



State of Oklahoma

Office of Management and Enterprise Services

**ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH ENA SERVICES LLC
RESULTING FROM SOLICITATION NO. 0900000251**

This Addendum 1 ("Addendum") is an Amendment to the Contract awarded to ENA Services LLC ("ENA") in connection with Solicitation No. 0900000251 ("Solicitation") and is effective October __, 2017.

Recitals

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

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

Whereas, the State and ENA have agreed to the terms under which ENA 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 the terms of the Contract that is being awarded to ENA simultaneously with execution of this Addendum. The parties agree that ENA 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:

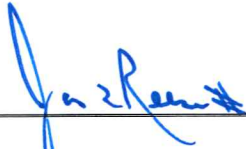
- i. revisions to Master Service Agreement as contained in Attachment A to this Addendum, which will be executed by customers purchasing services under the Contract.

- 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**

ENA Services LLC

By: _____



Name: James L. Reese, II

Title: Chief Information Officer

Date: 10-26-17

By: _____



Name: Matthew Turner

Title: VP, Operations

Date: 10/23/2017

Attachment A

**ENA UNIFIED MASTER SERVICE
AGREEMENT**

Client Name:	
Mailing and Notice Address:	
Contact Name, Phone and E-Mail Address:	

This Master Service Agreement ("Agreement") is a Contract Document in connection with the Contract issued as a result of Solicitation No. 0900000251 (the "Solicitation") and entered into between ENA Services LLC, a Delaware limited liability company having its principal place of business at 618 Grassmere Park Drive, Suite 12, Nashville, TN 37211 ("ENA" 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 "Client" shall refer to the State's subsidiaries and affiliates who may request work by Service Provider under this Agreement, and, to the extent of such requests, such subsidiary or affiliate shall receive rights and bear the obligations of Client set forth in this Agreement, which shall be effective as the latest date this Agreement is signed by ENA and/or Client (the "Effective Date").

In consideration for the mutual promises, covenants and agreements contained herein, ENA and Client agree as follows:

SECTION 1: SERVICES

1.1 Services. Subject to the terms and conditions of this Agreement, ENA shall provide Client with certain Services. ENA's Services and pricing are described in ENA's Price and Cost Response to the Solicitation and may be set forth in attached Schedules of Service(s) and/or Statement(s) of Work (the "Schedule(s)"), which may be entered into from time to time. As used herein, the term "Services" includes all services, software, products and deliverables provided by ENA to Client, including but not limited to professional services and online services.

1.2 Non-Exclusive Arrangement. Client acknowledges and understands that this is a non-exclusive arrangement and nothing herein shall preclude ENA from providing Services, deliverables, or related services to any third party, or from authorizing third parties to make Services available to their customers.

1.3 Service Availability. Services may be temporarily unavailable or limited because of capacity limitations and may be temporarily interrupted because of equipment modifications, upgrades, relocations, repairs, and similar activities. ENA will use commercially reasonable efforts to deliver the most reliable service possible, without interruption. ENA will notify Customer of any scheduled maintenance, but may need to interrupt Services without notice to Customer in the event of an emergency.

SECTION 2: FEES AND PAYMENT TERMS

2.1 Fees. Client shall pay ENA the fees set forth on each Schedule. Except for fees for Services delivered (as indicated in Schedule(s) attached hereto) and professional services, Client's payment obligations for the Services shall commence on the date on which the applicable Service delivered to and accepted by Client regardless of whether Client has commenced use of the Services. Client shall pay ENA

in U.S. dollars.

2.2 Taxes. Pursuant to Section 6.A. of the Oklahoma Constitution and 68 O.S. §§ 1404, 1352, and 1356, Client is exempt from the assessment of State sales, use and excise taxes.

2.3 Payment Terms. All charges shall be due and payable by Client no later than forty five (45) calendar days after submission of an accurate and proper invoice, and payment shall be past due if not paid as of forty five (45) days after the invoice date. If Client disputes any part of an invoice, then Client may withhold such disputed amount from its payment but will notify ENA in writing as to the specific amounts contested and the specific reasons therefor, in which case the parties shall attempt to amicably resolve said dispute. Unless otherwise agreed by the Parties in writing or in a Schedule, ENA shall invoice Client on a monthly basis.

2.4 Interest. Any applicable late fees or interest incurred after forty-five (45) days of nonpayment shall be paid only in accordance with Oklahoma law.

2.5 Move or Transfer of Service. Intentionally Left Blank.

2.6 Government and Regulatory Fees. Any charges set forth herein or in any Schedule, proposal or quotation are exclusive of taxes, surcharges, assessments, or other fees including E-911 fees and government regulatory fees such as Universal Service Fees. No discount offered, if any, shall apply to taxes, surcharges, assessments, or government or regulatory fees.

2.7 Compliance with Federal, State and Local Procedures and Processes. ENA complies with all federal, state and local procurement rules and regulations, and by this Agreement, Client acknowledges their duty to comply. If the Services provided under this Agreement qualify for E-rate discounts, ENA will work with Client to follow Client's selected E-rate reimbursement process (Service Provider Invoice or Billed Entity Applicant Reimbursement). Subject to the requirements in Section C.2 of the Solicitation, Client acknowledges its responsibility for full payment regardless of receipt of E-rate funds.

2.8 Security; Collection. If Client is late with more than one payment, ENA may, upon written notice to Client, require a security deposit or other reasonable assurances to secure Client's payment obligations hereunder. Client agrees to pay all costs and expenses associated with collecting delinquent payments, including reasonable attorneys' fees.

SECTION 3: CLIENT OBLIGATIONS

3.1 Acceptable Use Policy. As of the execution of this agreement, the current Acceptable Use Policy is posted at the following URL: <http://www.ena.com/legal>. Client is responsible for ensuring that all of its employees, agents, contractors, customers, or others who use the Services through Client's account abide by the Acceptable Use Policy. Client shall at all times abide by ENA's Acceptable Use Policy, as it may be amended from time to time provided that such change does not enlarge or add to the Client's obligations hereunder or result in a material reduction in services provided by ENA.

3.2 Client Obligations During Establishment of Service. Once ENA schedules installation and agrees upon an installation time with Client, Client must be present with facilities available and fully accessible.

3.3 Interoperability with Client's Infrastructure. ENA's Services are capable of being deployed across a wide set of pre-existing Client infrastructure, however Client is responsible for any upgrades of its pre-existing infrastructure necessary to establish and continue Service.

3.4 Protection of Client Premise Equipment ("CPE") Provided By ENA. The Client shall be responsible and liable for any and all damage caused to the CPE due to Client's negligence or misuse, including, without limitation, any damage due to misuse, vandalism, for the duration of the contract. At the expiration of the term of the contract or upon its early termination by either party to the contract, the Client shall continue to be responsible and liable for damage caused to the CPE due to Client's negligence while such equipment remains at the Client location. Client will provide reasonable space and environmental conditions for any CPE, will do nothing to change the space or conditions without notice to ENA and will at no time, move, adjust, alter or otherwise operate the ENA CPE without prior consent of ENA. Client will not attach any equipment to any ENA CPE without express instructions or involvement of ENA or utilize the ENA CPE in anyway inconsistent with the service purchased from ENA.

3.5 Internal Use. Subject to the terms and conditions set forth herein, ENA authorizes Client to use the Services for its internal business purposes.

3.6 Restrictions on Use. Client shall not and shall not knowingly permit others to reproduce, reverse engineer, de-compile, disassemble, alter, translate, modify, adapt, market, resell, or sublease any of the Services or any software or materials provided by ENA in connection therewith.

3.7 Client Responsibility. Client acknowledges and agrees that ENA is not responsible for the content of its transmissions which pass through the Services. Client also agrees it will not use the Services:

- (a) for illegal purposes;
- (b) to transmit threatening, obscene or harassing materials, or
- (c) to interfere with or disrupt other network users, network services or network equipment.

3.8 User Content.

(a) For purposes of this Agreement, the term "Content" includes, without limitation, information, data, text, written posts and comments, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible on or through the Services. For the purposes of this Agreement, "Content" also includes all User Content (as defined below).

(b) All Content added, created, uploaded, submitted, distributed, or posted to the Services by users (collectively "User Content"), whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such User Content. Users represent that all User Content provided by Users is in compliance with all applicable laws, rules and regulations. Users acknowledge that all Content, including User Content, accessed by users using the Services is at users' own risk and users will be solely responsible for any damage or loss to users or any other party resulting therefrom. ENA does not guarantee that any Content users' access on or through the Services is or will continue to be accurate.

(c) The Services may contain Content specifically provided by ENA, ENA's partners or ENA's users, and such Content is protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. Users shall abide by and maintain all proprietary notes, information, and restrictions contained in any Content accessed through the Services.

(d) Subject to this Agreement, ENA grants each user of the Services a worldwide, non-exclusive, revocable, non-sub-licensable and non-transferable license to use (i.e., to download and display locally) Content solely for purposes of using the Services. Use, reproduction, modification, distribution or storage of any Content for other than purposes of using the Services is expressly prohibited without prior written permission from ENA. Users shall not sell, license, rent, or otherwise use or exploit any Content for commercial use or for any use that violates any third party right.

SECTION 4: CONFIDENTIAL INFORMATION

4.1 Confidential Information. "Confidential Information" means any and all tangible and intangible information (whether written or otherwise recorded or oral) of the disclosing party that the disclosing party designates as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Neither party shall use for its own account or the account of any third party, nor disclose to any third party, any of the other party's Confidential Information.

4.2 Exceptions. Notwithstanding the above and subject to Section A.28 of the Solicitation, the term "Confidential Information" shall not include any information that is either:

(a) available from public sources or in the public domain, through no fault of the receiving party; or

(b) received at any time from any third party without breach of a non-disclosure obligation to the disclosing party; or

(c) readily discernible from publicly-available products or literature;

(d) approved for disclosure by prior written permission of a corporate officer of the disclosing party; or

(e) subject to disclosure under the Oklahoma Open Records Act.

4.3 Mandated Disclosures. The receiving party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that the receiving party (i) gives the disclosing party reasonable written notice to allow the disclosing party to seek a protective order or other appropriate remedy (except to the extent the receiving party's compliance with the foregoing would cause it to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

SECTION 5: DISCLAIMERS AND LIMITATIONS OF LIABILITY

5.1 Warranty. ENA WARRANTS THAT: (1) THE SERVICES, INCLUDING WITHOUT LIMITATION ANY INFORMATION DELIVERED AS PART OF THE SERVICES, AND CONTENT WILL BE DELIVERED, PROVIDED AND PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER; (2) THE SERVICES WILL PERFORM AND CONFORM TO THE DOCUMENTATION, SPECIFICATIONS, AND OTHER DESCRIPTIONS AND WARRANTIES SET FORTH HEREIN; (3) ENA WILL COOPERATE WITH CLIENT OFFICIALS IN PERFORMING THE SERVICES SO THAT INTERFERENCE WITH NORMAL OPERATIONS WILL BE HELD TO A MINIMUM; (4) ENA'S EMPLOYEES WILL OBSERVE AND EXERCISE ALL NECESSARY CAUTION AND DISCRETION SO AS TO AVOID INJURY TO PERSON OR DAMAGE TO PROPERTY OF ANY KIND; (5) DELIVERABLES AND OTHER MATERIALS AND INFORMATION AND THE SERVICES FURNISHED BY ENA 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; 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.

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 OR SERVICES PROVIDED HEREUNDER

5.2 Consequential Damages Waiver. In no event will either party be liable or responsible to the other party for any type of incidental, punitive, indirect or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, interruption or loss of use of Services or equipment, arising from or relating to this Agreement or the Services, even if advised of the possibility of such damages, whether arising under any theory of contract, tort (including negligence), strict liability, or otherwise.

5.3 Limitation of Liability. Except for any claims related to intellectual property infringement, ENA's liability for damages to Client for any cause whatsoever, regardless of form of action, shall be limited to the amounts paid by Client to ENA for the Service giving rise to the claim during the one year period preceding the incident giving rise to the claim for damages.

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 ENA; ENA's indemnity obligations under this Contract; the bad faith, gross negligence or intentional misconduct of ENA or its employees, agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.

5.4 Insurance. See Section A.20 of the Solicitation.

SECTION 6: TERM AND TERMINATION

6.1 Initial and Renewal Terms. The term of this Agreement shall commence on the Effective Date and continue until all Schedule(s) are expired or terminated.

6.2 Termination. See Section A.16, A.18, and A.19 of the Solicitation.

SECTION 7: INTELLECTUAL PROPERTY & PUBLICITY

7.1 Ownership. As between ENA and Client, ENA either owns all right, title and interest in and to or is authorized to use and license such use of the Services. Elements of ENA's website are protected by trade dress, trademark, unfair competition, and other laws and may not, unless otherwise permitted hereunder, be copied in whole or in part. No logo, graphic, or image from the website may be copied or retransmitted without ENA's express written permission. The images, text, screens, web pages, materials, data, other content and information used and displayed on the website are the property of ENA or its licensors and are protected by copyright, trademark and other laws. In addition to ENA's rights in individual elements of the website, ENA owns copyright or patent rights in the selection, coordination, arrangement and enhancement of any images, text, screens, web pages, materials, data, Content and other information used and displayed on the Website. Users may copy such images, text, screens, web pages, materials, data, Content and other information used and displayed on the Website for users' personal or educational use only, provided that each copy includes any copyright, trademark or service mark notice or attribution as they appear on the pages copied. Except as provided in the preceding sentence, none of such images, text, screens, web pages, materials, data, Content and other information used and displayed on the Website may be copied, displayed, distributed, downloaded, licensed, modified, published, reposted, reproduced, reused, sold, transmitted, used to create a derivative work or otherwise used for public or commercial purposes without the express written permission of ENA.

7.2 Use of ENA's Name and Trademarks. All trademarks, service marks and trade names identifying ENA or ENA products or services (the "Marks") are the exclusive property of ENA. Client shall take no action which may lessen the goodwill in the Marks. Client shall not use a Mark or the name of ENA in any advertising, promotional material, or public announcement without the prior written approval of ENA.

7.3 Use of Client's Name. See Section A.49 of the Solicitation.

SECTION 8: GENERAL PROVISIONS

8.1 Third Party Services. The Services may permit users to link to other websites, services or resources on the Internet, and other websites, services or resources may contain links to the Services. When users access third party resources on the Internet, users do so at users' own risk. These other resources are not under ENA's control, and users acknowledge that ENA is not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply ENA's endorsement or any association between ENA and their operators. Users further acknowledge and agree that ENA shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such

website or resource. It is users' responsibility to protect users' system from such items as viruses, worms, Trojan horses and other items of a destructive nature.

8.2 Import and Export Compliance. In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, Client agrees to be solely responsible for compliance related to the manner in which Client chooses to use the Services, including Client's transfer and processing of content and the provision of such content to others.

8.3 Force Majeure. Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party will give prompt written notice to the other party and will use commercially reasonable efforts to minimize the impact of the event.

8.4 Government Approvals. Client must exercise its rights under this Agreement with all necessary government approvals. Client must also comply with all applicable laws and regulations.

8.5 Changes in Laws and/or Government Regulations. This Agreement is based on the laws and government regulations in place at the Effective Date. Subsequent changes in any applicable laws or regulations may result in pricing changes and/or service changes that may automatically become a part of this Agreement.

8.6 Notice And Payment.

(a) **Writing Required.** Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party at the above stated address or mailed by certified, registered or Express mail, return receipt requested, or by overnight carrier with tracking. Notices to ENA shall be sent to the attention of Contract Administrator.

(b) **Change of Address.** Either party may change the address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

8.7 Jurisdiction/Disputes. See Section A.17 of the Solicitation.

8.8 Assignability. Neither party may assign this Agreement, its Schedule(s) or the rights and obligations thereunder to any third party without the prior express written approval of the other party which shall not be unreasonably withheld. Notwithstanding the foregoing, ENA may assign this Agreement in its entirety in connection with any sale of all or substantially all of its assets, or of the business division of ENA through which the Services are provided.

8.9 Agreement Binding On Successors. Subject to the terms of Section 8.8, the provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

8.10 Waiver. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

8.11 Independent Contractors. The relationship between ENA and Client under this Agreement shall be at all times one of contractor and client, respectively. Nothing herein shall be construed to place the parties in the relationship of partners, joint venturers, principal and agent, or employer and employee. ENA shall determine the method and means of performing the Services hereunder and ENA assumes all risks

and liabilities arising therefrom. ENA shall have no authority to act, make any representation, enter into any contract or commitment, or incur any liability for or on behalf of Client in any manner whatsoever.

8.12 Severability. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement or its Schedule(s).

8.13 Integration. The Solicitation, Addendum 1 to the Solicitation, ENA's Response to the Solicitation, this Agreement, ENA's Acceptable Use Policy, and all Schedules constitute the entire understanding of the parties with respect to the subject matter hereof, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement. This Agreement shall not be modified or amended except in writing signed by the parties hereto.

8.14 Hierarchy. In the event of any conflict regarding the terms of this Agreement, addendum to this Agreement, ENA's Acceptable Use Policy, or any Schedules, their terms shall control in the following order, from highest to lowest priority: (1) Schedules, (2) addendum to this Agreement, (3) this Agreement, and (4) ENA's Acceptable Use Policy.

8.15 Counterparts; Imaging. This Agreement and all ancillary agreements reference herein or executed in connection with this Agreement may be executed in one or more counterparts, and once combined shall constitute a single original. The parties agree that imaged or copied versions of such are fully enforceable, and original documents are not required for either party to enforce its rights thereunder.

[signatures on next page]

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

ENA:

CLIENT:

ENA Services LLC

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE OF SERVICES

No. _____

In accordance with all terms and conditions of the Unified Master Services Agreement executed between ENA and _____ (“Client”) on _____ (Date) (the “Agreement”), Client desires to purchase some or all of the Services described in this Schedule of Services (the “Schedule”). Client’s Purchases of Services from this Schedule will be memorialized in a form agreeable to both Parties during the Term of this Schedule.

Service Ordered (Check All Applicable Below)	
<input type="checkbox"/> Broadband <input type="checkbox"/> Communication	<input type="checkbox"/> Wi-Fi/LAN <input type="checkbox"/> Cloud
Description and Price of Services	
Check one: <input type="checkbox"/> Described below <input type="checkbox"/> Described in the attached document(s)	
Term (construed in conjunction with any documents attached to this Schedule)	
Initial Term	<input type="text"/> months
Renewal Term(s)	<input type="text"/> Number of Renewal Terms enter '0' if none permitted
	<input type="text"/> Length of each Renewal Term (in months)
Maximum Contract Length (if all renewal terms exercised)	<input type="text"/> months
Billing Address and Billing Contact Information	

Nothing in this Schedule is intended to replace, supersede or modify the terms of the Agreement. Client facility must be ready to support the Service. Any building or customer environment make-ready cost is the responsibility of the Customer. If this Service includes a data circuit, Client must have a suitable entrance facility into the building/demark room by conduit or aerial means.

ENA:

CLIENT:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____