



STATE OF OKLAHOMA STATEWIDE CONTRACT WITH NATIONAL CINEMEDIA, LLC

This State of Oklahoma Statewide Contract #0135 - Advertising and Marketing Services ("Contract") is entered into between the State of Oklahoma by and through the Office of Management and Enterprise Services ("State") and National CineMedia, LLC ("Supplier") and is effective as of the date of last signature to this Contract. The initial term of the Contract shall be for 1 year with four (4) one-year options to renew.

Purpose

The State is awarding this Contract to Supplier for the provision of Marketing and Advertising Services in one or multiple of the eight categories defined below, for State Agencies and Affiliates to utilize on an as-needed basis, as more particularly described in certain Contract Documents. Supplier submitted a proposal with no exceptions, BAFO, vendor documents or confidentiality requests. This Contract memorializes the agreement of the parties with respect to the 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. Issuance of a purchase order is required prior to payment to a Supplier.
2. Pursuant to Executive Order 2024-12 as amended and for as long as it is effective:
 - 2.1. The Supplier certifies by their signature below that they have no active contract related to any campaign-related matter (i.e., candidates or issues/questions that will appear on a ballot), state question initiative, or policy-based 501(c)(4) at the time of their bid submission to an RFP for PR/marketing/communications nor shall they enter into one during the term of this contract; and
 - 2.2. In addition to the termination rights outlined in the attachments hereto, the State or any Customer may immediately vacate contracts, with no more than ten (10) days' notice if the reason is for a PR Vendor or PR Vendor employee, in an unofficial capacity, being caught in violation of section 2.1 of this document.
 - 2.3. Supplier warrants and represents that it will comply with all parts of Executive Order 2024-12 as amended.

3. The following Contract Documents are attached hereto and incorporated herein:
 - 3.1. Solicitation, Attachment A;
 - 3.2. General Terms, Attachment B;
 - 3.3. Statewide Contract Terms, Attachment C;
 - 3.4. Intentionally Omitted; Attachment D
 - 3.5. Bid Response to Specifications, Attachment E;
 - 3.6. Valu Add, Attachment E-1;
 - 3.7. Pricing, Attachment E-2;
 - 3.8. Additional Terms, Attachment E-3;and
 - 3.9. Negotiated Exceptions; Attachment F.
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.
5. For the sake of clarity this Contract is awarded for categories IV and VI only, of Solicitation No. EV00000444.

Signatures

The undersigned represent and warrant that they are authorized, as representatives of the party on whose behalf they are signing, to sign this Contract and to bind their respective party thereto.

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

NATIONAL CINEMEDIA, LLC

By: 
Amanda Otis (Nov 18, 2024 15:50 CST)

By: *Mark Chandler*

Name: Amanda Otis

Name: Mark Chandler

Title: State Purchasing Director

Title: Manager, Advertising Partnerships and Contracts

Date: Nov 18, 2024

Date: 11/18/2024

ATTACHMENT A
SOLICITATION NO. EV00000444

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 Office of Management and Enterprise Services (OMES), Central Purchasing Division, is seeking responses from potential Suppliers to provide Marketing and Advertising Services in one or multiple of the eight categories defined below, for State Agencies and Affiliates to utilize on an as-need basis.

The Contract is awarded as a Mandatory Statewide contract on behalf of the State of Oklahoma's Office of Management and Enterprise Services - Central Purchasing (OMES-CP) for a full range of as-needed Marketing and Advertising services. All state agencies and state affiliates may avail themselves of this contract.

1. Contract Term and Renewal Options:

- A. 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.
- B. Statewide Contracts are moving to an annual auto-renewal format, instead of the previous manual renewals. No annual renewal notices will be supplied by the State. This does not change any substantive terms and conditions of the executed Contract or any previously executed Amendments. Should either party not want to renew the Contract, a written termination notice shall be sent at least 30 days prior to the end of the Contract term.

2. Solicitation Criterion:

- A. **The Bid will be evaluated using a best value criterion, based on the following:**
 - I. Experience
 - II. Technical Response
 - III. Cost

B. Scope and Description

1. The State of Oklahoma is soliciting Suppliers to be included on a prequalification contract for Advertising and Marketing services. This is a full-service contract that is grouped in eight categories that represent the service needs of Oklahoma for Advertising and Marketing. Suppliers may choose to respond to one or multiple categories. The categories for which a Supplier is submitting a response should be clearly identified in their proposal. The categories covered under this solicitation include:

- I. Category I – Web Based, Social & Emerging Media Services
- II. Category II – Client Services
- III. Category III - Creative Services
- IV. Category IV – Advertising and Marketing Services
- V. Category V – Integrated Marketing Services
- VI. Category VI – Value Proposals
- VII. Category VII – Direct Media Buys
- VIII. Category VIII – Outdoor Advertising

2. Category Definitions:

- i. **Category I -Web-based, Social and Emerging Media:** includes evolving methods of media production, delivery, and consumption. The creation, development, and implementation of marketing/communications tools, devices, and campaigns that reflect the evolving nature in which messaging is produced, delivered, and consumed. To include online marketing, e-mail marketing, social media, website development, mobile phone application development, and other emerging methods, platforms, and technologies, such as: The internet or similar electronic media (social networks e.g., Facebook, LinkedIn, blogs, podcasts, wikis, content communities: X, YouTube, etc. Microblogging: Mobile and location-based platforms, such as foursquare, for the development, preparation, promotion, and distribution/ placement of information or advertisement.

- ii. **Category II – Client Services:**

1. **Event Planning:** - To create, organize, and supervise all aspects of an event such as, but not limited to, trade shows, workshops, seminars, award ceremonies, and conventions. Event planning includes budgeting, establishing dates and alternate dates, selecting and reserving the event site, acquiring permits, and coordinating transportation and parking. Event planning also includes some or all the following depending on the event: developing a theme or motif for the event, arranging for speakers and alternate speakers,

coordinating location support (such as electricity and other utilities), arranging decor, tables, chairs, tents, event support and security, catering, police, fire, portable toilets, parking, signage, emergency plans, and cleanup.

2. **Event Support** - Relates to service assistance (support) once all functional elements of a scheduled event have been established and/or a site has been secured. Included in part or in total would be: graphic design, back-drop graphic imprinted signs or panels, onsite support personnel for registration, surveys, workshop facilitators but not presenters, greeters, and other services that are ancillary to the successful event outcome.
3. **Business Development** – Services aimed at developing and implementing opportunities to expand within and between organizations and aiding in furthering a user’s mission.
4. **Project Management** – Services assisting a User in the initiation, planning, executing, controlling, and finalization of projects in order to achieve a user’s goals while meeting specific criteria for success.
5. **Quality Assurance** – Services that assist Users in ensuring a desired level of quality of service, through attention to process stages and efficiencies.
6. **Public Relations** - Includes: Research, planning, communication, dialogue and evaluation, public attitudes, definition of the policies, procedures, and interests of an organization. More specifically publicity events, photo ops or publicity stunts, speeches to constituent groups and professional organizations, receptions, seminars, and other events, personal appearances, collateral literature (both offline and online), direct communication (carrying messages directly to audiences, rather than via the mass media) with, for example, printed or email newsletters, blogs as well as social media, and social networks.

iii. **Category III -Creative Services:**

1. **Art & Graphic Design** – Includes: Images, patterns, layouts, and other graphic devices composed into a coherent distinctive design intended for printing and/or for advertisements and printed

materials. Awarded Suppliers will provide copywriting and technical writing services, create sketches, drawings, publication designs and typographic layouts, and furnish custom or stock artwork (including electronic artwork.)

2. **Commercial Photography** - Includes: Taking pictures, photo development, enlargements, hardcopy and/ or digital pictures (black and white or color) for advertisement, merchandising, product placement, brochures, leaflets, and other communication services.
3. **Video Production** - Includes: The development, creation and production of television programs, television commercials, training videos, and videos to raise public awareness about services, educate learners, train staff, and deliver brand messages. Essential functions include services to produce quality videos, content, production quality, and clarity. Awarded Suppliers will be responsible for project management, content development, creative script, finding talent, scouting filming locations, filming, and editing.

iv. **Category IV - Advertising and Marketing Services**

1. **Marketing** - Includes: Brand development, strategic planning, focus groups, video, PSA/commercials/radio spots development & production, event materials development, graphics, packaging, analytics & monitoring, email & social media marketing, mobile application development, search engine optimization & outreach, web development, media placement, qualitative use of mainstream and ethnic-based TV and radio advertising reach through targeted programming, and pre-/post-campaign evaluations.
2. **Advertising** - Includes: The development, production (drafts, proof, edits, and finals) & positioning of specific messaging content in any identified or to be identified approved mainstream and ethnic communication mediums (newspapers, magazines, broadcast media, advertising media, social media, direct mail, billboards and posters, transit advertising, and promotional items) to reach a predetermined audience/demographic market. Includes services to promote awareness, disseminate information, enable public understanding of complex technical and social issues, etc.

v. Category V - Integrated Marketing Services

1. Must include all functions of a full-service marketing & advertising agency and cover services offered under the categories above. The Integrated Marketing Services Category is broad in scope so that departments can develop scopes of work that may require a variety of services offered under this contract.

vi. Category VI – Value Added Proposals

1. Suppliers may propose additional services not otherwise included in the solicitation. Suppliers must describe how these services would add value to the State and meet all other evaluation requirements listed in Section D. These additional services must be within the scope of the contract and not otherwise detailed in the other award categories. The State reserves the right to utilize options that are deemed to provide value to the State.

vii. Category VII Definition – Direct Media Buys

1. May include updated graphics regarding existing campaign materials (refresh and revise) including posters, promotional materials, displays, web site graphics, and television/digital video Public Service Announcements (PSAs).
2. May include updating and expanding creative messaging regarding an existing campaign including posters, promotional materials, displays, web site graphics, and television/digital video PSAs).
3. May include expansion of an existing web site and necessary edits/design to include new message and links.
4. May include targeted media buys and direction related to a statewide messaging campaign targeting certain established populations.
5. May include the purchase of broadcast and digital media messaging. Digital media as in web based direct ads (Pop-ups). Public Service Announcement (PSA) will pop-up when you go to a website. These can be on phone or other devices.
6. May include grass-roots campaign/training including development of an awareness tool kit with outlined activities, support materials, public messages (including social media), and other items as part of an existing campaign. Local coalition training regarding promotion and education as part of an existing campaign. Community events including assistance and promotional/awareness support.

viii. **Category VIII Definition – Outdoor Advertising**

1. Highway/Road Billboards – Paint, Panel, or Digital, Location – the physical location of the board(s).
2. DEC/Traffic Counts/Impressions – the number of people on a daily or weekly basis that see the board.
3. Readability – how easily read is the message on the board as you are driving by – how long is it?
4. Availability – does the desired route of the bus have a board that is available to put under contract?
5. Price – Advertising Cost, per increment of time?
6. Production fees – the cost to produce.

C. As referenced in subsection 7.2, Executive Summary and Company Information are on **Exhibit 01: Offeror response Worksheet, Executive Summary and Company Information.**

D. As referenced in subsection 7.7, All Technical responses are on **Exhibit 02: Offeror Response Worksheet, Technical Response.**

E. As referenced in subsection 7.8, The response to pricing shall be proposed using **Exhibit 03: Rate Card Template.**

F. As referenced in subsection 7.9, Value-added products and/or services within scope of the Acquisition are to be included in **Exhibit 02: Offeror Response Worksheet, Technical Response.**

G. As referenced in subsection 7.10, Business References are to be on **Exhibit 04: Bidder Reference Worksheet**

H. As referenced in subsection 7.11, third-party vendor information is included in on **Exhibit 05: Third Party Supplier Information.**

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

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

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

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

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

- 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 Amendment. 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.
- 3.3 Except for information deemed confidential by the State pursuant to applicable law, rule, regulation, or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.
- 3.4 Unless mutually agreed to in writing by the State of Oklahoma by and through the Office of Management and Enterprise Services, 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.
- 3.5 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.

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 **Amendment** means a mutually executed, written modification to a Contract Document.
- 4.3 **Bid** means an offer a Bidder submits in response to the Solicitation.
- 4.4 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.5 **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.
- 4.6 **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 Amendment.
- 4.7 **Customer** means the governmental entity receiving goods or services contemplated by the Contract.
- 4.8 **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.

- 4.9 Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.
- 4.10 Governmental Entity** means any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claim Act including any associated institution, instrumentality, board, commission, committee, department, or other entity designated to act on behalf of the state.
- 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 260:115-9-1, 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.

- 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 notice of cancellation and includes 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 \$2,000,000 per occurrence;

- C. Automobile Liability Insurance with limits of liability of not less than \$2,000,000 combined single limit each accident;
- D. If the Supplier will access, process, or store state data, then 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
- E. 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 Supplier's 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, Supplier's 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 2 C.F.R. part 376 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,
set

Procedures,
forth

Guidelines
at

https://oklahoma.gov/content/dam/ok/en/omes/documents/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's 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.

- 11.8** Except for information deemed confidential by the State pursuant to applicable law, rule, regulation, or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to the Supplier.

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 13.1 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 Contract or 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 260:115-9-1 is an example.

19 Termination for Convenience

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

19.2 Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been

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

20 Suspension of Supplier

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

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

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

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

22 Certification Regarding State Employees Prohibition From Fulfilling Services

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

23 Force Majeure

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

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

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

indemnification, data security or breach notification obligations set forth herein.

24 Security of Property and Personnel

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

25 Notices

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

If sent to the State:

State Purchasing Director
2401 N. Lincoln Blvd., Second Floor
Oklahoma City, Oklahoma 73105

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

Purchasing Division Deputy General Counsel
2401 N. Lincoln Blvd., Second Floor
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. §85.7(F),

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. The State expressly declines any terms that minimize its rights under Oklahoma law, including but not limited to, Statutes of Limitations.

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 118
Oklahoma City, Oklahoma 73105

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

ATTACHMENT D

Intentionally left blank.

B. Scope and Description

IV. Category IV – Advertising and Marketing Services

National Cinemedia, LLC (NCM) does not publish a Price List. NCM is a customized solution-based company that reaches your target through our highly coveted audience of entertainment enthusiasts'.

With our exclusive 1st Party Data, we can target and reach better than anyone your target through our media platforms and networks before, during, and after the movies.

We base our recommendations on your goals, desired outcomes, and budget. We do not have pricing sheets or anything like that. Everything is a custom solution based on the following:

1. Target
2. Geo-target
3. Flight Dates of campaign
4. Length of message
5. Budget Range

NCM accomplishes what you want for questions #1 thru #4 within your answer for question #5. In responding to the State of Oklahoma, Solicitation Number EV00000444, NCM's campaign recommendation is an integrative, (52) week campaign broken up into quarters of (13) week campaign flights. We think this is an optimal schedule for the various government agencies to plug in and out of throughout the year for their outreach needs. However, the campaign recommendations can be revised based upon further input from State of Oklahoma and agencies.

NCM is uniquely qualified because our highly coveted audience of Entertainment Enthusiasts. NCM's audience is diverse and NCM's cinema platform has the highest attention to (:30) and (:15) messages than any video media platform. NCM's expertise is targeting your messaging to your target segment of our audience through our 1st and 2nd Party Data which brings to your campaign a better impact of your message, robust reporting, and a better R.O.I.

NCM's Audience and Data

NCM is *the* premium video platform for today's today's advertisers.

- Hard to Reach Audiences
- Powerful Cultural Moments
- Proven Business Outcomes

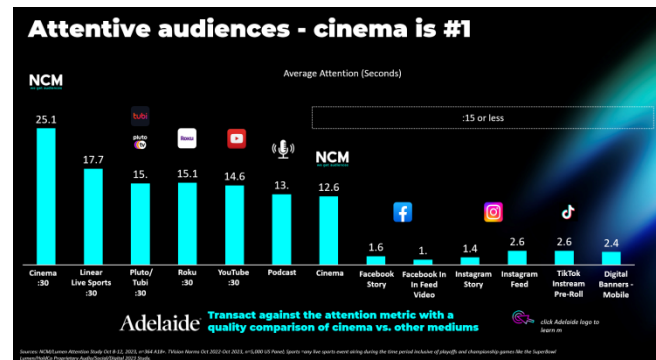
The most sought-after audiences

- 30** Median age
- 60%** Multicultural
- 56%** Cord-cutters/cord-nevers
- 3x** Greater spend than the general population

NCM

Movies drive the cultural conversation

- FOMO effect
- Shared experiences
- Trending moments
- Pervasive memes
- Full immersion
- Biggest buzz



NCMx revolutionizes cinema measurement

Powered by one of the largest deterministic moviegoer datasets in the industry, NCMx provides solutions from planning through post-campaign analysis

1st and 2nd Party Data: Loyalty card, ticket purchase, and location-based data

DMP: TransUnion

NCMx: 44M HHs

Advanced Audience Segments • Audience Analytics • Brand Measurement • Incrementality • Attention • Attribution

NCM is proposing quarterly campaigns that can be revised based upon the Oklahoma agencies' needs. NCM is presenting a multi-media campaign recommendation that re-targets the audience after they leave the theater on their personal devices. This increases the reach and frequency of your message in order to drive engagement and ultimately the desired behavior you want your target to do. A recommendation for a multi-media solution gives a greater depth and frequency of reporting during the course of your campaign and final metrics at the end of your campaign. NCM can provide pacing reports and a final post report to show you quantitatively how your campaign is doing and at the end of the campaign.

NCM's Multi-Media Platform (52) Week Flighted Campaign Recommendations

07/01/2024 - 09/29/2024	07/01/2024 - 09/29/2024	07/01/2024 - 09/29/2024	09/30/2024 - 12/29/2024	09/30/2024 - 12/29/2024	09/30/2024 - 12/29/2024
Onscreen	Streaming OTT - Retargeting	Digital Full Panel Banner Takeover - Retargeting	Onscreen	Streaming OTT - Retargeting	Digital Full Panel Banner Takeover - Retargeting
(:30) Video	(:30) Video	Full Panel Banner	(:30) Video	(:30) Video	Full Panel Banner
Gold Position	Targeted Zip Codes	Targeted Zip Codes		Targeted Zip	Targeted Zip

The OTT streaming and Digital Full Panel Banner Mobile Screen Takeover has the ability to add two additional targeting segments for the campaign thus each Oklahoma government agency will have their own unique campaign. (All creative needs prior approval before running).

Targeting via OTT Streaming and Full Panel Banner Mobile Screen Takeover can use zip codes, counties, and state geo-graphic areas.

Theater List for Recommendation Campaign

NCM has a variety of major theaters in the state of Oklahoma. Here are the theaters for the campaigns:

Theater Code	Theater Name	Location
SBC6009	Edmond	EDMOND, OK
AMC0146	Penn Square Mall 10	OKLAHOMA CITY, OK
AMC0144	Quail Springs Mall 24	OKLAHOMA CITY, OK

NCM will use its 1st Party data, 2nd Party data, and behavioral data on its various media platforms to reach a predetermined audience/demographic market. Includes services to promote awareness, disseminate information, enable public understanding of complex technical and social issues, etc.
NCM will then provide reporting of the campaigns of performance metrics.

Total Investment

Media Platform	Net Investment	Flight Dates
Onscreen	\$323,128	52 Weeks
Digital OTT Streaming	\$125,000	52 Weeks
Digital Full Panel Banners	\$68,000	52 Weeks

B. Scope and Description

Category VI – Value Added Proposals

National Cinemedia, LLC (NCM) does not publish a Price List. NCM is a customized solution-based company.

We base our recommendations on your goals, desired outcomes, and budget. We do not have pricing sheets or anything like that. Everything is a custom solution based on the following:

1. Target
2. Geo-target
3. Flight Dates of campaign
4. Length of message
5. Budget Range

NCM accomplishes what you want for questions #1 thru #4 within your answer for question #5. In responding to the State of Oklahoma, Solicitation Number EV00000444, NCM's campaign recommendation is an integrative, (52) week campaign broken up into quarters of (13) week campaign flights. We think this is an optimal schedule for the various government agencies to plug in and out of throughout the year for their outreach needs. However, the campaign recommendations can be revised based upon further input from the State of Oklahoma and its government agencies.

DOOH – College Campus Network Screens

Reach college students where they are, on campus. National CineMedia, LLC's college campus network has screens in high traffic areas on campus such as the University City, College Campus Bookstore, etc. Your (:15) video message (no audio) plays on the College Campus screens based upon the projected impressions of your campaign. NCM will provide a post report with metrics of your campaign.


Chart on next page.

Campaign Recommendations

National CineMedia, LLC
People Soft Supplier ID: 0000483254
OK SOS Filing Number: 3712071792
scott.wood@ncm.com

Attachment E-1: Value Add

**NCM CAMPUS
NETWORK**
POWERED BY TROOH



**:15 video served on high-impact
screens located in high-traffic
areas on college campuses**

08/19/2024 - 09/29/2024	09/30/2024 - 11/17/2024	01/06/2025 - 03/30/2025	03/31/2025 - 05/25/2025
DOOH College Campus Networks	DOOH College Campus Networks	DOOH College Campus Networks	DOOH College Campus Networks
(:15) Video	(:15) Video	(:15) Video	(:15) Video
(7) Campuses	(7) Campuses	(7) Campuses	(7) Campuses
(9) Screens	(9) Screens	(9) Screens	(9) Screens
Campus Network Screens	Campus Network Screens	Campus Network Screens	Campus Network Screens
*Projected Impressions: 755,556	*Projected Impressions: 755,556	*Projected Impressions: 755,556	*Projected Impressions: 755,556
Investment \$17,000	Investment \$17,000	Investment \$17,000	Investment \$17,000

Campus Locations
Oklahoma State University
Rogers State University
University of Central Oklahoma
Southeastern Oklahoma State University
Rose State College
University of Oklahoma
Oklahoma State University - Tulsa

Total Investment

Media Platform	Net Investment	Flight Dates
Campus Onscreen Network	\$68,000	33 Weeks

National CineMedia, LLC
 People Soft Supplier ID: 0000483254
 OK SOS Filing Number: 3712071792
 scott.wood@ncm.com

Request for Proposals for
SW0135 Marketing & Advertising
Issued by the **State of Oklahoma**
Solicitation Number EV00000444
Bidder Name: National CineMedia, LLC
People Soft Supplier ID: 0000483254 / OK SOS Filing Number: 3712071792

7.8 Section Eight: Pricing (Will not be held Confidential) EXHIBIT 03: Rate Card Template							
Instructions category, list the services titles you support. Provide total cost or hourly "not-to-exceed" rates for each level and category as applicable. - If you are attaching a supplementary PDF with prices, please select YES on the "Attached File" Drop down Menu related to the category, and then provide the file name. It is acceptable to have an attached PDF file that covers multiple categories. *Pricing must include travel and delivery costs							-For each
Categories	List Services Provided (Items in Red are meant as examples. Add more lines as needed or attach a .pdf)	Cost Per Hour/Month	Cost per Project	% Rate Increase 2nd year	% Rate Increase 3rd year	% Rate Increase 4th year	% Rate Increase 5th year
Category I Web-Based, Social & Emerging Media Services	Media Platform A:	NA	NA	NA	NA	NA	NA
	Media Platform X:	NA	NA	NA	NA	NA	NA
	Any emerging media platforms:	NA	NA	NA	NA	NA	NA
Attached File? No		Name of File:	NA				
Category II Client Services	Marketing Event planning and support:	NA	NA	NA	NA	NA	NA
	Business Development:	NA	NA	NA	NA	NA	NA
	Project Management:	NA	NA	NA	NA	NA	NA
	Quality Assurance:						
	Public Relations:						
Attached File? No		Name of File:	NA				
Category III Creative Services	Arts & Graphic Design:	NA	NA	NA	NA	NA	NA
	Commercial Photography:	NA	NA	NA	NA	NA	NA
	Video Production :	NA	NA	NA	NA	NA	NA
Attached File? No		Name of File:	NA				
Category IV Advertising and Marketing Services	Advertising						
	Marketing						
	Cinema advertising (averaged monthly cost)	\$24,856	\$323,128	3%	4%	5%	6%
	OTT Streamining advertising (averaged monthly cost)	\$9,615	\$125,000	3%	4%	5%	6%
	Full Panel Banner Mobile Takeover Advertising (averaged monthly cost)	\$17,000	\$68,000	3%	4%	5%	6%
Attached File? Yes		Name of File:	B. Scope and Description -Advertisng and Marketing - National CineMedia				
Category V Integrated Marketing Services	Includes all services offered under Categories I-IV and possibly Categories VII-VIII. The Integrated Marketing Services Category is broad in scope so that departments can develop scopes of work that may require a variety of services offered under this contract.	NA	NA	NA	NA	NA	NA
Attached File? No		Name of File:	NA				
Category VI Value Proposals	Other options not described that may add value to the State of Oklahoma.						
	College Campus Network (average monthly investment)	\$17,000	\$ 68,000	3%	4%	5%	6%
Attached File? Yes		Name of File:	B. Scope and Description – Value Added Proposals - National CineMedia				
Category VII Direct Media Buys	Graphic Design (Print, Video, and Web)	NA	NA	NA	NA	NA	NA
	Update and Expand Existing Messaging;	NA	NA	NA	NA	NA	NA
	Existing Web Site Update	NA	NA	NA	NA	NA	NA
	Targeted Media	NA	NA	NA	NA	NA	NA
Attached File? No		Name of File:	NA				
Category VIII Outdoor Advertising	Highway/Road Billboards – Paint, Panel, or Digital;	NA	NA	NA	NA	NA	NA
	Bus Panel	NA	NA	NA	NA	NA	NA
	Vehicle Wrapping	NA	NA	NA	NA	NA	NA
	Streetcar Advertising	NA	NA	NA	NA	NA	NA
	Mobile – Billboards on Trailers.	NA	NA	NA	NA	NA	NA
Attached File? No		Name of File:	NA				

NATIONAL CINEMEDIA, LLC
Standard Media Terms and Conditions (Rev. 04-08-24)

The Insertion Order or other agreement ("**Order**") between National CineMedia, LLC ("**NCM**") and Advertiser (whether executed by Advertiser or an agency or media buyer on behalf of Advertiser or agreed to by Advertiser running a programmatic campaign against a Deal ID) for the NCM services described below ("**NCM Services**") is non-cancellable by Advertiser and is subject to the following terms and conditions ("**Agreement**"):

1. NCM Services. Subject to Advertiser's compliance with this Agreement, NCM will use commercially reasonable efforts to cause the advertising identified in the Order ("**Advertising**") to be displayed as specified in the Order. Inventory for Advertising placement is subject to availability, and NCM may add or substitute inventory, screens, showings, units, and ratings in NCM's reasonable discretion. NCM does not make any representations or warranties regarding number of impressions for Advertising not sold on an impression basis. For Advertising sold on an impression basis, NCM shall deliver Advertising based on the total number of impressions set forth in the Order. Exact timing of Advertising display or impressions over the course of any Advertising campaign may vary from estimates (e.g., due to actual movie attendance, among other factors).

2. In-Theatre Advertising and Promotions. In-theatre Advertising will be displayed on movie auditorium screens or on the lobby entertainment network. In-theatre Advertising that is not sold on an impression basis will be displayed each week on a per screen or per theatre basis and will be deemed to be delivered by NCM if it is displayed in a majority of showings on a single screen or in a single theatre during the applicable week. Timing of theatre lighting is outside of NCM's control. All materials to be distributed to theatre patrons by or on behalf of Advertiser, including lobby promotional material ("**Promotional Materials**"), will be delivered to locations at Advertiser's sole expense, with Advertiser bearing all risk of loss. Final placement of Promotional Materials is determined by theatre management. NCM may, in its discretion, (i) delay the distribution of Promotional Materials, or (ii) require Promotional Materials to include disclaimers provided by NCM or its location or media providers.

3. RESERVED.

4. RESERVED.

5. Content.

5.1 Advertiser Content. The Advertising, Promotional Materials, and all information, data, text, photographs, videos, names, images, likenesses, voiceovers, music, audio, calls to action, trademarks, and other content provided by or for Advertiser ("**Advertiser Content**") is subject to (a) the procedures, specifications, guidelines, and deadlines at <http://adspecs.ncm.com> or otherwise provided by NCM or its location or media providers, (b) all requirements, restrictions, and limitations imposed by law, rule, or regulation (including self-regulatory rules and guidelines) or by any third party, and (c) prior and on-going approval by NCM and its location and media providers. In the event of any conflict between SW0135 and the NCM Terms, SW0135 will control. NCM or any location or media provider may reject or elect not to display any Advertising at any location or in any medium where the Advertising would not be appropriate (e.g., before any motion picture with a particular movie rating) or not permitted. If any Advertising is rejected, Advertiser will promptly replace the Advertising with Advertising acceptable to NCM and its location and media providers so as not to delay the schedule for display of the Advertising. NCM reserves the right to make changes to Advertiser Content to conform with technical specifications. NCM has no obligation to review any Advertiser Content for compliance with this Agreement or any content restrictions or limitations imposed by law, rule, or regulation (including self-regulatory rules and guidelines) or by any third party. Except for NCM Content, all Advertising provided by Advertiser is and will remain the sole and exclusive property of Advertiser, and except as otherwise provided in this Agreement, NCM receives no rights or licenses in or to any Advertising. Advertiser grants to NCM and its location and media providers the right to use, reproduce, distribute, display, perform, and modify (collectively, "**Use**"), upon written approval from State Customer, the Advertising, Advertiser Content, and Promotional Materials, as necessary or appropriate, for the performance by NCM and its location and media providers of their obligations relating to this Agreement and for promotion of NCM's business.

5.2 NCM Content. All materials, content, reports, information, and data prepared or provided by NCM under this Agreement ("**NCM Content**") is and will remain the sole and exclusive property of NCM or its licensors, and except as may otherwise be provided through a separate agreement (e.g., a creative license that is subject to a separate fee paid by Advertiser to NCM), Advertiser receives no rights or licenses in or to any NCM Content.

6. Representations and Warranties. NCM represents and warrants that NCM has the legal right and authority to enter into and provide the NCM Services under the Agreement. Advertiser represents and warrants that: (a) Advertiser (or the agency or media buyer entering into this Agreement on behalf of Advertiser) has the legal right and authority to enter into and perform its obligations under the Agreement; (b) Advertiser has obtained all rights, authorizations, consents, licenses, and clearances (collectively, "**Licenses**") necessary to enable NCM and its location and media providers to Use the Advertising, Advertiser Content, and Promotional Materials and to perform the obligations under this Agreement; (c) all information and data provided to NCM in connection with this Agreement is correct and current; (d) Advertiser will not collect any personal information or transfer such information to any third party, without the prior written approval of NCM; (e) the Advertising and Advertiser Content do not contain any viruses, Trojan horses, worms, time bombs, or any other similar software, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, information, or property of another; and (f) the Advertising, Advertiser Content, and Promotional Materials (i) are not in any way pornographic, obscene, abusive, threatening, indecent, vulgar, defamatory, disparaging, harassing, or otherwise objectionable, (ii) do not violate applicable laws, rules, or regulations (including self-regulatory rules and guidelines), (iii) do not infringe, violate, or misappropriate any third party copyright, patent, trademark, trade secret, right of privacy or publicity, or any other intellectual property or proprietary right, (iv) do not impersonate, or misrepresent endorsement by, any individual or any government or business entity; (v) are not unfair or deceptive; (vi) make all required disclosures (e.g., paid endorsements or testimonials, sweepstakes or contests, political ads, industry-specific regulatory disclosures, and use of artificial intelligence for certain Advertising) in a clear and conspicuous manner, and (vii) are free from defects.

7. Disclaimer and Limitation of Liability. EXCEPT FOR NCM-OWNED APPS AND WEBSITES, NCM DOES NOT MAINTAIN ANY OF THE ADVERTISING LOCATIONS, MEDIA, OR TECHNOLOGY AND MAKES NO REPRESENTATION OR WARRANTY REGARDING THE CONDITION OR AVAILABILITY OF SUCH LOCATIONS, MEDIA, OR TECHNOLOGY. NCM PROVIDES ALL SERVICES, MEDIA, AND NCM CONTENT "AS-IS" AND "AS-

AVAILABLE." NCM MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICES, MEDIA, OR NCM CONTENT. NCM EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. ADVERTISER IS SOLELY RESPONSIBLE FOR ANY LIABILITY ARISING FROM THE ADVERTISING AND ADVERTISER CONTENT, AND NCM WILL NOT BE LIABLE FOR LOSS OR DAMAGE TO ANY ADVERTISING OR ADVERTISER CONTENT.

8. Indemnification.

8.1 RESERVED.

8.2 NCM is responsible for and will indemnify, defend, and hold harmless Advertiser, its affiliates, and their respective officers, directors, employees, and its agency or media buyer entering into this Agreement on behalf of Advertiser, from and against any and all direct and indirect losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of any third party claims related to (1) NCM's gross negligence or willful misconduct; or (2) Use by NCM of the NCM Content, specifically excluding any Advertiser Content. Advertiser will provide NCM with notice of any such claim, and Advertiser has the right to participate in the defense of any such claim at its expense.

9. RESERVED.

10. Insurance. Advertiser will obtain and maintain a commercial general liability insurance policy with a financially sound and reputable insurance company in such amounts that are adequate for its business, including performance of its obligations under this Agreement.

11. Confidentiality. Subject to federal and state law, rule, and regulation including but not limited to the Oklahoma Open Records Act, Advertiser acknowledges that information, knowledge, or data made available by NCM to Advertiser regarding NCM, its affiliates, its location and media providers, and each of their businesses and information, knowledge, or data of third parties, including but not limited to source code, schemata, algorithms, software techniques, processes, devices, know-how, inventions (whether or not patentable), methods, business ideas, forecasts, projections, designs, drawings, diagrams, data (including without limitation technical, marketing, accounting or financial data), pricing, fee information, posting information, post-buy analysis, post-campaign delivery reports, attendance reports, impression counts, proof of performance documentation, information from or about location or media providers, patents or potential or actual improvements on existing patents, business plans and strategies, negotiations and contracts, technical information, research, customer or vendor information and lists, and all other information constituting trade secrets and the terms of any agreement is confidential (collectively, "**Confidential Information**"), and Advertiser agrees (for itself, its agents, employees, and affiliates (collectively, the "**Representatives**")) that, it and its Representatives: (i) will not disclose any Confidential Information to any third party; (ii) will not use Confidential Information for any purpose other than to comply with its obligations under the Agreement; (iii) will implement the same controls to prevent unauthorized use or disclosure of the Confidential Information as it uses to prevent unauthorized use or disclosure of its own proprietary information of like nature, but using at least reasonable care. Advertiser will only disclose Confidential Information to its Representatives that have a need to know and who are subject to confidentiality obligations at least as restrictive as this Agreement.

12. Additional Terms. This Agreement will be binding on the parties and upon their heirs, personal representatives, executors, administrators, successors, and assigns. This Agreement will be governed by the laws of the State of Oklahoma, without regard to conflict of laws principles. The parties hereby irrevocably consent to the exclusive jurisdiction and venue in the state and federal courts sitting in the City and County of Oklahoma City, Oklahoma County, for any dispute concerning the interpretation or effect of this Agreement. In all such disputes arising under this Agreement, the parties expressly waive right to trial by jury. The relationship between the parties under this Agreement is one of independent contractors. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. If any provision of this Agreement is deemed unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Any failure or delay in performance by a party will be excused and will not constitute a breach of this Agreement to the extent due to any cause not reasonably within such party's control, including, without limitation, third party acts, omissions, or failures; labor disputes; natural disasters; pandemics; epidemics; disease outbreaks; shortage of materials; fire; earthquakes; floods; acts of war or terrorism; governmental action; or acts of God. NCM's location and media providers are intended third party beneficiaries of this Agreement. The Agreement may be executed in counterparts, each of which is deemed an original and all of which together constitute one document.

**Attachment F to
STATE OF OKLAHOMA CONTRACT WITH NATIONAL CINEMEDIA, LLC.
RESULTING FROM SOLICITATION NO. EV00000444**

Negotiated Exceptions to the Solicitation

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

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

RFP Section	Exception
Attachment B. State of Oklahoma General Terms – Section 6, Ordering, Inspection, and Acceptance.	The following is added to Section 6.2: Notwithstanding the foregoing, Supplier shall be given the option to make available to the State an alternative time period, location, or media of reasonably comparable value for the display of the advertising (“Make-Good”). The State must request each Make-Good in writing within one month after any failure, and (ii) schedule the Make-Good for display within one year following such failure. Supplier does not guarantee that Make-Good will be available for any particular time period, location, media, rating or impression count.
Attachment B. State of Oklahoma General Terms – Section 8, Maintenance of Insurance, Payment of Taxes, and Workers' Compensation.	Section 8.1B is hereby deleted in its entirety and replaced by the following: B. Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$1,000,000 per occurrence;
Attachment B. State of Oklahoma General Terms – Section 8, Maintenance of Insurance, Payment of Taxes, and Workers' Compensation.	Section 8.1C is hereby deleted in its entirety and replaced by the following: C. Automobile Liability Insurance with limits of liability of not less than \$1,000,000 combined single limit each accident;

RFP Section	Exception
Attachment B. State of Oklahoma General Terms – Section 9, Compliance with Applicable Laws.	<p>Section 9.9 is hereby deleted in its entirety and replaced by the following:</p> <p>9.9 Supplier represents that, to the best of its knowledge, any material litigation or claim or any threat thereof involving Supplier has been publicly disclosed. Supplier is not aware of any other material litigation, claim or threat thereof.</p>
Attachment B. State of Oklahoma General Terms – Section 10, Audits and Records Clause.	<p>Section 10.2 is hereby deleted in its entirety and replaced by the following:</p> <p>10.2 The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of three (3) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. At the end of the three (3) year period, Supplier shall give the Customer the option to receive the records before deletion. If a claim, audit, litigation, or other action involving such records is started before the end of the three-year period, the records are required to be maintained for two (2) years, from the date that all issues arising out of the action are resolved, or until the end of the three (3) year retention period, whichever is later.</p>