individual consumer, nothing in this EULA affects your statutory rights if the laws of your state or country do not permit it to do so.

1. License Grant.

1.1. Right to Use. Subject to and in consideration of your full compliance with the terms and conditions of this EULA, Licensor grants to You a personal, non-exclusive license to use the Software during the period stated in the applicable Order (if no period is specified, You may use the Software perpetually). If You are an individual consumer, this license grant allows You to use the Software in connection with Your own personal use. If You are a business entity, this license grant allows You to use the Software in

connection with the internal business operations of Your entity. In addition, You may make a reasonable number of copies of the Software solely as needed for backup or archival purposes. Additional license terms for certain Software may be included in the Offering Specific Terms Table located at www.dell.com/offeringspecificterms (“OST Table”), for clarity this EULA and the Contract will be the sole terms and conditions for all those listed offerings on the OST Table that are not third party offerings and additional terms for Software that is licensed to You for a limited time (“Subscription Software”) are included as Exhibit 2 (“Subscription Terms”).

1.2. **Third Party Use.** If You are a business entity, You may allow Your contractors (each, a “Permitted Third Party”) to use the Software solely for the purpose of providing services to You, provided that such use is in compliance with this EULA. You are liable for any breach of this EULA by any Permitted Third Party.

1.3. **Rights Reserved.** The Software is licensed and not sold. Except for the license expressly granted in this EULA, Licensor, on behalf of itself and its affiliates and suppliers, retains all rights in and to the Software and in all related materials (“Works”). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereafter developed. Any use of Works other than as expressly set forth herein is strictly prohibited.

1.4. **Ownership.** Licensor, on behalf of itself and its affiliates, retains ownership of the Works and all related intellectual property rights. If Software is provided to You on removable media (e.g., CD, DVD or USB drive), You may own the media on which the Software is recorded.

2. License Conditions.

2.1. You and Your Permitted Third Parties must do the following:

- A. Run the Software only on the hardware for which it was intended to operate, when applicable;
- B. Use License Keys (if applicable) only from Licensor or an authorized Dell License Key provider;
- C. Treat the Software as Dell confidential information;
- D. Use the Software only on as many computers or devices that You purchased, in such configurations permitted by Dell or Licensor, and/or in accordance with the applicable unit of measure, each as may be specified on Your Order. For Software licensed via a unit of measure, the terms and descriptions of each unit of measure are located Exhibit 3 (“UOM Terms”);
- E. Abide and be responsible for compliance with the applicable export control and economic sanctions laws of the United States, the European Union, and other applicable jurisdictions (collectively, “Applicable Trade Laws”). Software may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with the Applicable Trade Laws. You represent and warrant that You or Your Permitted Third Parties are not the subject or target of, or located in a country or territory

that is the subject or target of economic sanctions under the Applicable Trade Laws. For further information about geographical restrictions and compliance with Applicable Trade Laws, visit www.dell.com/tradecompliance. Notwithstanding the foregoing hyperlink, You only agree to any requirements to the extent permitted by law and You have no obligation to defend and indemnify Dell; and

F. Comply with all Third Party Terms (as defined in Section 5 below).

2.2. Except as otherwise permitted by this EULA or by mandatory law (meaning a law that the parties cannot change by contract), You must not, and must not allow Your Permitted Third Parties, to do the following:

- A. Modify or remove any proprietary notices or markings on or in the Software;
- B. Transfer License Keys to any other person or entity;
- C. Download Updates from Licensor or an authorized provider unless You have a valid support agreement;
- D. Install Updates on Enterprise Products (e.g., server, networking, storage, integrated solutions, and data protection appliances) that have gone end of service life unless Licensor otherwise agrees in writing;
- E. Install and operate counterfeit versions of Software (i.e. software provided by anyone other than Dell or an authorized representative of Dell) on Dell hardware;
- F. Violate or circumvent any technological use restrictions in the Software;
- G. Sell, loan, rent, lease, sublicense, distribute or encumber (e.g., by lien, security interest, etc.) the Software;
- H. Use any trademarks or service marks of Licensor, its affiliates or suppliers;
- I. Provide access to the Software or allow use by any third party, other than Permitted Third Parties, without Licensor's prior written consent;
- J. Copy, republish, upload, post or transmit the Software in any way;
- K. Modify or create derivative works based upon the Software, or decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part;
- L. Attack or attempt to undermine the security, integrity, authentication or intended operation of the Software;
- M. Use the Software on a service bureau, rental or managed services basis;
- N. Create or permit others to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server, wireless or Internet-based device;
- O. Use the Software to create a competitive offering;
- P. Use the Software to create other software, products or technologies unless the Software contains Development Tools as described in Section 7;
- Q. Share or publish the results of any benchmarking of the Software without Dell's prior written consent;

R. Use the Software for high risk activities, including without limitation online control systems, or use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, weapons systems or in any other device or system in which function or malfunction of the Software could result in death, personal injury or physical or environmental damage;

S. Use the Software for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or support of missile projects, or chemical or biological weapons; and

T. Assign this EULA, or any right or obligation under this EULA, or delegate any performance, without Dell's prior written consent, unless You are transferring the Software in accordance with the Transferability Section 3 below. Even if Dell consents to an assignment, You remain responsible for all obligations under this EULA that You incurred prior to the effective date of the assignment.

3. Transferability. If You are an individual consumer, You may transfer the Software on a permanent basis as part of the sale or transfer of the hardware system on which the Software is loaded, provided that You retain no copies of any version of the Software. If You are a business entity, You may not transfer the Software to another person or entity without the express written permission of Dell except as provided in the Contract, unless allowed by applicable law stating that transfer may not be restricted (note that a transfer fee may be charged by Dell).

4. Compliance Verification. If You are a business entity, You must: (a) maintain and use systems and procedures that allow You to accurately track Your use of the Software; (b) certify to Dell in writing, at Dell's request, that Your use of Software fully complies with this EULA, indicating the number of Software licenses deployed at that time; and (c) cooperate fully and timely with Dell and its auditors if Dell notifies You that it will conduct an audit to confirm Your compliance with this EULA. Any such audit will be conducted during normal business hours. If Dell determines that You have over-deployed Software, You agree to immediately purchase licenses at the then-current list price to bring Your use into compliance.

5. Third Party Software. "Third Party Software" is software, including open source software, that is contained in or provided with the Software and is licensed by a third party under its own terms of use ("Third Party Terms"). Third Party Software is governed solely by the applicable Third Party Terms and not by this EULA. Third Party Terms may be provided with the Third Party Software or may be included in the OST Table. For certain open source software, the applicable Third Party Terms may entitle You to obtain the corresponding source files. You may find corresponding source files for such open source software at [//opensource.dell.com/](https://opensource.dell.com/) or in the "About" or "Read Me" file of Software, or other locations that Licensor may specify. You agree to these terms only to the extent permitted by Oklahoma law.

6. Free Software. "Free Software" means Software that is provided to You without additional charge

(e.g., scripts that enable customer installation; code that enables You to monitor Your use of Dell products; etc.). You may only use Free Software on or with equipment or in the operating environments for which Dell has designed that Free Software to operate. Licensor may terminate any license to Free Software at any time in its sole discretion. You may not transfer Free Software to anyone else.

7. Development Tools. If the Software includes development tools, such as scripting tools, APIs or sample scripts (collectively “Development Tools”), and unless there is a separate agreement between You and Dell or Licensor for the Development Tools, You may use such Development Tools to create new scripts and code for the purpose of customizing Your use of the Software (within the parameters set forth in this EULA and in the Development Tools themselves) and for no other purpose.

8. Evaluation Software. This EULA does not license use of Software for evaluation purposes (“Evaluation Software”) except to the extent these terms may be invoked by the separate license terms and conditions accompanying that Evaluation Software.

9. Support Services Not Included. If You purchase maintenance and support for Software, such services are identified in Your Order and will be provided under a separate services agreement.

10. Termination. For Subscription Software, this EULA automatically terminates at the end of Your subscription period unless You renew Your rights. Licensor may terminate this EULA if You or a Permitted Third Party commits a material breach of this EULA and fails to cure such breach within thirty (30) days following Your receipt of notice of the breach from Dell. This right to terminate applies accordingly if Dell or the Reseller from whom You made Your purchase does not receive timely payment for the licenses to the Software or for the hardware on which the Software is loaded, if any. When this EULA terminates, all licenses granted automatically terminate and You must immediately cease use of the Software and return or destroy all copies of the Software. Except as otherwise agreed by Dell, You will not get a refund from Dell if this EULA is terminated. Rights and obligations under Sections of this EULA that, by their nature should survive, will survive termination, as well as obligations for payment.

11. Warranty Disclaimer. Under this EULA, Licensor provides neither any warranties for the Software nor does it provide support for the Software. Your rights under any warranties and any support entitlements for Software acquired for a fee are solely between You and the Reseller or Dell entity from whom You procured the Software and related support, and are defined under the commercial terms agreed between You and such selling entity. Accordingly, except as otherwise offered by Dell, the Software is provided by Licensor under this EULA “As Is” without any warranties or conditions. To the maximum extent permitted by applicable law, Licensor, on behalf of itself and its affiliates and suppliers: (a) makes no express warranties or conditions related to

the Software; (b) disclaims all implied warranties and conditions related to the Software, including merchantability, fitness for a particular purpose, title, and non-infringement; and (c) disclaims any warranty or condition arising by statute, operation of law, course of dealing or performance, or usage of trade. Licensor does not warrant uninterrupted or error-free operation of the Software. This Section does not affect or modify any of the statutory warranty rights that are available to consumers.

12. Limitation of Liability.

12.1. Limitations on Damages. The limitations, exclusions and disclaimers set forth in a Pre-Existing Agreement or Dell Terms of Sale that applies your Order (in each case, the “Order Terms”) shall apply to all disputes, claims or controversies (whether in contract, tort or otherwise) between You and Licensor or Dell related to or arising out of: (a) this EULA; (b) the breach, termination or validity of this EULA; or (c) any Orders (each, a “Dispute”). In the absence of applicable Order Terms, the terms set forth in this Section shall apply to all Disputes.

The terms of this Section are agreed allocations of risk constituting part of the consideration for Licensor’s licensing of Software to You and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities. If applicable law prohibits any portion of the limits on liability stated below, the parties agree that such limitation will be automatically modified, but only to the extent required to make the limitation compliant with applicable law.

A. Limitation on Direct Damages. Except for Your obligation to pay for the Software, or for Your violation of the License Grant and License Conditions set forth herein or of Licensor’s or Dell’s intellectual property rights, the total liability of You and Licensor (including Licensor’s affiliates and suppliers) arising out of any Dispute is limited to the amount You paid for the Software that is the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. Notwithstanding anything otherwise set forth above, Licensor and its affiliates have no liability for any direct damages resulting from Your use or attempted use of Third Party Software, Free Software or Development Tools.

B. Disclaimer of Certain Other Damages. Except for Your obligation to pay for the Software, or for Your violation of the License Grant and License Conditions set forth herein or of Licensor’s or Dell’s intellectual property rights, neither You nor Licensor (including Licensor’s affiliates and suppliers) shall have any liability under this EULA for special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use or procurement of substitute products or services.

12.2. Regular Backups. You are solely responsible for Your data. You must back up Your data before Licensor or a third party performs any remedial, upgrade or other work on Your production systems. You acknowledge that it is a best practice to have more than one back up copy of Your data. If applicable law prohibits exclusion of liability for lost data, then Licensor will only be liable for the cost of the typical effort to recover the lost data from Your last available back up.

12.3. Limitation Period. Except as stated in this Section, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within 18 months after the cause of action accrues.

13. Additional Terms.

13.1. Notices. The parties will provide all notices under this EULA in writing. Unless provided otherwise in an Order, You must provide notices to the local Dell entity in Your Order, or, if Your Order is not with a Dell entity, by e-mail to Dell_Legal_Notices@dell.com.

13.2. Waiver and Severability. Failure to enforce a provision of this EULA will not constitute a waiver of that or any other provision of this EULA. If a court of competent jurisdiction determines that any part of this EULA or document that incorporates this EULA by reference is unenforceable, that ruling will not affect the validity of all remaining parts.

13.3. Modifications. This EULA may only be modified in writing signed by both parties; provided, however, that Licensor may, in its sole discretion, update the Licensor Table, the OST Table, the UOM Terms and the Subscription Terms at any time. Any changes that Licensor makes to the Licensor Table, the OST Table, the UOM Terms or the Subscription Terms will only apply to Orders that occur after Licensor posts those changes online.

13.4. Governing Law and Jurisdiction. If You obtained the Software directly from Dell, then the governing law and jurisdiction provisions set forth in the Contract shall apply to this EULA. Otherwise the following shall apply:

A. Reserved

B. Subject to Section 13.4 D, if You are domiciled outside of the United States or Canada: (1) this EULA and any Dispute is governed by the substantive laws in force in the country in which the Licensor is located (as indicated in the Licensor Table located at www.dell.com/swlicensortable), without regard to its conflict of law rules; and (2) the exclusive place of jurisdiction for any Dispute shall be in such country.

C. In any event, neither the U.N. Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act shall apply to this EULA or any Dispute.

D. If You are an individual consumer, this Section 13.4 does not deprive You of the protection afforded to You by the provisions of mandatory consumer protections laws that are applicable to You, nor does it prevent you from seeking remedies or enforcing your rights as a consumer under such laws.

13.5. Reserved

13.6. Third Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

13.7 Entire Agreement. You acknowledge that You have read this EULA, that You understand it, that You agree to be bound by its terms, and that this EULA, along with the Order Terms into which this EULA may be incorporated (as applicable) and the Contract, is the complete and exclusive statement of the agreement between You and Licensor regarding Your use of the Software. All content referenced in this EULA by hyperlink is incorporated into this EULA in its entirety and is available to You in hardcopy form upon Your request. The pre-printed terms of Your purchase order or any other document that is not issued or signed by Licensor or Dell do not apply to Software. You represent that You did not rely on any representations or statements that do not appear in this EULA when accepting this EULA.

(Dell EULA rev 25OCT2023)

Perpetual vs. Term-Based (“subscription”) Licenses

Software may be offered in term and perpetual licenses. Your quote will identify whether your license rights are perpetual or term-based.

A perpetual license allows end users to use the software for as long as the end user complies with all terms of the license agreement.

A term license allows the end user to use the software for a specified license term so long as the end user complies with all the terms of the license agreement. At the end of the license term, the end user must stop using the software, extend the license term, or purchase new licenses through an agreement with Dell EMC.

Special Notice for Subscription Software

All offerings provided by Dell EMC as a software subscription (identified by a model number or sku containing “SH” or “SU” in the “Item” column of the quote) are provided subject to the terms contained in this paragraph. The software subscription fee listed on the quote includes both the license to use the software and access to the specified Dell EMC support option (which may be identified as a separate line item at no additional charge) for the period of time stated in the quote (“Original Term”). The Original Term begins on the date upon delivery to Customer’s destination of the software media (if any) or sends the customer notice that the software is available for electronic download. Unless other arrangements are made to properly continue the software subscription at the end of the Original Term, the customer must immediately cease using the software subscription and must erase or return the software to Dell EMC. If the “Description” column of the quote contains the designation of “AIP” (representing Annual Installment Payment), or “MIP” (representing Monthly Installment Payment), then: (a) the amount shown on the quote is the total charge for the entire specified software subscription period; and (b) Dell EMC will not invoice such amount all at once, but will invoice the applicable portion of that amount in equal, annual or monthly installments, as applicable, with each installment invoice being sent at the beginning of each year or month, as applicable, of the specified software subscription period.

If a license for subscription software obtained directly from Dell EMC is terminated due to a material breach by Dell EMC of the EULA that Dell EMC fails to cure within 30 days following its receipt of notice of the breach, Dell EMC will refund the unused pro-rated portion of any license fees that were pre-paid for such subscription software.

DELL EMC UNITS OF MEASURE

(FORMERLY SOFTWARE USE RIGHTS)

Dell EMC¹ software products (“Software”) are licensed by Dell EMC to customers who order directly from Dell EMC (“Direct End-Users”) under a signature-bearing agreement between Dell EMC and the Direct End-User or under the terms of an End-User License Agreement (“EULA”) that is between Dell EMC and the entity making productive use of the Software. The EULA is either in a hard-copy format that is shrink-wrapped to the software media packaging or stated in an electronic “click-wrap” or click-to-accept format that must be electronically accepted prior to downloading and/or installing the Software. Dell EMC also provides Software to its Channel Partners (organizations that resell the license directly to or through additional tiers of resellers to the organization that makes productive use of the Software (“Indirect End-User”). Channel Partners are required to obtain a written, signed license with the Indirect End-User in a format that meets Dell EMC license requirements, but if the Reseller does not obtain a written, signed license with the Indirect End User, then the Software is governed by the EULA. The information in this Units of Measure document is provided to further define the license rights and limitations for Software products.

¹ “Dell EMC” as used in this document, means the applicable EMC sales entity (“EMC”) specified on your EMC Quote or Dell sales entity (“Dell”) specified on your Dell Quote. The use of “Dell EMC” in this document does not indicate a change to the legal name of the Dell or EMC entity with whom you have dealt.

Dell EMC Units of Measure

Software is licensed via a unit of measure (“UOM”) that quantifies the scope of the license rights being granted by Dell EMC for such Software. The UOM are described in this document. The UOM applicable to the Software being offered pursuant to a Dell EMC Quote may be designated in the Software product description in the Dell EMC Quote by the codes described in the following table:

UOM Code	UOM (Unit of Measure)
CA	Registered Capacity of data measured in terabytes
CB	Raw Capacity of data measured in terabytes
CC	Usable Capacity of data measured in terabytes
CF	Raw Capacity of data measured in gigabytes
CG	Usable Capacity of data measured in gigabytes
FA	Foundation
FB	Foundation related Service Connector
FC	Foundation related Application Instance
FD	Foundation related Advanced Logging Instance
FE	Foundation related Service Instance
IA	Instance measured per server
IB	Instance measured per virtual machine
IC	Instance measured per storage array
ID	Instance measured per node
IE	Instance measured per engine
IF	Instance measured per cluster
IG	Instance measured per total number of processors per node
MA	Managed Entity measured per device
MB	Managed Entity measured per inbox or mailbox
MC	Managed Entity measured per user
MD	Managed Entity per consistency group
PA	Process Rate measured in pages per year
PD	Pod (contains one or more containers, depending on application)

UA	Named User
UB	Concurrent User
UC	Single unique user for Video Instructor-Led Training Streaming service (VILTS); (one user, one title or one Valupak)
UD	Multiple unique users for Video Instructor-Led Training Streaming service (VILTS); (multiple users or titles, subscriptions or partner collections).
ZA	Central Processing Unit cores (quantity 1-6 cores)
ZB	Central Processing Unit cores (quantity 7-12 cores)
ZC	Individual Central Processing Unit Core
ZD	Central Processing Unit by MSU (Millions of Service Units)

CA - REGISTERED CAPACITY – Storage Array Software; Data Protection Appliance Software

Description

Licensing and pricing is based upon the Registered Capacity of one or more storage array, data protection appliance, server, or other device(s) on which this Software is licensed for use. The Registered Capacity describes the maximum quantity of data for which the functionality of the Software is authorized for use. The total capacity of the device may exceed the Registered Capacity that the Software is licensed to operate on.

Software that is licensed on the basis of this Registered Capacity unit of measure is typically licensed for use only on a specifically identified storage array, data protection appliance, or other hardware device. Each storage array, data protection appliance, or other hardware device requires the purchase of: (i) an initial base product (independent of Registered Capacity); and (ii) an additional quantity of add-on products that reflect the amount of Registered Capacity on which the applicable Software is authorized for use. Customers may subsequently determine they need to use the Software in connection with an amount of data that exceeds the current Registered Capacity. In such cases, Customers must either purchase an appropriate number of additional licenses to cover the increase in the Registered Capacity, or purchase a new base product plus Software in instances where a capacity limitation has been reached.

Specific Terms and Conditions

- The purchase of a base product license plus add-on product licenses (which are measured by Registered Capacity) are both needed to use the Software product(s).

CA - REGISTERED CAPACITY – Stand-alone Data Protection Software

Description

Licensing and pricing is based upon the Registered Capacity of one or more stand-alone Data Protection Software applications licensed by Registered Capacity. Registered Capacity is measured in Front End Terabytes. Front End Terabyte (“FETB”) is defined as a single instance of any source-based data, including, but not limited to application, database, server, system, and user data that is protected by applicable Software. FETB should be determined through an assessment of the customer’s environment using a combination of native capacity reporting tools and external reporting tools.

An assessment may show that customers need to use the Software in connection with an amount of data that exceeds the current Registered Capacity. In such cases, customers must purchase an appropriate number of additional Software licenses to cover the increase in the Registered Capacity needed.

Specific Terms and Conditions

- Purchasing Software licensed based on Registered Capacity and measured in FETB allows the customer to protect the source data even if multiple backup and copy management capabilities are used in parallel. For example, if data is backed up multiple times (e.g., via image backups and in-guest backups), only the capacity associated with the source data (FETB) is counted towards the unit of measure. The FETB unit of measure is also not altered by using backend storage capabilities such as deduplication and compression, snapshots, remote replication, or moving copies into the cloud.
- FETB includes the following:

- Capacity associated with the data the customer wants to protect regardless of the content (e.g., database records, table spaces, files, user data, etc.).
- Database capacity where the individual table spaces are aggregated into a full backup.
- FETB excludes the following:
 - Systems and devices that are not protected by the applicable Software licensed by Registered Capacity.
 - Retired client systems, even if the applicable Software retains unexpired backups.
 - Provisioned but unused “white space” within backups. Examples include virtual machine images and snapshot LUNs.
 - Database checkpoints and unutilized space on the underlying disk system.
 - Any number of copies created on the backend data protection storage including snapshots, remote replicas, etc.

CB and CF - RAW CAPACITY MEASURED IN TERABYTES OR GIGABYTES (AS SPECIFIED ON THE QUOTE)

Description

Licensing and pricing is based upon the total capacity of the storage array or other devices on which the Software is licensed for use. Software licensed on the basis of Raw Capacity is typically licensed for use only on a specifically identified storage array. This UOM uses a “base plus capacity” approach as described in the Registered Capacity UOM above, where the customer purchases one base product license and then purchases incremental capacity add-on product licenses to equal the raw capacity of the system on which the Software will operate.

Specific Terms and Conditions

- A base product license plus add-on product licenses (which are measured by Raw Capacity) are both needed to use the Software product(s).

CC and CG - USABLE CAPACITY MEASURED IN TERABYTES OR GIGABYTES (AS SPECIFIED ON THE QUOTE)

Description

Licensing and pricing is based upon the Usable Capacity of one or more storage arrays, servers, or other devices on which the Software is licensed for use. The Usable Capacity describes the maximum quantity of data for which the functionality of the Software is authorized for use. The Usable Capacity of a licensed device is calculated by MC on the basis of the Raw Capacity minus Overhead. Raw Capacity is the total data storage capacity of a licensed device. Overhead is that portion of Raw Capacity that EMC determines is reserved for or allocated to spares, RAID types and applications running on a licensed device and on which the software functionality is not to be used.

Software that is licensed on the basis of Usable Capacity is typically licensed for use only on a specifically identified storage array or other hardware device. The Customer or Dell EMC may subsequently make a change to the Raw Capacity, configuration, RAID level or overall environment of a licensed device that increases the Usable Capacity to an amount in excess of the quantity for which the Software has been licensed. In these cases, Customer must purchase an appropriate additional license to cover the increase in the Usable Capacity.

Specific Term and Conditions

- The purchase of a base product license plus add-on product licenses (which are measured by Usable Capacity) are needed to use the Software product(s).

IA, IB, IC, ID, IE, IF, and IG - INSTANCE

Description

Licensing and pricing is based upon the nature of the hardware platform on which the Software operates. It includes servers that run a single instance, partition, or virtual machine as well as servers that run multiple instances, partitions, or virtual machines (both physical and virtual machines). Each partition running the application constitutes an instance. This UOM is also used with server-based Software and Software that is licensed to a specific storage array or to an engine within a storage array. An engine consists of a CPU, cache and data storage (regardless of the speed, performance or capacity of the engine components), as designated by

Dell EMC. Adding an engine to an existing storage array enclosure is designated as an upgrade to the existing storage array. This UOM is also used with clusters. A cluster is a collection of more than one node.

Specific Terms and Conditions

- Server-based Software licensed in accordance with the Instance UOM is generally priced for a particular OS type, such as Windows, Solaris, etc.
- An Instance license may provide support for only a single application type, such as Exchange or Oracle.
- Isilon clusters have a minimum of three (3) nodes.
- Some stand-alone Data Protection Software is licensed per CPU "Socket" on Virtual Machine Hosts that are being backed up, replicated, or both.

MA, MB, MC, and MD - MANAGED ENTITY

Description

Licensing and pricing is based upon the total number of entities being managed or inspected by the Software. An entity is defined as any singular item being managed or monitored by the Dell EMC Software and can include third-party hardware, a running instance of a software program, an abstract resource (such as an email inbox), or a user. The Software licensed under this UOM may be used on or with a specific entity or quantity of entities of a specified type.

Examples of physical devices include, but are not limited to, routers, switches, firewalls, load balancers, storage arrays, NAS data movers, NAS systems, blades, and IP phones.

Examples of instances of a software program include, but are not limited to, databases, volume managers, file systems, operating systems, hypervisors, backup software systems, and CMDB systems. An example of an abstract resource is an email inbox being inspected or managed by the Software product. An example of a user as a managed entity is a user that authenticates to a VPN or some other system using the Software product. A managed entity based on a consistency group consists of a named set of identified storage devices, located at the same physical site, that are treated as a single unit to enable the devices to act in unison to maintain the integrity of data that is distributed across those same devices. For example, devices using the Symmetrix® Remote Data Facility that are identified as belonging to the same consistency group act in unison to preserve the dependent write consistency of a database distributed among the devices in the consistency group.

Specific Terms and Conditions

- Managed Entity Metric Considerations: Under this UOM, some Software will be licensed by the total number of entities the Software is interacting with while other Software will be licensed for specifically identified entities.

PA - PROCESS RATE

Description

Licensing and pricing is based upon the cumulative amount of work done by the Software over a specified time.

Specific Terms and Conditions

- Tiered pricing (price per mailbox decreases as the number of email mailboxes purchased increases).
- Licensing for EMC EmailXtender is limited to the sole and exclusive benefit and use of the user. License rights may not be further assigned or sublicensed to any other party for any other purpose.

UA - NAMED USER

Description

Licensing and pricing is based upon the total number of unique named users or seats accessing the Software, whether such users are actively using the Software, or accessing the Software at any given time. If a named user of the Software leaves the employ of the customer, or moves into a role that does not require access to the Software, the seat does not have to be relinquished by the customer, but can be reassigned to a different named user.

UC and UD - UNIQUE USER VIDEO INSTRUCTOR-LED TRAINING STREAMING LICENSING ("VILTS")

Description

Licensing and pricing is based upon the number of Customer's individual, unique-named employees or agents authorized to view a VILTS course ("Authorized Users") and each instance of an Authorized User clicking on or launching a unique VILTS title is deemed a single use of a VILTS license.

UB - CONCURRENT USER

Description

Licensing and pricing is based on this UOM and specifies the maximum number of concurrent users who are accessing the Software at any instance in time.

ZA and ZB - CENTRAL PROCESSING UNIT ("CPU")

Description

Licensing and pricing is based upon the total number of CPUs present in the computer upon which the Software will operate. A two-tier system is used based on the number of cores present. These two tiers can be combined as needed on CPUs with greater than 12 cores. Neither tier can be split across more than one CPU.

ZC - INDIVIDUAL CENTRAL PROCESSING UNIT ("CPU") CORE

Description

Licensing and pricing is based upon the number of "Cores" on which the Software will operate. A "Core" is defined on the basis of the environment in which the Software operates.

When operating the Software in a "bare metal" environment, which means a physical machine without a hypervisor product capable of creating Virtual Machines, and excludes operation within a cloud service environment, a "Core" equals a single, computational unit of the processor.

When operating the Software in a hypervisor (Virtual Machine) environment, a "Core" equals a single unit of virtual processing power (commonly referred to as a "vCPU") configured to each Virtual Machine. A Virtual Machine is a software container able to run its own operating system and execute applications, just as a physical computer does.

When operating the Software in a public cloud services environment, a "Core" equals a single, basic, most granular unit of computational power as defined by the cloud service provider. This may include but is not limited to such units expressed as the number of "vCPUs," "virtual CPUs," "virtual cores," and "dynos."

When used with respect to Pivotal software titles, please reference the Pivotal Product Guide posted at www.pivotal.io/product-guide for a complete description of this UOM (including the meaning of defined terms) in lieu of the above.

ZD - CENTRAL PROCESSING UNIT ("CPU") MEASURED BY MSU

Description

Licensing and pricing is based upon the maximum combined capacity of the CPUs contained within a mainframe device, as determined by the industry standard measurement of Millions of Service Units (MSU) to reflect the processing power of the mainframe device, irrespective of the type of processor or the workload.

FA, FB, FC, FD, AND FE - FOUNDATION AND FOUNDATION RELATED

Descriptions

A complete description of these UOMs (including the meaning of defined terms) for Pivotal software titles are contained in the Pivotal Product Guide posted at www.pivotal.io/product-guide.

PD - POD LICENSING MODEL

Description

A complete description of this UOM (including the meaning of defined terms) for Pivotal software titles is contained in the Pivotal Product Guide posted at www.pivotal.io/product-guide.

Additional Information

Software Access and Use Requirements

Except as otherwise agreed in writing, licenses are required for each device/user accessing or using the Software, notwithstanding any non-Dell EMC technology used to: (i) reduce the number of devices or users the Software directly manages; (ii) pool connections; or (iii) reduce the number of devices/users accessing or using the Software.

AppSync Basic or AppSync Starter Pack or AppSync iCDM Starter Bundle

EMC provides this software without additional charge. This software is a limited license that is bundled with:

- XtremIO (X2/E Bundle) - licensed per raw capacity similarly to XtremIO X2 Software
- PowerMax (Essentials) – licensed per usable capacity similarly to PowerMax Software
- VMAX AF (F Suite) - licensed per usable capacity similarly to VMAX AFA Software
- UNITY AF and UNITY Hybrid– licensed per frame similarly to your Unity Software
- Data Protection Suite

Following are the limitations of this license:

- Simultaneous mounted copies are limited to 20: This license allows the creation of an unlimited number of Application Copies via the software, but no more than twenty (20) Application Copies at any point of time can be mounted. This limit only applies to the Application Copies that are created with AppSync software. An Application Copy is defined as the set of storage volumes on a single array that are presented to an application. For example, if the user copies and mounts an application data set that consists of three volumes, those comprise one mounted application copy since all three volumes are used together for the application
- Only local copies (Bronze plans in AppSync): This license can only be used for creating local copies and cannot be used with VPLEX and RecoverPoint
- A single array per AppSync server: With this license a dedicated AppSync Server is required per licensed array. Specifically, this license cannot be installed or used on an AppSync Server that already manages another array. Customers wishing to add multiple arrays to the same AppSync Server are required to purchase the AppSync Advanced license

PowerPath in the VMAX FX and PowerMax Pro package

PowerPath and PowerPath/VE is included as part of the VMAX FX and PowerMax Pro package software package for use only with the hosts physically connected to the storage array for which the VMAX FX and PowerMax Pro software package is licensed. PowerPath licenses for FX and Pro are not transferable and can only be used on the hardware for which it was originally licensed.

Temporary Licenses

Evaluation and Other Non-production Use Licenses

In certain instances, and at Dell EMC's discretion, Dell EMC may grant a short-term license for the purpose of demonstration, evaluation, or some other non-production internal use. Such license may be issued as a 30-day license for standalone Software or a 90-day license for array-based systems Software. At the end of the temporary term, the license to use the Software expires and the Software may cease to operate. The temporary term begins once the licenses are made available (e.g., either by making the Software available for download or by delivering the CD to the customer).

Failover Expiring Licenses

Each license entitlement includes the right to run the Software on a separate computer in a failover environment for up to 30 separate days in any given calendar year for purposes of emergency management. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software. License keys for such licenses must be obtained from DELL EMC by making a request through the applicable Dell EMC Online Support website at <https://support.emc.com/>.

Backup Testing Expiring License

For the purpose of testing physical copies of backups, license rights include the capability to run the Software on an unlicensed computer for up to 30 days in any given calendar year. License keys for such licenses must be obtained from Dell EMC by making a request through the applicable Dell EMC Online Support website at <https://support.emc.com/>. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software.

Emergency Expiring License

Dell EMC will allow and support the use of emergency licenses for customer critical situations, such as getting back into production in a disaster recovery situation or resolving a situation with an incorrect License Key being delivered. Each license entitlement includes the right to run the Software on an unlicensed separate computer for up to 30 separate days in any given calendar year. License keys for such licenses must be obtained from Dell EMC by making a request through the applicable Dell EMC Online Support website at <https://support.emc.com/>. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the software.

Service License

Dell EMC will allow the use of service-related licenses for customer situations in conjunction with Dell EMC's support organization when initiated and used by Dell EMC support personnel. The license includes the right to run the Software on an unlicensed separate computer for up to 30 separate days in any given calendar year.

Transfer Policy

"Transfer" of a Software license is defined as when the original licensee has stopped using a Software product and wants to sell or otherwise transfer the rights to use the Software to a secondary purchaser. Except as provided in the Contract, Dell EMC does not allow transfers under any circumstances; in all cases, the secondary purchaser must purchase a new license to run the Software.

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EMC Corporation believes the information in this document is accurate as of its publication date. The information is subject to change without notice.

Rev. 12 December 2019

**Attachment F to
STATE OF OKLAHOMA CONTRACT WITH DELL MARKETING L.P.
RESULTING FROM SOLICITATION NO. 0900000556**

Negotiated Exceptions and Additional Terms to the Solicitation

The Solicitation is hereby amended to include the terms as set forth below and supersedes all prior terms and exceptions submitted by **Dell Marketing L.P.** or discussed by the parties.

Requested Exceptions and Additional Terms not addressed below are declined by the State of Oklahoma.

RFP Section	Exception
Contract Effectiveness and Order of Priority (Section 2.2, page 2, Attachment B)	<p>Section 4.21 is deleted in its entirety and replaced with the following:</p> <p>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:</p> <ul style="list-style-type: none"> 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.
Definitions (Section 4.21, pg. 6, Attachment B)	<p>Section 4.21 is deleted in its entirety and replaced with the following:</p> <p>Work Product means any reports, analyses, scripts, code, other work results, or deliverables produced by Supplier for Customer within the framework of fulfilling obligations under a statement of work or other Contract Document. For clarity, Work Product shall not include any Products.</p>

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Attachment B, Products (new Section 4.22, pg. 6)	<p>Section 4.22 is created to read as follows:</p> <p>Products are Supplier-branded generally available software, whether microcode, firmware, operating systems or applications (“Software”). Products exclude Services and Third Party Products.</p>
Attachment B, Services (new Section 4.23, pg. 6)	<p>Section 4.23 is created to read as follows:</p> <p>Services are: (a) Supplier’s standard service offerings for maintenance and support of Products (“Support Services”) and (b) consulting, deployment, implementation and any other services that are not Support Services (“Professional Services”).</p>
Attachment B, Third Party Products (new Section 4.24, pg. 6)	<p>Section 4.24 is created to read as follows:</p> <p>Third Party Products means software, products, or services that are not “Dell” or “Dell EMC” branded. Supplier may offer to supply Third Party Products that are provided by a third party manufacturer/supplier, including without limitation under Supplier’s “Extended Technologies Complete” program, Supplier’s “Brokerage” program or Supplier’s Software & Peripherals (S&P) program, or such other programs as Supplier may operate from time to time, and may include offerings from Supplier Affiliates using different brands other than “Dell” or “Dell EMC”. Notwithstanding any other provisions herein, such Third Party Products are subject to the standard license, services, warranty, indemnity and support terms of the third party manufacturer/supplier (or an applicable direct agreement between Customer and such manufacturer/supplier), to which Customer shall adhere as agreed to by Customer and permitted by law. Even if support fees are invoiced through Supplier, such Third Party Products are not supported by Supplier and Customer shall contact such third party directly for support.</p>
Attachment B, EULA (new Section 4.25, pg. 6)	<p>Customer’s rights to use the Software delivered by Supplier are governed by the terms of the applicable end-user license agreement. Unless different terms have been agreed between the parties or as provided in Attachment E-1, Supplier’s terms posted on www.dell.com/eula (the “EULA”) shall apply. Notwithstanding the foregoing, Supplier’s terms shall not 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. Supplier will provide a hard copy of the applicable terms upon request. Unless expressly otherwise agreed, microcode, firmware or operating system</p>

RFP Section	Exception
	<p>software required to enable the equipment with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such equipment. Third Party Products resold under this Contract shall also be governed by the negotiated electronic license, subscription, maintenance, support or similar agreement between the State and the third party publisher or supplier. Supplier agrees that all such agreements will pass to any applicable Acquisition placed by the State or Customer hereunder. Any other Third Party Product terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement shall be binding only upon the State’s acceptance of those additional terms. Non-negotiated Third Party Product terms can be accessed here: https://i.dell.com/sites/csdocuments/Legal_Docs/en/offeringspecifictermstable.pdf.</p>
<p>Attachment B, Ordering, Inspection, and Acceptance (Section 6.2, pg. 23-24)</p>	<p>Section 6.2 is deleted in its entirety and replaced with the following:</p> <p>6.2 (a). Scope and details of Services and Product-specific terms are specified in the applicable standard service description that is attached to or referred in a Schedule or Quote, or is made available through the then-current Supplier website for product- or service-specific terms, currently located at www.dell.com/offeringspecificterms. Such standard descriptions are from time to time referred to as “Service Description(s)”, “Product Notices” or “Service Briefs.” The version of the applicable document that is effective as of the date of the applicable Quote, shall be deemed incorporated into the Purchase Order. Scope and details of customized Professional Services not covered by such a standard description shall be documented in a mutually agreed Statement of Work (“SOW”).</p> <p>6.2(b). Services will be performed in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify Supplier of any failure to so perform within 5 days after the date on which such failure first occurs. In such case, Supplier will use reasonable efforts to correct such failure within a reasonable period of time. If after reasonable efforts, Supplier is not able to correct such deficiencies for reasons for which Supplier is responsible, then Customer may terminate the affected Services for cause by providing written notice to Supplier.</p>

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	<p>The following terms apply to the specific Software (“Warranted Software”) listed in the table located at https://www.dellemc.com/content/dam/digitalassets/active/en/unauth/manual-warranty-informations/h4276-emc-prod-warranty-maint-table.pdf (the “Software Warranty Table”). Supplier warrants that Warranted Software will substantially conform in all material respects to its then-current documentation during the applicable warranty period specified in the Software Warranty Table (the “Software Warranty Period”).</p> <p>A defect in a product or deliverable furnished by or through the Supplier shall be subject to the return or warranty policy and addressed at no additional cost or expense to the Customer if such defect occurs during the warranty period.</p>
<p>Ordering, Inspection, and Acceptance (Section 6.3, pg. 10, Attachment B)</p>	<p>Section 6.3 is deleted in its entirety and replaced with the following:</p> <p>Unless otherwise agreed, Supplier shall arrange for shipment of the ordered Products to the ship-to address indicated in the Purchase Order, through a common carrier designated by Supplier. Delivery dates are indicative. Software may be provided by delivery of physical media or through electronic means. Customer shall notify Supplier within 21 days of the invoice date if Customer believes any Product included in its Order is missing, wrong, or damaged, and shall ensure that the intended installation site meets the specifications as per the product documentation.</p> <p>Risk of loss for physical media containing licensed Software transfers to Customer upon Delivery. “Delivery” for Software occurs either when Supplier provides physical media to the Customer’s destination, or the date Supplier notifies Customer that Software or Independent Software is available for electronic download.</p> <p>Customer shall have 5 business days to inspect and accept all Products, 3rd Party Products, and Services-not including Software, after 5 business days all Products and Services are deemed accepted and inspected. Notwithstanding such acceptance, Customer retains all rights and remedies under the warranty terms stated below. Customer may only return Products to Supplier that are permitted to be returned pursuant to the return policy at www.dell.com/returnspolicy.</p>

RFP Section	Exception
	<p>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.</p> <p>Pursuant to OAC 260:115-9-1, 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.</p>
<p>Ordering, Inspection, and Acceptance (new Section 6.5, pg. 11, Attachment B)</p>	<p>New Section 6.5 is added as follows:</p> <p>Other than the warranties set forth in this section 6 and the Schedules, and to the maximum extent permitted by applicable law, Supplier and Supplier Affiliates: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance or usage of trade.</p>
<p>Invoices and Payment (Section 7.1, pg. 11-12, Attachment B)</p>	<p>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.</p> <p>The following terms additionally apply:</p>

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	<ul style="list-style-type: none"> 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.
<p>Applicable Laws (Section 9.1(F), pg. 15, Attachment B)</p>	<p>Section 9.1 is deleted in its entirety and replaced with the following:</p> <p>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 required and applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:</p> <ul style="list-style-type: none"> A. Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.

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	<p>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;</p> <p>C. Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;</p> <p>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;</p> <p>E. Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;</p> <p>F. Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);</p> <p>G. 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;</p> <p>H. 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</p> <p>I. 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.</p>

RFP Section	Exception
<p>Audits and Records Clause (Section 10.1, pg. 17-18, Attachment B)</p>	<p>Section 10.1 is deleted in its entirety and replaced with the following:</p> <p>Customer, or any pertinent federal or State agency, shall have the right to audit invoice records or other records relevant to Supplier’s performance for a period of seven years following the date of the invoice. Invoice records shall be produced for Customer’s inspection in an electronic format, in accordance with the reporting format created by Supplier’s business system of record. Supplier shall not be required to furnish any data in a format other than that of the standard reports created by Supplier’s business system of record, unless Supplier stores the record in another format. A sample report can be furnished to Customer upon request. Customer shall not charge Supplier in any event for the cost of conducting an audit initiated by Customer or an agent duly authorized by Customer and Supplier shall not charge Customer or other authorized federal or State agency. Supplier shall not be required to perform any data analysis against data points that are known to Customer or should be known to Customer. This includes analysis of invoiced amounts against amounts in orders issued by Customer, or against pricing discounts that are designated in the contract.</p> <p>Nonetheless, Supplier shall provide Customer reasonable assistance as part of an audit.</p>
<p>Audits and Records Clause (Section 10.2, pg. 18, Attachment B)</p>	<p>Section 10.2 is modified to read as follows:</p> <p>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 (7) 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.</p>
<p>Confidentiality, (Section 11.3, pg 14, Attachment B)</p>	<p>Section 11.3 is modified to read as follows:</p> <p>Supplier shall immediately report to the Customer a confirmed and/or reasonable probability of a confirmed unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or</p>

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	<p>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 confirmed 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.</p>
<p>Attachment B, (Section 15, pg. 23-24)</p>	<p>Section 15 is deleted in its entirety and replaced with the following:</p> <p>Infringement Remedies</p> <p>Should any Product or Support Service provided by Supplier under the Contract infringes that third party’s patent, copyright or trade secret enforceable in the country where Customer purchased the Product from Supplier, Supplier shall enable each affected Customer to (i) legally continue to use the affected Product or Support Service; (ii) modify the affected Product or Support Service to make them non-infringing; (iii) replace such affected Product or Support Service with non-infringing substitutes; (iv) provide a reasonable depreciated or pro rata refund for the affected Product; or (v) discontinue the Support Services and refund the portion of any prepaid Support Service fees that corresponds to the period of Support Services discontinuance.</p>

RFP Section	Exception
<p>Acts or Omissions (Attachment B Section 16.1)</p>	<p>Section 16 is deleted in its entirety and replaced with the following:</p> <ul style="list-style-type: none"> 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 tangible 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. Supplier will: (i) defend Customer against any third party claim that Products or Support Services (but excluding Third Party Products, any Product provided for evaluation or without charge, and open source software) infringe that party’s patent, copyright, or trade secret enforceable in the country where Customer purchased the Product from Supplier (“Claim”); and (ii) indemnify Customer by paying: (a) the resulting costs and damages, including attorneys’ fees, finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (b) the amounts stated in a written settlement negotiated and approved, as provided in Section 16.4 of Attachment B, by Supplier. In addition, should any Product or Support Service become, or in Supplier’s opinion be likely to become, the subject of such a Claim supplier will act in accordance with section 15. Except as otherwise provided by law, this clause states Customer’s exclusive remedies for any third-party intellectual property claim relating to the Products or Support Services. C. To the extent Supplier is found liable for loss, damage, or destruction of any tangible 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 reasonable 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

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	<p>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.</p>
<p>Infringement , (Section 16.2, Attachment B)</p>	<p>Section 16.2 is deleted in its entirety.</p>
<p>Notice and Cooperation (Section 16.3, Attachment B)</p>	<p>Subsection 16.3 is deleted in its entirety and replaced with the following:</p> <p>In connection with indemnification obligations under the Contract, the parties agree to furnish (i) prompt written notice to each other of any third-party claim and (ii) cooperating with the indemnifying party in the defense and resolution of the Claim and in mitigating any damages 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.</p>

RFP Section	Exception
Limitation of Liability (Section 16.5, Attachment B)	<p>Section 16.5 is deleted in its entirety and replaced with the following:</p> <ul style="list-style-type: none"> 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, DELL PRODUCTS OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE. 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. 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 TEN (10) MILLION DOLLARS. 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

RFP Section	Exception
	<p>OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR SUPPLIER'S SALE OF 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>NEW Section 16.6 for Professional Services indemnity, Attachment B</p>	<p>A new Section 16.6 is added as follows:</p> <p><u>A.</u> Indemnity. Supplier shall (a) defend Customer against any third party claim that Professional Services or Work Product (excluding Third-Party Products and services and open source software) infringe that party’s patent, copyright, or trade secret enforceable in the country where Supplier performed the Professional Services (a “Professional Services Claim”); and (b) indemnify Customer by paying (1) the resulting costs and damages, including attorneys’ fees, finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Professional Services Claim, or (2) the amounts stated in a written settlement negotiated and approved, as provided in Section 16.4 of Attachment B, by Supplier.</p> <p>In addition, should any such Professional Services or Work Product become, or in Supplier’s opinion be likely to become, the subject of such a Professional Services Claim, Supplier may, at its expense and in its discretion (a) obtain a right for Customer to continue using such Professional Services or Work Product; (b) modify such Professional Services or Work Product to make them non-infringing; (c) replace such Professional Services or Work Product with non-infringing substitutes; (d) provide a reasonable depreciated or pro rata refund for the allegedly infringing Professional Services or Work Product; or (e) discontinue the Professional Services and refund the portion of any pre-paid Professional Services fees that corresponds to the period of Professional Services. Except as otherwise provided by law, this Section states Customer’s exclusive remedies for any third-party intellectual property claim relating to Professional Services or Work Product, and nothing herein or elsewhere will obligate Dell to provide any greater indemnity.</p>

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	<p>B. Exclusions from Indemnity. Supplier shall have no obligation under this Section: (a) if Customer is in material breach of the Agreement or an applicable SOW or an applicable Service Agreement or (b) for any Professional Services Claim to the extent resulting or arising from: (1) any combination, operation or use of Professional Services or Work Product with any other non-Supplier products, services, items, or technology, including Third Party Products and services and open source software; (2) use for a purpose or in a manner for which the Professional Services or Work Product were not designed unless Supplier recommended use of such manner in documentation or other guidance, instruction, or direction, or use after Supplier notifies Customer to cease such use due to a possible or pending Professional Services Claim; (3) any modification made, or services performed, by any person other than Supplier or its authorized representatives unless Supplier recommended or participated in such modification or by providing express written instructions; (4) services provided by Customer (including Professional Services Claims seeking damages based on any revenue Customer derives from Customer’s services), but this subsection shall not exclude Supplier’s obligations with regards to Supplier’s Work Product; or (5) any data or information which Customer or a third party records on or utilizes in connection with the Professional Services or Work Product, but this provisions shall not exclude Supplier’s obligations with regards to Supplier’s Professional Services or Work Product.</p> <p>C. Indemnification Process. Supplier’s duty to indemnify and defend under this Section is contingent upon: (a) Customer’s prompt written notice of the Professional Services Claim; (b) Customer’s cooperation in Supplier’s defense and resolution of the Professional Services Claim, and in mitigating any damages.</p> <p>Indemnity Cap. Supplier’s total liability, in the aggregate, for any and all Professional Services Claims accruing is limited to the amount listed in Section 16.5(C) of Attachment B.</p>
<p>Security of Property and Personnel (Section 24, pg 25, Attachment B)</p>	<p>Section 24 is deleted in its entirety and replaced with the following:</p> <p>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</p>

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	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.
Definitions (Section 1.5, pg. 1, Attachment D)	Section 1.5 is deleted in its entirety and replaced with the following: Intellectual Property Rights means the patents, trade secrets and copyrights, trademark and any other proprietary or similar rights.
Definitions, Attachment D, Section 1.9	Subsection 1.9 is deleted in its entirety and replaced with the following: Security Incident means the reasonable probability of a confirmed and/or confirmed successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services
Definitions (Section 1.11, pg. 2, Attachment D)	Subsection 1.11 is deleted in its entirety and replaced with the following: Supplier Intellectual Property means the Intellectual Property Rights created or developed by Supplier (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.
Attachment D, Section 1.13, Definitions, Work Product	Section 1.13 is deleted in its entirety (see Attachment B, Section 4.21 definition).
Attachment D, Compliance with Technology Policies, Section 6.1	This Security Policy governs all aspects of hardware, software, communications and information. It covers all State Agencies as well as contractors or other entities who may be given permission to log in, view or access State information. The Supplier, to the extent such Policies and Standards align and are not in conflict with Dell policies and standards (International Standards Organization (“ISO”) 27001 (standard for managing information security governance risks) and National Institute of Standards and Technology

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	<p>(“NIST”) SP800-53), agrees to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at https://oklahoma.gov/omes/services/information-services/policy-standards-publications.html [oklahoma.gov] Supplier’s employees and subcontractors shall adhere to the applicable State IT Standards, policies, procedures and architectures as set forth at https://oklahoma.gov/omes/services/information-services/policy-standardspublications.html [oklahoma.gov] or as otherwise provided by the State.</p>
Attachment D, Section 6.3, Compliance with Technology Policies	<p>Section 6.3 is deleted in its entirety and replaced with the following:</p> <p>The parties agreed that CJIS Security Policy, as more particular described in Appendix 2, will apply as applicable to any Hosting of Customer Data that is CJIS data.</p>
Source Code Escrow (Section 9, pg. 5-6, Attachment D)	<p>Subsection 9 is deleted in its entirety and replaced with the following:</p> <p>State and Supplier agree that Supplier is not planning to develop customized computer software developed or modified exclusively for the State. Should Supplier develop customized computer software developed or modified exclusively for the State then Supplier and the State will enter into in writing a mutually agreed upon a statement of work for such development and/or modification and the following terms will apply to any such mutually agreed upon in writing Statement of work:</p> <p>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:</p> <p>9.1 A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;</p>

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	<p>9.2 An assignment by the Supplier for the benefit of its creditors;</p> <p>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;</p> <p>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;</p> <p>9.5 The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier’s property;</p> <p>9.6 The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;</p> <p>9.7 Supplier’s ceasing of maintenance and support of the software; or</p> <p>9.8 Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.</p>
<p>Ownership Rights (Section 11, pg. 6-7, Attachment D)</p>	<p>Subsection 11 is deleted in its entirety and replaced with the following:</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-transferrable, irrevocable (except in case of non-payment, or any</p>

RFP Section	Exception
	<p>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>Intellectual Property Ownership (Section 12, pg. 7-10, Attachment D)</p>	<p>Subsection 12 is deleted in its entirety and replaced with the following:</p> <p>Ownership Rights</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.</p>

RFP Section	Exception
	<p>The State and/or Customer grants Supplier a non-exclusive, non-transferable 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>
<p>Data Security, Attachment D Appendix 1, Header</p>	<p>The header is deleted in its entirety and replaced with the following:</p> <p>The parties agree that the following Appendix 1 will apply 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. Otherwise and subject to Attachment B, Section 4.25 (agreement of State or Customer and third party publisher or supplier), the parties agree that the following Appendix 1 applies if, prior to placing the order, Customer notifies Supplier that Customer Data will be accessed, processed or stored by or on behalf of a third party publisher or supplier. In that case, the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract.</p>
<p>Data Security, Attachment D Appendix 1, Section C (Security Assessment)</p>	<p>Section C is deleted in its entirety and replaced with the following:</p> <p>On an annual basis, Supplier engages an independent certification registrar to conduct ISO certification audits ((e.g., ISO 9001, ISO 14001, ISO 18001, ISO 27001) of several of Supplier’s management systems related to the provision of services and support, as well as the manufacture of computer storage and technology products at specific Supplier data centers, service centers, and manufacturing facilities. The accredited registrar, scope of certification and physical locations covered by the certification are listed within each ISO certificate. Supplier attempts to post and update these certificates periodically and as necessary offers the ISO certificates it has achieved on an Internet accessible website at: http://www.dell.com/learn/us/en/uscorp1/corpcomm/international-organization-for-standardizationcertifications?c=us&l=en&s=corp&ref=rss. Supplier has also received extensive industry certifications such as the Common Criteria for Information Technology Security Evaluation and the Federal Information Processing Standard (FIPS) 140-2. Additionally, Supplier has established thought leadership in software assurance through active participation in</p>

RFP Section	Exception
	<p>industry groups, including being a cofounder of the Software Assurance Forum for Excellence in Code (SAFE Code).</p> <p>Dell upon request will provide the SIGLite document. This document provides Dell Technologies customers with a comprehensive assessment, demonstrating how cybersecurity, IT, operating and data security risks are managed across a broad spectrum of risk control areas within the Dell Technologies environment. This document can be requested once per year.</p>
Attachment D, Appendix 2	<p>Appendix 2 is amended to add to the beginning of the Introduction:</p> <p>The parties agreed that CJIS Security Policy will only apply as applicable to any Hosting of Customer Data that is CJIS data.</p>
Attachment D-1 Information Security Requirements	<p>The following is added to the beginning of Attachment D-1:</p> <p>The parties agree that the following Attachment D-1 will only apply 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. The applicable requirements found in Sections 2 through 8 will apply as applicable to the respective Customer Data provided the parties will reference, list or identify the applicable sections on the ordering document.</p>
Attachment D-1 Information Security Requirements, Section 1, General Information Security Requirements, Subsection d	<p>Subsection 1(d) is deleted in its entirety and replaced with the following:</p> <p>Contractor or its subcontractors to the extent the following apply to Contractor-branded products or services provided under this agreement 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 [oklahoma.gov]</p>

STATE OF OKLAHOMA CONTRACT WITH DELL MARKETING L.P.

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**

DELL MARKETING L.P.

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: _____