



State of Oklahoma
Office of Management and Enterprise Services

**ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH GPS INSIGHT
RESULTING FROM STATEWIDE CONTRACT NO. 1028**

This Addendum 1 (“Addendum”) is an Amendment to the Contract awarded to GPS Insight in connection with Statewide Contract No. 1028 (“Solicitation”) and is effective July 1, 2017.

Recitals

Whereas, the State issued a Solicitation for proposals to provide a GPS/AVL Fleet Management System, as more particularly described in the Solicitation;

Whereas, GPS Insight submitted a proposal which contained various other Contract Documents; and

Whereas, the State and GPS Insight have negotiated the final terms under which GPS Insight will perform the Services under the Contract.

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. Addendum Purpose.

This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to GPS Insight as of even date with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. Negotiated Documents of the Contract.

2.1. The parties have negotiated certain terms of the Contract as follows:

- i. certain additional terms to the Solicitation as contained in Attachment A to this Addendum titled Negotiated Additional Terms; and

- ii. revisions to GPS Insight's Master Monitoring Agreement as contained in Attachment B to this Addendum titled, Master Monitoring Agreement.

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

State of Oklahoma

By: 

Name: James L. Reese, II

Title: Chief Information Officer

Date: 7-10-17

GPS Insight

By: 

Name: Elliot Batcheller

Title: VP of Operations

Date: 6/28/1017

**Attachment A to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH GPS INSIGHT
RESULTING FROM STATEWIDE CONTRACT NO. 1028**

Negotiated Additional Terms

The Solicitation is hereby amended as set forth below:

Solicitation, Section B Special Provisions, Subsection B.14. is hereby added:

The State requires any entity hosting Oklahoma client data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the contract, including renewals, constitutes a material breach.

To the extent Supplier desires to no longer host the solution and instead utilize a subcontractor as a third-party hosting vendor, the sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the third-party hosting vendor in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party hosting vendor's State Certification and Accreditation Review. In the event the third-party hosting vendor does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it may not utilize the third-party vendor in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

Solicitation, Section B Special Provisions, Subsection B.15. is hereby added:

Per Solicitation, Section B Special Provisions, Subsection B.2, the State approves Supplier's use of Metro Mobile Electronics as a third party installer under this Contract.

**Attachment B to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH GPS INSIGHT
RESULTING FROM STATEWIDE CONTRACT NO. 1028**

The Master Monitoring Agreement is hereby amended as set forth below and supersedes all prior documents submitted by GPS Insight or discussed by the parties, including the Monitoring Agreement (Purchase) and Monitoring Agreement (rental) included in GPS Insight's response.

Master Monitoring Agreement

This Master Monitoring Agreement (this "Agreement") sets forth the terms and conditions to which the undersigned (the "Customer") agrees with respect to (i) the rental, purchase and/or use of GPS-proprietary vehicle-mounted hardware devices (the "Devices"), (ii) the purchase and use of and use of the purchase and use of hardware accessories (the "Accessories"), and (iii) GPS Insight's developed, hosted and managed vehicle and asset tracking hosted solution (the "Tracking Solution"), all as set forth on the applicable Estimate (the "Estimate").

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intend to be legally bound and do hereby agree as follows:

1. Term and Termination

1.1. Term. Unless otherwise set forth on the applicable Estimate, the subscription term ("Subscription Term") for renting Devices and/or using the Tracking Solution is calculated per Device, with the initial Subscription Term commencing upon execution and delivery of this Agreement (the "Effective Date") and ending one (1) year after the first day of the month after the earlier of (a) the date that a Device is configured to communicate and send data to the Tracking Solution ("Activated") or (b) one-hundred and eighty (180) days from the date GPS Insight shipped the Device to Customer (as evidenced by GPS Insight's shipping records). Once a device is Activated, the Tracking Solution will continue through the balance of the Subscription Term. Notwithstanding the foregoing, the then-current Subscription Term may be renewed if the parties execute a renewal agreement associated with such Devices (a "Renewal Agreement").

1.2. Termination for Cause. Either party may terminate the Subscription Term in the event the other party materially breaches the terms set forth in this Agreement and fails to cure within thirty (30) days after written notice detailing such breach.

1.3. Effect of Termination. Upon any termination of the Subscription Term, (i) Customer's right to access and use the terminated rental Devices and Tracking Solution shall terminate; (ii) all terminated rental Devices (including all cables, antenna, connecting harness, other accessories or related equipment provided by GPS Insight with the Devices) shall be promptly (but in all cases within thirty (30) calendar days) returned to GPS Insight; and (iii) unless otherwise set forth in this Agreement for Contract resulting from Oklahoma Statewide 1028, GPS Insight has no obligation to retain any data collected through Customer's use of the Devices and/or Tracking Solution. Should Customer fail to timely return the terminated rental Devices as set forth in Section 2.2 and unless otherwise agreed to

by the parties in writing, GPS Insight will bill and/or charge Customer a per Device per month fee equal to two (2) times their Device rental fee (a "Deactivated Device Fee"). Should Customer fail to return the terminated Device within one hundred twenty (120) days after termination, GPS Insight will bill and/or charge Customer for the replacement value of such Device, less the sum of Rental Fees and Deactivated Device Fees paid for such Device.

2. Devices

2.1. Upgrade Devices. Customer acknowledges that Devices acquired as part of the upgrade program set forth on the Estimate may be a used and/or refurbished product. Refurbished Devices are previously used, reconditioned and tested Devices, which must pass GPS Insight's quality control standards.

2.2. Returns. Unless otherwise agreed in writing between the parties, Customer shall return each rental Device to GPS Insight within five (5) business days from the later of (the "Return Date") the parties' mutually agreed upon return date or the termination date for such Device rental. Such Devices shall be returned using a method of shipment approved in advance by GPS Insight or as set forth on the Estimate. Customer shall provide GPS Insight the tracking number (bill of lading number, airway bill number, etc.) as directed by GPS Insight.

2.3. Damage. Unless as otherwise set forth in this Agreement or the Contract resulting from Oklahoma Statewide 1028, Customer shall be liable for any loss or damage to the rental Devices while in transit and under Customer's custody or control, including at all times during the Subscription Term. Customer shall promptly notify GPS Insight in writing of any damaged or missing rental Devices, but in all cases within four (4) business days of becoming aware of damaged or missing rental Devices. GPS Insight shall notify the Customer of the cost to Customer for repair or replacement of such damaged or missing rental Devices, and Customer shall compensate GPS Insight for any loss or damage to the Devices, up to and including the full replacement value of the such rental Devices.

2.4. Ownership. Each rental Device is, and shall at all times be and remain, the sole and exclusive property of GPS Insight and Customer shall have no right, title or interest therein or thereto, except as expressly set forth in this Agreement. In recognition of the foregoing, Customer's business records shall reflect that the rental Devices are the sole and exclusive property of GPS Insight. Further, Customer shall keep the rental Devices free and clear of all levies, liens and encumbrances.

2.5. Refurbished Devices. Devices rented during the Subscription Term may be refurbished. Refurbished Devices are previously used, reconditioned and tested Devices, which must pass GPS Insight's quality control standards.

2.6. 2G Devices. For each Device provided as part of the upgrade program set forth on the Estimate (an "Upgrade Device"), Customer may return one (1) prior generation 2G device (a "2G Device") within sixty (60) days after GPS Insight ships such Upgrade Device to Customer by using the prepaid return shipping label provided with the Upgrade Device. Upon GPS Insight's receipt of a 2G Device and confirmation that such 2G Device is in working order, GPS Insight will credit Customer's account \$50.00 for each such 2G Device. Please note that such \$50.00 credit is not applicable for Networkfleet Devices, non-2G Devices or rental Devices. For rented 2G Devices, the rental fee associated with such 2G Device will continue to be charged until returned.

3. Tracking Solution

3.1. Use Rights. Subject to the terms of this Agreement, GPS Insight grants Customer during the Subscription Term the non-transferable, non-exclusive, non-sublicensable right to use the Tracking Solution for information collected from the Device, solely for Customer's own internal business operations.

3.2. Support; Training. During the Subscription Term, Customer will be entitled to access training, online user guides, knowledge bases and self-help tools, and any additional standard technical support resources (collectively, "Support and Training") offered by GPS Insight from time to time.

3.3. User Accounts. Customer will be provided one Customer account, which will allow Customer's authorized users to see data collected from all Customer's Activated Devices. Customer will be provided unique user accounts to access the Customer account. Customer may designate and add user accounts pursuant to the applicable product tier purchased by Customer. Customer will be responsible for the confidentiality and use of its passwords and user accounts. GPS Insight will act as though any electronic communications it receives under Customer's passwords, user accounts, and/or account numbers have been sent by Customer. Customer agrees to immediately notify GPS Insight if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's passwords, user accounts, and/or account numbers. Customer agrees not to access the Tracking Solution by any means other than through the interfaces that are provided by GPS Insight.

3.4. Transmission of Data. Customer understands that the technical processing and transmission of Customer's data (including data collected from the Devices) is necessary to Customer's use of the Tracking Solution, and hereby consents to GPS Insight's interception and storage of such data. Customer understands that Customer or GPS Insight may be transmitting data over the Internet, and over various networks, only part of which may be owned and/or operated by GPS Insight. Customer agrees that GPS Insight is not responsible for any portions of data that are lost, altered, intercepted or stored without authorization during the transmission of data across networks not owned and/or operated by GPS Insight.

3.5. Restrictions. The rights granted in this Agreement are subject to the following additional restrictions: (i) use of the Tracking Solution shall be limited to the Customer's authorized users and other limitations set forth in the software package purchased by Customer; (ii) Customer shall not license, sell, rent, lease, transfer, assign, distribute, host, outsource, disclose or otherwise commercially exploit or make the Tracking Solution or Devices available to any third party; (iii) Customer shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Tracking Solution or Devices, or access or use the Tracking Solution or Devices in order to build a similar or competitive product or service; (iv) Customer shall not bypass or breach any security device or protection used by the Tracking Solution or the Devices, nor shall Customer intentionally damage, destroy, disrupt or otherwise impede or harm in any manner the Tracking Solution, Devices or any systems used by GPS Insight; and (v) Customer acknowledge and agree that, as between Customer and GPS Insight, GPS Insight owns all right, title and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the Tracking Solution, Devices, and any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer or any of Customer's authorized users relating to the Tracking Solution or Devices.

3.6. ELD Device Usage. Customer acknowledges and agrees that while the Electronic Logging Device (an "ELD Device") is intended to assist Customer in its compliance with the final rule

regarding electronic logging devices and hours of service supporting documents mandated by the Federal Motor Carrier Safety Administration set forth in 49 CFR Parts 385, 386, 390, and 395 (the "Final Rule"), it is Customer's ultimate responsibility to ensure that any ELD Device and Customer's use thereof is in compliance with all laws, rules and regulations, including without limitation, the Final Rule.

4. Installation

4.1. Requirements for 3rd Party Installation

4.1.1. *Vehicle Data.* Prior to GPS Insight submitting its request to a certified third party installer (the "Installer"), Customer shall provide GPS Insight with vehicle data for each vehicle included in the installation (each, a "Vehicle"), including vehicle make, model, year and VIN, as well as any Device accessories or specific installation requirements per Vehicle which differ from the Installation Guide. If Customer changes any requirements, Customer shall be charged, and Customer shall pay, for any such additional work performed.

4.1.2. *Work Environment.* Site requirements must be provided to GPS Insight when scheduling the installation. Customer shall provide a restroom for the Installer and a working electrical outlet whenever possible. Customer shall (i) make each Vehicle available consecutively over consecutive days to permit Installer to complete the installations with limited to no downtime between installations, (ii) make a driver available during the installation, as the Installer is not permitted to drive Vehicles, and (iii) have Vehicles keys present during the entire installation.

4.1.3. *Scheduling.* All scheduling is made by the Installer and GPS Insight has no control over such Installer's availability. One technician is capable of completing approximately 8-10 vehicles in a 9-hour day (with 1 hour for lunch). Additional charges may apply if more than one technician is required. A standard installation takes approximately one hour. A standard installation means no additional inputs/accessories. Non-standard installations may take additional time, depending on the inputs/accessories required.

4.1.4. *Cancellations.* Once booked, scheduled and confirmed, Customer must give GPS Insight no less than three (3) business days' notice to cancel an installation, or Customer shall be charged, and Customer shall pay, a \$50/Vehicle fee. Customer shall be charged, and Customer shall pay, an additional \$50/Vehicle fee if less than all scheduled Vehicles are available for installation. If booked, scheduled and confirmed and the Installer fails to arrive as scheduled, GPS Insight will credit Customer \$50/vehicle.

4.1.5. *Third Party Installer.* Other than the fact that the Installer has been certified by GPS Insight and instructed to follow all industry standards and GPS Insight's quality guidelines, Customer acknowledges and agrees that the Installer is a third party with no legal affiliation to GPS Insight.

4.1.6. *Out of Scope Requirements.* Should Customer's installation require the utilization of a sensor or any other connection not supplied by GPS Insight, Customer must either have that sensor/connection installed and ready before the Installer arrives, or contact GPS Insight Installation team prior to the installation to confirm the price and availability of the Installer to perform such additional work.

4.2. Installation Procedures. Customer (for self-installation) or the Installer (for 3rd party installation) will perform installations according to the most current version of the Installation Guide specific to the hardware purchased unless otherwise requested by Customer and approved by GPS Insight prior to scheduling the Installation.

4.3. Verification. Customer (for self-installation) or the Installer (for 3rd party installation) will verify and report to GPS Insight the success of each Vehicle self-installation. Verification means the confirmation that the Device is functional and sending data to the Tracking Solution.

4.4. Device Registration. Registration of the Devices are to be completed by the Customer (for self-installation), the Installer (for 3rd party installation) or GPS Insight upon successful verification of the Device.

5. Payments

5.1. Charges. Customer will pay all applicable fees as set forth on the Estimate. Customer hereby authorizes GPS Insight to collect payment in accordance with Oklahoma law via the payment method mutually agreed upon (including the Prepay Deposit (as defined below), Device fees, Tracking Solution fees, and installation fees) and any other amounts that come due under this Agreement on the first day of the applicable recurring payment period. For credit card payment methods, such cards will be set to AutoPay for each recurring payment upon the applicable recurring payment period set forth on the Estimate.

5.1.1. *Recurring Payments*

(a) *Device Rental Fees.* The monthly, paid in advance and in accordance with Oklahoma law, per Device rental fee begins upon acceptance of the Device.

(b) *Tracking Solution Fees.* The monthly per Device Tracking Solution fee begins upon the earlier of (i) the Device being Activated or (ii) one-hundred and eighty (180) days from the date GPS Insight shipped the Device to Customer.

5.1.2. *One-Time Payments*

(c) *Device and Accessories Purchase Fees.* The purchase price for the Device, Accessory and other hardware listed on the Estimate will be paid either (i) in advance, upon shipment of the Device, or (ii) if Customer provides a valid purchase order, upon the terms set forth on the invoice.

(d) *Prepay Deposit.* The amount of the prepay deposit is set forth on the Estimate ("Prepay Deposit"). The Prepay Deposit shall be used for pro-rated Tracking Solution fees, as rental Devices are Activated, and, once all Devices are Activated, if any is remaining, will be credited toward the monthly Device Rental Fees and/or Tracking Solution Fees.

(e) *3rd Party Installation.* The applicable fees for the installation of the Devices as set forth on the Estimate or otherwise in this Agreement. If Customer is located outside of the standard coverage area or more than one (1) scheduled installation is required, Customer will pay any additional charges that may accrue upon completion of the installation.

5.2. Suspension Right. GPS Insight reserves the right to disable access to the Tracking Solution with reasonable notice to Customer when GPS Insight believes that Customer is using the Devices, Tracking Solution and/or any other services provided hereunder not in accordance with GPS Insight's instructions, this Agreement and/or applicable laws and government regulations.

6. Device Warranties; Replacement Devices

6.1. Device Warranty. Unless otherwise set forth herein, GPS Insight warrants that (i) the Devices will perform their intended functions without material defect while under their Lifetime Limited Warranty (LLW) during the initial Subscription Term. In the event a device is determined to be materially defective while under LLW, a replacement device of the same or better quality will be shipped for receipt within two (2) business days; (ii) the ELD Devices will perform substantially in accordance with their documentation for a period of one (1) year from GPS Insight's shipment of such ELD Device; and (iii) the Accessories will perform substantially in accordance with their documentation for a period of one (1) year from GPS Insight's shipment of such Accessory.

6.2. Device Warranty Claims. Customer shall contact GPS Insight Customer Support at 866.477.4321 to assist in troubleshooting if Customer believes that a Device or Accessory is not functioning properly. The GPS Insight Customer Care team will work with Customer in an effort to resolve the issue. If GPS Insight is unable to resolve the issue remotely, the Device, Accessory, antenna or harness may need to be replaced. The procedure for issuance of the GPS Insight RA# and for shipment of replacement parts depends on the warranty coverage status of the particular Device or Accessory. GPS Insight shall promptly, in its reasonable discretion, determine whether warranty coverage applies.

6.3. Voided Warranty. Device and Accessory Warranty coverage is VOID if GPS Insight determines that Customer is in material breach of this Agreement, GPS provides written notice to the Customer of the material breach and the Customer fails to cure the material breach within 30 days of the written notice or if the Device or Accessory failure is due to any of the following reasons: (i) physical damage caused by negligent/improper handling and treatment of the Device or Accessory; (ii) damage caused by water or any other liquid; (iii) tampering with the Device, Accessory or associated peripherals or the vehicle itself e.g. intentionally denying power to the device; (iv) improper installation; (v) cutting or otherwise impairing the Device connector harness; (vi) cutting or otherwise impairing the antenna and/or antenna cables; (vii) defects or damage caused by the use of non-GPS Insight branded or approved products, accessories or other peripheral equipment; (viii) GPS Insight serial number has been removed or defaced; or (ix) any other circumstance that GPS Insight deems to constitute intent on the part of the Customer, vehicle driver or any other party to purposefully impair the functionality of the Device or Accessory.

6.4. Replacement Devices. GPS Insight will ship a replacement Device, Accessory and/or peripherals, within 48 business hours of issuing the RA#. Replacement Device or Accessory may be a refurbished product. Refurbished Devices and Accessories are previously used, reconditioned and tested Devices and Accessories, which must pass GPS Insight's quality control standards and of like or similar quality of the original Device being replaced. For approved RA's GPS Insight will pay for 2-day air shipping of replacement Device, Accessory and/or peripherals. If Customer wishes to expedite shipping from 2-day air to overnight delivery, Customer will need to provide consent to be billed for the expedited shipping charges. Replacement Devices and Accessories are covered under warranty for

the greater of (i) the balance of the remaining warranty period of the original Device or (ii) ninety (90) days from date of activation of the replacement Device or Accessory. The scope of warranty coverage on the replacement Device or Accessory will match the scope of warranty coverage of the original Device or Accessory.

6.5. Return Shipping. All materials replaced under an approved GPS Insight RA# become the property of GPS Insight. Customer is required to return the defective Device or Accessory to GPS Insight. For Customer's convenience, pre-paid return shipping labels will be sent to Customer along with the replacement Device or Accessory. The defective Device or Accessory must be returned to GPS Insight within 60 calendar days after GPS Insight's issuance of the RA. If the defective Device or Accessory is not returned within 60 calendar days, Customer will be billed a Non-Return Fee at the then current rate. The shipping box used to return the Device or Accessory must clearly be labeled "GPS Insight RA#XXXXXX" and the serial number of the defective Device or Accessory must match the Device or Accessory stipulated at the time the RA# was issued. If Customer returns the wrong Device or Accessory and the serial number does not match GPS Insight's records, GPS Insight will return the Device or Accessory to Customer at Customer's expense and the RA will remain open pending return of the correct Device or Accessory (which correct Device or Accessory shall be shipped at Customer's expense).

6.6. Exclusive Remedy. The Device and Accessory Warranty Claims and Replacement Devices sections above are Customer's sole and exclusive remedy for any breach of the Device and Accessory Warranty set forth above.

6.7. Disclaimer of Additional Warranties. EXCEPT FOR THE SPECIFIC WARRANTIES SET FORTH IN THIS AGREEMENT, THE DEVICES, ACCESSORIES, TRACKING SOLUTION, INSTALLATION, SUPPORT AND TRAINING, AND ALL OTHER SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE WARRANTIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY GPS INSIGHT AND THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY USAGE OR TRADE, COURSE OF DEALINGS OR COURSE OF PERFORMANCE. NO WARRANTY IS GIVEN AS TO ACCURACY, ERROR-FREE OR UNINTERRUPTED SERVICE.

7. Limitation of Liability; Indemnification

7.1. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES OF ANY TYPE OR KIND (INCLUDING LOST PROFITS, COST OF COVER, LOST SAVINGS, CURRENCY CONVERSION LOSSES, OR LOSS OF OTHER ECONOMIC ADVANTAGE) ARISING FROM BREACH OF CONTRACT, OR NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION (A) DEVICES, ACCESSORIES, THE TRACKING SOLUTION, INSTALLATION SERVICES, SUPPORT AND TRAINING OR ANY OTHER SERVICES, (B) ANY INTERRUPTION OF USE OF THE DEVICES, ACCESSORIES, THE TRACKING SOLUTION, INSTALLATION SERVICES, SUPPORT AND TRAINING OR ANY OTHER SERVICES, OR (C) FOR LOSS, INACCURACY

OR CORRUPTION OF DATA. THIS LIMITATION SHALL APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY HEREUNDER EXCEED THE AMOUNT THAT CUSTOMER REMITTED TO GPS INSIGHT UNDER THE ESTIMATE GIVING RISE TO THE CLAIM., provided that the limitation of liability set forth in this Section 7 shall not apply to breach of confidentiality or infringement of third party intellectual property rights by GPS Insight.

8. Customer Data

8.1 Customer Data. All data supplied by or on behalf of the Customer in connection with the Customer's use of the Case Management System shall be defined as "Customer Data." The Customer will be responsible for the accuracy and completeness of all Customer Data provided to Service Provide. **The Customer shall retain exclusive ownership of all Customer Data and such Customer Data shall be deemed to be the Customer's Confidential Information, as set forth in Section 15 of this Agreement. GPS Insight shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).**

8.2 Maintenance of Customer Data. GPS Insight will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by GPS Insight. GPS Insight will promptly notify the Customer of any loss, damage to, or unauthorized access of, Customer Data. GPS Insight will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by GPS Insight as a result of its gross negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of GPS Insight's gross negligence or willful misconduct, GPS Insight, at the Customer's expense, will, at the request of the Customer, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged. For the avoidance of doubt, nothing in this Section 8 shall be read to modify or alleviate GPS Insight's obligations under Section 10 and 11 hereof.

9. Security Provisions

9.1 Generally. GPS Insight will use commercially reasonable efforts, consistent with industry standards, to provide security for the Case Management System and Customer Data and to protect against both unauthorized access to the hosting environment, and unauthorized communications between the hosting environment and the Customer's browser.

9.2 Viruses. GPS Insight represents and warrants to the Customer that the Tracking Solution and hosting equipment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. The first check will take place before first use by the customer. GPS Insight will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. GPS Insight will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to the Customer by GPS Insight, GPS Insight will promptly notify the Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means GPS Insight has used to remediate the virus. Should the virus propagate to State asset IT infrastructure, GPS Insight is responsible for costs incurred by State for State to remediate the virus.

9.3 GPS Insight acknowledges that it is liable to maintain the security and privacy of Customer Data and may be held liable for a breach of its security which results in the improper or unauthorized release of protected information.

10 Security Incident or Data Breach Notification: GPS Insight shall inform Customer of any security incident or data breach.

10.1 Incident Response: GPS Insight may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract resulting from Oklahoma Statewide 2018. Discussing security incidents with Customer should be handled on an urgent as-needed basis, as part of GPS Insight communication and mitigation processes and mutually agreed upon, defined by law or contained in the contract resulting from Oklahoma Statewide 1028.

10.2 Security Incident Reporting Requirements: GPS Insight shall report a security incident to the Customer identified contact set forth herein immediately as defined in this Agreement.

10.3 Breach Reporting Requirements: If GPS Insight has actual knowledge of a confirmed data breach that affects the security of any of Customer's content that is subject to applicable data breach notification law, GPS Insight shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

11 Breach Responsibilities: This section only applies when a data breach occurs with respect to Customer Data within the possession or control of GPS Insight.

11.1 GPS Insight, unless stipulated otherwise, shall immediately notify the Customer identified contact set forth herein by telephone in accordance with the agreed upon security plan or procedures if it reasonably believes there has been a security incident.

11.2 GPS Insight, unless stipulated otherwise, shall promptly notify Customer identified contact within 2 hours or sooner by telephone, unless shorter time is required by applicable law, if it conforms that there is, or reasonably believes that there has been a data breach. GPS Insight shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

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

12 Notice: Contact information for Customer for notifications pursuant Sections 10 and 11 of this Agreement

Customer:

With copy to:

Chief Information Officer

3115 N. Lincoln Blvd
Oklahoma City, OK 73105

and

OMES Information Services Deputy General Counsel
3115 Lincoln Blvd
Oklahoma City, OK 73105

13 GPS Insight Representations and Warranties: GPS Insight represents and warrants the following:

13.1 The product and services provided under this Agreement do not infringe a third party's patent or copyright or other intellectual property rights.

13.2 GPS Insight will protect Customer's Confidential Information from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own Confidential Information and, in any event, will use no less than a reasonable degree of care in protecting such Confidential Information.

13.3 The execution, delivery and performance of this Agreement and any ancillary documents and the consummation of the transactions contemplated by this Agreement or any ancillary documents by GPS Insight will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between GPS Insight and any third parties retained or utilized by GPS Insight to provide goods or services for the benefit of the Customer.

13.4 GPS Insight shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

14 Indemnity.

14.1 GPS Insight's Duty of Indemnification. GPS Insight agrees to indemnify and shall hold the Customer, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees) (collectively "Damages") (other than Damages that are the fault of the Customer) arising from or in connection with GPS Insight's breach of its express representations and warranties in Sections 13 and 15 of this Agreement. If a third party claims that any portion of the products or services provided by GPS Insight under the terms of this Agreement infringes that party's patent or copyright, GPS Insight shall defend and indemnify the Customer against the claim at GPS Insight's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the Customer. Customer shall promptly notify GPS Insight of any third party claims and the defense shall be coordinated by the Vendor with the Office of the Attorney General when Oklahoma state agencies are named defendants in any lawsuit, and Vendor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. Vendor and the customer agree to furnish timely written notice to each other of any such claim. Should the software become, or in GPS Insight's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated under this Agreement, GPS Insight may, at its option (i) procure for the Customer the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

15 Confidentiality.

15.1 Definition of “Confidential Information”. By virtue of this Agreement, Customer may be exposed to or be provided with certain confidential and proprietary information of GPS Insight. GPS Insight shall clearly mark any such information as confidential (“Confidential Information”). GPS Insight’s placement of a copyright notice on any portion of any software will not be construed to mean that such portion has been published and will not derogate from any claim that such portion contains proprietary and confidential information of GPS Insight. Customer is a state agency and subject to the Oklahoma Open Records Act and GPS Insight acknowledges information marked Confidential Information will be disclosed to the extent permitted under Customer’s Open Records Act and in accordance with this section. The parties acknowledge Customer Data is Confidential Information. Notwithstanding the foregoing, 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 Agreement; (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 Agreement and without other obligations of confidentiality; (iii) is independently developed by the receiving party without the use of any of the disclosing party’s Confidential Information; or (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure. In addition, the obligations in this Section 15 shall not apply to the extent that the receiving party is required by law or regulation to disclose the Confidential Information of the disclosing party, provided that the receiving party required to disclose such information provides reasonable written notice pursuant to Section 16.1 to the disclosing party so that the disclosing party may seek a protective order or other appropriate remedy.

15.2 Non-Disclosure Obligations. Each party, will protect the other’s Confidential Information from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own Confidential Information and, in any event, will use no less than a reasonable degree of care in protecting such Confidential Information. Neither party will use the other’s Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement or contract resulting from Oklahoma Statewide 1028. Except as otherwise set forth in this Section 15, neither party will disclose to third parties the other’s Confidential Information without the prior written consent of the other party.

15.3 Remedies for Breach of Confidentiality Obligations. Each party acknowledges that the disclosure of any aspect of any of the Confidential Information of the other may give rise to irreparable injury and may not be adequately be compensated by an award of money damages. Accordingly, either party may seek injunctive relief against the breach or threatened breach of any of the foregoing undertakings by the other, in addition to any other legal remedies which may be available.

16 Support Call Service Level Agreement.

Severity 1 CRITICAL CONDITION REQUIRING IMMEDIATE RESOLUTION

Target Initial Response: Immediate
Required Initial Response: 30 minutes
Target Resolution: 24 hours or as soon as possible.
Maximum Resolution: 48 hours

Definition: Calls requiring immediate attention due to customer software being non-functional with no workaround. A customer has an error message and cannot process data, which severely impacts guest service or financial results.

Severity 2 SERIOUS CONDITION REQUIRING PROMPT ATTENTION

Target Initial Response: Immediate
Required Initial Response: 30 minutes
Target Resolution: 48 hours
Maximum Resolution: 7 days

Definition: Calls requiring a quick resolution, but the software is operable and a workaround has been given. The customer is experiencing guest service issues or financial results are being impacted. A customer has an error message or a data problem and cannot process an important function of the software. The situation does not constitute an emergency either because they can postpone usage of the function or wait a few days for a resolution. Any question relating to a situation that requires an immediate response due to the nature of the question.

Severity 3 PROGRAM OPERATES WITH LIMITED FUNCTION

Target Initial Response: 24 hours
Required Initial Response: Next business day
Target Resolution: 7 days
Maximum Resolution: 30 days

Definition: Calls requiring attention due to problems with a report or function of the software. The problem is not necessarily an error message, but a malfunction within the software. The problem can wait for a resolution because the functionality is not totally hindered.

Severity 4 PROGRAM OPERATES WITH PROBLEM CIRCUMVENTED

Target Initial Response: 24 hours
Required Initial Response: Next business day
Target Resolution: 30 days
Maximum Resolution: 45 days or next patch/cumulative release

Definition: Calls requiring a program fix, but can be circumvented by using alternative system processing. There still may be an error in the software, but resolution can be postponed. Includes low priority user questions. Root cause analysis investigation fall into this category.

Severity 5 COSMETIC ISSUES

Target Initial Response: 24 hours
Required Initial Response: Next business day
Target Resolution: 90 days or next patch/cumulative release
Maximum Resolution: Next full version release

Definition: Calls requiring a change to the look or feel of the software but doesn't impact operations. Depending upon the change, the resolution can occur upon the next LPU level or next release.

17 General

17.1 Notice. Except for notices pursuant to Sections 10 and 11 of this Agreement, notices regarding this Agreement to either party shall be in writing and sent by first class mail or overnight courier to the following address:

GPS Insight

Address: Attn: COO
7201 E Henkel Way
Ste 400
Customer Scottsdale, AZ 85255

Address:

GPS Insight may give notice applicable to GPS Insight's general customer base by means of a general notice on the Tracking Solution, to the extent the content of the notice does not diminish GPS Insight's obligations or enlarge Customer's obligations under this Agreement or the contract resulting from Oklahoma Statewide 1028. All notices shall be deemed to have been given three days after mailing or posting (if sent by first class mail), upon delivery in the case of courier.

17.2 Export. Customer agrees that U.S. export control laws and other applicable export and import laws govern Customer's use of the Tracking Solution, the Devices and the Accessories. Customer represents that Customer is not a citizen of an embargoed country or prohibited end user under applicable U.S. export and anti-terrorism laws, regulations and lists. Customer will not use, export or allow a third party to use or export the Tracking Solution, Devices or Accessories in any manner that would violate applicable law, including but not limited to export control laws and regulations.

17.3 Force Majeure. Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other 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. In the event that 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 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. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, Customer may terminate a purchase order if GPS Insight cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Customer.

17.4 Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of Oklahoma. Any legal action or proceeding relating to this Agreement shall be instituted in the District Court of Oklahoma County, State of Oklahoma or the Western District of Oklahoma.

17.5 Amendments. The terms and conditions of this Agreement may only be amended by written agreement of the parties.

17.6 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

17.7 Relationship of Parties. No joint venture, partnership, employment, or agency relationship exists between Customer and GPS Insight as a result of this Agreement.

17.8 Assignment. Neither party may assign this Agreement without the prior written approval of the other party; provided, however, GPS Insight may assign this Agreement to a successor-in-interest in the event of a merger, consolidation or sale of substantially all of its assets. Any purported assignment in violation of this Section shall be void. GPS Insight reserves the right to provide installation services offered hereunder pursuant to the terms of the contract resulting from Oklahoma Statewide 1028 from locations, and/or through use of third party providers.

17.9 Waiver. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing.