



State of Oklahoma

Office of Management and Enterprise Services

**ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH DISYS SOLUTIONS, INC.
RESULTING FROM SOLICITATION NO. 0900000251**

This Addendum 1 ("Addendum") is an Amendment to the Contract awarded to DISYS Solutions, Inc. ("DSI") in connection with Solicitation No. 0900000251 ("Solicitation") and is effective September __, 2017.

Recitals

Whereas, the State issued a Solicitation for proposals to provide Managed Internet Broadband Services, as more particularly described in the Solicitation;

Whereas, DSI submitted a proposal which did contain exceptions to the Solicitation terms; and

Whereas, the State and DSI have negotiated the final terms under which DSI 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 DSI simultaneously 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. revisions to Master Service Agreement as contained in Attachment A to this Addendum, which will be used executed by customers purchasing services under the Contract.

- 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 and through the Office
of Management and Enterprise Services**

By: 
Name: James L. Reese, II
Title: Chief Information Officer
Date: 9-19-17

DISYS Solutions, Inc.

By: 
Name: Vinu Luthra
Title: Chief Operating Officer
Date: September 11, 2017

Attachment A

MASTER SERVICES AGREEMENT
EQUIPMENT AND ENGINEERING SERVICES

This Master Services Agreement ("Agreement") for Equipment and/or Engineering Services is a Contract Document in connection with the Contract issued as a result of Solicitation No. 0900000251 (the "Solicitation") and entered into between DISYS Solutions, Inc. ("DSI" or "Service Provider") and the State of Oklahoma by and through the Office of Management and Enterprise Services ("State"), the terms of which are incorporated herein. For purposes of this agreement, the term "Customer" shall refer to the State's subsidiaries and affiliates who may request work by DSI under this Agreement and, to the extent of such requests, such subsidiary or affiliate shall receive rights and bear the obligations of Customer set forth in this Agreement.

Service Provider: **DISYS Solutions, Inc.**
44670 Cape Court, Suite 100
Ashburn, VA 20147

Customer: _____

WHEREAS, Customer desires to engage DSI to perform certain Engineering Services ("Services") and Equipment pertaining to specific projects set forth in a Statement of Work (as defined in Exhibit 1); and Customer and DSI wish to define herein the terms and conditions under which DSI will provide Customer with such Services.

WHEREAS, DSI desires to provide such Services and Equipment as described in this Master Services Agreement for the purpose of assisting Customer in achieving their objectives.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

Term of Agreement: This Agreement shall become effective as of _____, 201_ and shall remain effective until _____, 201_, unless extended by mutual agreement of the parties or terminated earlier in accordance with the terms of this Agreement.

1. SCOPE OF THE AGREEMENT AND DEFINITIONS.

1.1. Subject to the provisions of this Agreement, DSI agrees to perform services in accordance with a Statement of Work signed by Customer and DSI. In addition, DSI agrees to deliver, install, and provide support with respect to IT Infrastructure for Customer in accordance with the requirements set forth in Exhibit 1.

1.2. "Documentation" means and refers to all specifications, instructions, guides, annotations, flow charts and other material that accurately and completely describes and provides operating and use instructions for the Project (whether written, viewable or printable from a digital format or file), in its current form and as same may be updated and modified in the future, including, but not limited to, technical and functional specifications and any other components of the Deliverables and the Project as a whole, all user, operator and supervisory reference manuals and guides, quick reference sheets, reports, operational, performance and technical information and all other information and instructions sufficient to

enable Customer and its designees to use, operate, support and maintain the equipments and to fully understand its use, maintenance and operations.

1.3. “Equipment” means and refers to any and all equipment, resources and devices, required to properly operate and function as described and contemplated hereunder, including, but not limited to, the equipment set forth in Exhibit 1 and any and all additions or replacements thereto.

1.4. “Installation Sites” shall mean the office locations listed in the Scope of Work.

1.5. “Services” means, individually and collectively, the delivery, installation, implementation, training, repair, maintenance and other support services provided by DSI in connection with this Agreement.

2. TERM, TERMINATION, AND DEFAULT.

2.1. Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect until the date of expiration, unless terminated earlier pursuant to the terms of this Agreement. The Initial Term and, if applicable, any Extension Term shall be referred as the “Term”.

2.2. Termination. Each party shall have the right to terminate this Agreement, effective at any time, for any reason or no reason whatsoever, upon thirty (30) days’ prior notice to the other party.

2.3. If Customer terminates the Agreement, DSI will be paid by Customer for all services completed by DSI and accepted by Customer up to the date of termination. DSI will be paid by Customer for the full cost of the equipment procured by DSI for Customer that is accepted by Customer.

3. DELIVERY, INSTALLATION AND ACCEPTANCE TESTING FOR EQUIPMENT

3.1. DSI agrees to deliver and install each Deliverable at the Installation Site on or before dates set forth in Exhibit 1, subject to Customer meeting the anticipated project timelines set forth therein Exhibit 1. DSI will only be responsible for all risks of physical loss or damage to Equipment until the Equipment is delivered to Customer premises. DSI will be entitled to invoice Customer upon delivery of Equipment at Customer premises and acceptance by Customer.

3.2. Customer accepts the responsibility to provide essential services like power, rack space, timely access to facilities and other essential information in a timely manner. Any delay in these aspects will cause delay in the deliverables for which DSI will not be held responsible.

3.3. The installation schedules stated in Exhibit 1 are based on the best effort, good faith and on the assumption that DSI and Customer will collectively take remedial measures to minimize any schedule slippage. DSI will not be held responsible for delays or failures to perform hereunder due to causes beyond its reasonable control (including, without limitation, acts of God, fire, flood, war, explosion, sabotage, terrorism, embargo, civil commotion, acts or omissions of any government entity, supplier delays, communications or power failure, equipment or software malfunction, or labor disputes).

4. DOCUMENTATION AND TRAINING.

4.1. DSI agrees, at no additional charge, to deliver to Customer within ten (10) business days of the actual completion date a complete set of Documentation.

5. COMPENSATION.

5.1. Customer will make payment for the Services and Deliverables in accordance with the Payment Schedule, attached hereto as Exhibit 4.

6. REPRESENTATIONS AND WARRANTIES.

6.1. DSI represents and warrants to Customer that:

6.1.1. Services will be performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards.

6.1.2. It has the right and authority to enter into this Agreement and furnish the required deliverables, and other materials and information and perform Services hereunder and that its obligations are not in conflict with any other DSI obligations;

6.1.3. It has obtained all necessary consents or licenses to use and provide to Customer the products, deliverables, and other materials and information as part of the Services furnished by DSI and/or Customer's use of same as under this Agreement;

6.1.4. DSI's employees have the proper skill, training and background necessary to accomplish their assigned tasks and Services will be performed in a competent and professional manner, by qualified personnel;

6.1.5. DSI's employees shall observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any kinds;

6.1.6. The Deliverables and other materials and information and the Services furnished by DSI will be in compliance with all applicable laws, rules, regulations and determinations of government agencies, judicial orders and regulatory or administrative rules or orders having jurisdiction over the subject matter;

6.1.7. On the acceptance of the Work Order, it will perform and conform to the Documentation, specifications, and other descriptions and warranties set forth herein;

6.1.8. The Documentation, information, and other materials regarding the products and/or services provided by DSI will faithfully and accurately reflect the Work Order provided to and maintained and supported by DSI hereunder; and

6.1.9. DSI shall cooperate with Customer officials in performing the Services so that interference with normal operations will be held to a minimum.

6.2. DSI represents and warrants to that, to the best of DSI's knowledge:

6.2.1. There are no protections, encryption, security or lock-out devices, whether triggered by the passage of time, the use or operation of the equipment, remotely or otherwise which might in any way interrupt, discontinue or otherwise adversely affect the equipment or the use thereof; and

6.3. Except as specifically set forth in this Agreement, there are no express or implied warranties, including the implied warranties of merchantability or fitness for a particular purpose not specified herein, respecting this Agreement and the equipment provided hereunder.

Product Warranties/Disclaimers:

DSI does not warrant the products of any third party manufacturer or licensor which may be used or supplied with DSI's equipment or services, and customer agrees to look only to such third parties for any warranty claim relating thereto.

7. COMPLIANCE WITH STATE LAW IN DEALING WITH CORPORATIONS

7.1. DSI covenants and agrees that it is either a corporation or other business entity and is authorized to transact business in the State of Oklahoma as a domestic business entity.

7.2. DSI covenants and agrees that it shall not allow its existence to lapse or its certificate of authority or registration to transact business in the State of Oklahoma to be revoked or cancelled at any time during the term of the Agreement.

8. LIMITATION OF LIABILITY AND INDEMNIFICATION.

8.1. DSI will indemnify Customer against any and all costs, losses, damages or expenses (including reasonable attorney's fees) incurred or subjected to by reason of any claim, demand or suit arising out of DSI's performance of the Services set forth in this Agreement and the applicable Statement of Work, or by reason of any act or omission of DSI or any of its employees, contractors or agents.

8.2. DSI's Maximum Liability. Except for any claims related to intellectual property infringement, DSI's liability on any claim of any kind whether in contract, tort (including negligence) or otherwise for any loss or damage arising out of, resulting from, or concerning any aspects of these terms or from the goods or services furnished hereunder shall not exceed the amount of compensation paid and due by Customer pursuant to the order out of which the claim arose for the three month period ending on the last day of the last full month to be completed prior to the date the applicable claim first arose and any claim for defective work shall be limited to the extent provided for below in the Statement of Work.

8.3. In no event will either party be liable for any special, indirect, incidental, punitive, exemplary or consequential damages in connection with or arising out of this Agreement, regardless of the form of action or basis of the claim and whether or not a party has been advised of the possibility of such damages and even if any right or remedy does or is alleged to fail of its essential purpose.

8.4. Notwithstanding anything to the contrary in this Agreement, the foregoing provisions of this Section shall not apply to or limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by DSI; DSI's indemnity obligations under this Agreement; or other acts for which applicable law does not allow exemption from liability.

8.5. No provision of this Agreement, or other supplements, amendments, or other documents related to this Agreement, providing for a limitation of liability of DSI or other third parties, or indemnification or exculpation of DSI or other third parties, shall be enforceable against OMES and/or Customer except to the extent permitted by Oklahoma law. Notwithstanding any provisions to the contrary in this Agreement, any supplement or amendment to this Agreement, or other documents related to this Agreement, Oklahoma law will govern the interpretation and enforceability of any limitation of liability, indemnity, or exculpation provision in this Agreement, supplements or amendments to this Agreement, or other applicable or related documents.

9. **INSURANCE.** DSI will maintain in full force and effect at all times insurance to protect itself from claims under the Workers' Compensation Act and from any other claim for damages for personal injury, including death, and for damages to property which may arise from the provision of Deliverables or Services under the Agreement, whether such Deliverables or Services are provided by DSI or by any subcontractor or anyone directly employed by either or them.

10. **CONFIDENTIALITY.** Any material or information, including but not limited to information relating to the business, products, marketing plans and policies of Customer or its affiliates, supplied to DSI by Customer or its affiliates (either directly or indirectly, and in whatever form) or developed by DSI in carrying out Services under this Agreement (collectively, "Confidential Information"), shall be deemed to be confidential and proprietary and the property of Customer. During and after the term of this Agreement, DSI agrees not to use Confidential Information for any purpose other than in furtherance of Services under this Agreement and not to provide or disclose Confidential Information to any third party without the prior written consent of Customer.

Confidential Information shall not include any information which (i) was already known to DSI prior to the time of disclosure by Customer, (ii) is available or becomes generally available to the public other than through a breach of this Agreement by DSI or (iii) is acquired or received rightfully and without confidential limitation by DSI from a third party. If DSI becomes or is required to disclose Confidential Information, or any part thereof, pursuant to any applicable law, regulation, court order or document discovery request, then DSI will give Customer prompt notice of such requirement. If Customer waives compliance with the terms of this Agreement with respect to such disclosure or is unable to obtain a

protective order or other appropriate remedy with respect to such disclosure, then DSI will disclose only that portion of the Confidential Information necessary to ensure compliance with such legal requirement.

DSI agrees to return all Confidential Information to Customer, including, but not limited to, raw data, records, memoranda and reports, together with all photographic copies, handwritten notes, excerpts or other copies thereof promptly after request by Customer, or, in any event, promptly upon expiration or termination of this Agreement.

11. NOTICES. All formal notices and contractual communications required or permitted under this Agreement shall be in writing and delivered personally, mailed by certified, first class mail, return receipt required and full postage prepaid, or sent using a nationally recognized overnight courier with ability to track receipt, to the following addresses. Notices shall be deemed given on the date delivered or when receipt, in the manner specified, is recorded. Each party may change or supplement the addresses for notice hereunder, by written notice.

12. GENERAL.

12.1. Survival. Any provisions, terms and conditions of this Agreement which, in order to give effect to their meaning, contain obligations or terms which must survive the termination, expiration or cancellation of this Agreement, will survive and continue in full force and effect thereafter.

12.2. Independent Contractors. The parties to this Agreement are independent contractors. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligation or liability upon either party.

12.3. Amendment; Waiver. No modification, course of conduct, amendment, supplement to or waiver of this Agreement shall be binding unless made in writing and duly signed by both parties. No failure or delay in enforcing any provision, exercising any option, or requiring performance of any provision, shall be construed to be a waiver of that or any other provision, now or in the future. If any provision is held invalid, illegal or unenforceable, it shall be deemed stricken and the remaining provisions shall be unimpaired and continue in full force and effect. Headings are for reference only and shall not affect the meaning.

12.4. Severability. If any provision of this Agreement is held illegal, invalid or unenforceable, the remaining provisions of this Agreement shall be unimpaired and remain in full force and effect and the illegal, invalid or unenforceable provision shall be amended to achieve as closely as possible the intention of the parties.

12.5. Excusable Delays. Neither party shall be liable to the other for any delay or failure to perform due to causes beyond its control and without its fault or negligence.

12.6. Governing Law. This Agreement is made, entered into, and shall be construed and enforced under the laws of the State of Oklahoma without regard to its conflict of law principles.

12.7. Entire Agreement. The Exhibits and other documents specifically referenced in this Agreement are hereby incorporated by reference and form a part of this Agreement as if fully set forth herein. This Agreement constitutes the entire agreement between the parties and supersedes all previous and inconsistent agreements, promises, proposals, representations, understandings and negotiations, written or oral, between the parties respecting the subject matter.

NOW THEREFORE, the parties hereunder do mutually and voluntarily cause this Agreement to be executed on the Effective Date.

By: _____

Name: _____

Title: _____

Date: _____

DISYS Solutions, Inc.

By: _____

Name: Vinu Luthra

Title: Chief Operating Officer

Date: _____

Exhibit 1

Section 1 – Deliverables, Services, Statement of Work

Section 2 – Deliverables, Equipment

Section 3 – Installation Schedule

Section 4 – Payment Schedule