



State of Oklahoma

Office of Management and Enterprise Services

**STATE OF OKLAHOMA
AGREEMENT WITH MY CONSULTING GROUP
Oklahoma Statewide Contract No. 1175**

This State of Oklahoma Contract (“Contract”) is entered into between MY Consulting Group (“Vendor”) with its principal place of business at 500 Hasswell Dr. Oklahoma City, Oklahoma 73170 and the State of Oklahoma by and through the Office of Management and Enterprise Services (“State”) and is effective December 1, 2018 (“Effective Date”). This Contract is being entered into pursuant to 62 O.S. §34.11.1.

Vendor and State (the “Parties”) agree to the terms and conditions as follows:

I. Scope

- A.** This Contract memorializes the agreement of the parties with respect to terms of the Contract being awarded to Vendor as of the Effective Date. The term of this Contract shall be for a term of one (1) year (“Term”), with four (4) one year options to renew by mutual agreement.

II. Negotiated:

- A.** The Contract documents shall be read to be consistent and complementary and any conflict among terms shall be resolved by giving priority as follows: any Addendum executed after the Contract Effective Date; this Contract; any statement of work, work order, or other similar ordering document as applicable; other mutually agreed Contract Documents; and a properly issued purchase order related hereto.
- B.** 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.

III. Definitions

The parties agree that, when used in the Contract, the following terms are defined as set forth below:

- A. Acquisition**

The term “Acquisition” means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act.

B. Addendum

The term “Addendum” means a written restatement of or modification to a Contract Document executed by the Vendor and State or Customer, as applicable.

C. Contract

The term “Contract” means the this Contract and Attachments thereto, which may be amended from time to time which together with other Contract Documents, evidences the final agreement between the parties with respect to the particular transaction the State and Vendor are engaged in.

D. Contract Document

The term “Contract Document” means the this Contract and Attachments thereto; any statement of work, work order, or other similar ordering document related hereto and executed by the Vendor and State or Customer, as applicable; any purchase order related hereto; other mutually agreed documents; and any Addendum to any of the foregoing.

E. Customer

The term “Customer” means the State any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department, or other entity designated to act on behalf of the political subdivision; a state, county, or local governmental entity in its state of origin; and entities authorized to utilize contracts awarded by the State via a multistate or multi-governmental contract. The State, in its sole discretion, may authorize use of this Contract by other state entities.

F. Destination

The term “Destination” means delivered to the receiving dock or other point specified in the applicable Contract Document.

G. Indemnified Parties

The term “Indemnified Parties) means the State of Oklahoma and Customers, and/or their officers, agents, employees, representatives, contractors, assignees and/or designees.

H. Intellectual Property Rights

The term “Intellectual Property Rights” means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights.

The term Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

I. Moral Rights

The term “Moral Rights” means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

J. Purchase Card

The term “Purchase Card” means commercial purchase card to facilitate the acquisition of goods and services necessary for conducting official State business.

K. Third Party Intellectual Property

The term “Third Party Intellectual Property” means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to Customer under the Contract.

L. Vendor Intellectual Property

The term “Vendor Intellectual Property” means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor’s provision of Services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

M. Work Product

The term “Work Product” means any and all deliverables produced by Vendor for Customer under a statement of work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Effective Date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files,

text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (i) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or statement of work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a statement of work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

IV. Extension of Contract

The State, at its sole option, may extend the Contract for ninety (90) days beyond the final renewal option period, at the Contract compensation rate for the extended period. If this option is exercised, the State shall notify the Vendor in writing prior to Contract end date.

V. Ordering, Inspection and Acceptance

- A.** Any Products or Services furnished under the Contract shall be ordered by the issuance of written purchase orders or e-procurement of purchase orders. There is no limit on the number of purchase orders that may be issued. Delivery to multiple destinations may be required. All orders are governed by the terms and conditions of the Contract. Any purchase order dated prior to the expiration of the Contract shall be performed unless the Acquisition is terminated by the Customer under the terms of the Contract.
- B.** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of Services or associated deliverables shall not apply automatically upon receipt of a deliverable or upon provision of Services.

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

Customer payment for an Acquisition does not constitute final acceptance of the Acquisition by the Customer. If subsequent Customer inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has latent defects, the Customer shall notify the Vendor as soon as is reasonably practicable. The Vendor shall retrieve and replace the Acquisition at Vendor's expense or, if unable to replace, shall issue a refund to the Customer.

- C.** Vendor shall deliver Products and Services on or before the required date specified in a Contract Document. Deviations, substitutions, or changes in Products or Services shall not be made unless expressly authorized in writing by the Customer.
- D.** Product warranty and return policies and terms for Customers will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated Customer for like Products.

VI. Ownership Rights

- A.** As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third Party Intellectual Property, except as may be incorporated in the Work Product by Vendor.
- B.** Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any

purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- C.** Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- D.** All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph (vii) hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- E.** The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Vendor's obligations with respect to confidentiality provisions of this Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury as same is presumed.
- F.** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

- G.** Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- H.** To the extent that any Vendor Intellectual Property or Third Party Intellectual Property are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for the Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor Intellectual Property or Third Party Intellectual Property and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party Intellectual Property. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.
- I.** Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to the provision of such Services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.
- J.** Vendor grants to Customer, a perpetual, irrevocable, royalty-free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor Intellectual Property embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor Intellectual Property remain in Vendor.
- K.** To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or

services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriated license and royalty agreement to allow for such.

- L.** If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Vendor.

VII. Pricing

- A.** Pursuant to 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, Customers under the Contract that are Oklahoma state agencies are exempt from the assessment of State sales, use, and excise taxes. Further, such Customers and Customers that are political subdivisions of the State of Oklahoma are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Vendor shall not be reimbursed by the State or Customer.
- B.** Notwithstanding anything in a Contract Document, pursuant to 74 O.S. § 85.40, all travel expenses of Vendor must be included in the total Acquisition price.
- C.** The price to the Customer under the Contract shall include and Vendor shall prepay all shipping, packaging, delivery and handling fees. All Product deliveries will be Free on Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

VIII. Invoices and Payment

- A.** Vendor shall be paid upon submission of a proper invoice(s) to the Customer at the prices stipulated in the Contract in accordance with 74 O.S. 85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted unless otherwise set forth in the Contract or applicable schedule thereto.

The following terms additionally apply:

- i.** Invoices shall contain the purchase order number;
- ii.** Failure to provide a proper invoice may result in delay of processing the invoice for payment;
- iii.** Unless the parties agree to an early payment discount, payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. § 34.72; and

- iv. Prompt pay discounts will be offered to the State or Customer under with the first discount being offered when payment is made no less than ten (10) days after the receipt of invoice. Additional discounts will be offered when payment is made at different five (5) day increments, e.g. payment made fifteen (15), twenty (20), twenty-five (25), etc. days after receipt of invoice. In lieu of prompt pay discounts, the State will be offered hourly rates for services in one or more labor categories that are discounted from maximum vender statewide contract rates.
- v. If a Customer finds that an overpayment or underpayment has been made to Vendor, the Customer may adjust any subsequent payments to Vendor under the Contract to correct the account. A written explanation of the adjustment will be issued to Vendor by the Customer.

B. The Vendor will accept payment from any Customer by Purchase Card.

IX. Termination for Non-appropriation

The State may terminate the Contract in whole or in part if funds sufficient to pay its obligations under the Contract are not appropriated or received from an intended third party funding source. Similarly, a Customer may terminate any purchase order if funds sufficient to pay its obligations under the Contract are not appropriated or received from an intended third party funding source. In the event of such insufficiency, Vendor will be provided fifteen (15) calendar days written notice of intent to terminate. The determination by the State or Customer, as applicable, as to whether sufficient appropriations are available shall be accepted by the Vendor as final and binding. Notwithstanding the foregoing, if a Customer issues a purchase order and has accepted the Products or Services, the Customer is obligated to pay for the Products or Services. In the event of such termination, the Customer will not be considered to be in default or breach under the Contract nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

X. Notices

All notices, approvals or requests allowed or required by the terms of any Contract Document shall be in writing and deemed delivered upon receipt or upon refusal of the intended party to take or accept receipt of the notice. Such notices shall be sent to the respective party at the physical or e-mail address set forth below, which may be updated in writing to the other party as necessary; provided, however, breach and termination-related notices shall not be delivered via e-mail.

If sent to the State:

Office of Management and Enterprise Services
Chief Information Officer
3115 N. Lincoln Blvd.
Oklahoma City, Oklahoma 73105

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

Deputy General Counsel
3115 N. Lincoln Blvd.
Oklahoma City, Oklahoma 73105

If sent to Vendor:

MY Consulting Group
PO Box 721225
Norman, Oklahoma 73070

XI. Choice of Law

Any claim, dispute, or litigation relating to the execution, interpretation, performance, or enforcement of the Contract, or any of the Contract Documents shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles.

XII. Choice of Venue

Venue for any action, claim, dispute, or litigation relating in any way to the execution, interpretation, performance, or enforcement of the Contract, or any of the Contract Documents, shall be in Oklahoma County, Oklahoma. Further, notwithstanding any provision in the Contract, the State does not waive the doctrine of sovereign immunity and immunity from suit to the extent authorized by the Constitution and laws of the State of Oklahoma nor any other right or defense available to the State.

XIII. Conflict of Interest

- A.** In addition to any requirement of law or through a professional code of ethics or conduct, the Vendor, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Further, as long as the Vendor has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State.
- B.** The Vendor certifies the name of any officer, director or agency who is also an employee of the State or any of its agencies has been disclosed. Further, the Vendor certifies the name of any state employee who owns, directly or indirectly, an interest of five percent (5%) or more in Vendor has been disclosed prior to execution of this Agreement.

XIV. 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, a Customer may terminate a purchase order if Vendor cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Customer.

XV. Termination for Cause

- A.** Either party may terminate this Agreement, in whole or in part, for default or other just cause after providing the other party with notice of the default or other just cause and a thirty (30) day cure period after receipt of the notice by the other party. The cure period may be extended by the party claiming default or other just cause; provided, however, extension of the cure period shall not automatically operate as a waiver of such party's claim.
- B.** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Vendor, only if Vendor's material breach is reasonably determined **i.** to be an impediment to the function of the State and detrimental to the State or **ii.** to cause conditions precluding the thirty (30) day notice or when the State determines that an administrative error occurred prior to Contract performance.
- C.** If the Contract or certain obligations under the Contract are terminated, the State shall be liable only for payment for products and/or services delivered and accepted prior to the date of such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. In no event shall the State be liable to the Vendor for compensation for any products neither requested nor accepted by the Customer or for any Services neither requested by the Customer nor satisfactorily performed by the Vendor. In no event shall the State's exercise of its right to terminate the Contract for convenience relieve the Vendor of any liability to the State for claims arising under the Contract.
- D.** The Vendor's repeated failure to provide defined Services, even though provided an opportunity to cure the underlying cause of the failure, shall constitute a material breach of the Vendor's obligations, which may result in partial or whole cancellation of the Contract.

XVI. Termination for Convenience

- A. The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. The State shall deliver to the Vendor a written notice of termination for convenience specifying the terms and effective date of termination. The Contract termination date shall be a minimum of thirty (30) days from the date the notice of termination is issued by the State.
- B. If the Contract or certain obligations under the Contract are terminated, the Customer shall be liable only for payment for Products or Services delivered and accepted prior to the date of such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. In no event shall a Customer be liable to the Vendor for compensation for any Products neither requested nor accepted by the Customer or for any Services neither requested by the Customer nor satisfactorily performed by the Vendor. In no event shall the State's exercise of its right to terminate the Contract for convenience relieve the Vendor of any liability to the State or a Customer for claims arising under the Contract.

XVII. Modification

Any change to the Contract, including but not limited to the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the State, or made unilaterally by Vendor, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such modifications, including unauthorized written contract modifications, shall be void and without effect, and Vendor shall not be entitled to any claim under the Contract based on those modifications.

XVIII. Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with an applicable Oklahoma and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, Customer makes no representation or warranty regarding the enforceability of such term or condition and Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the Contract term or condition.

XIX. Audits and Records Clause

- A. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Vendor agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit all records relevant to the execution and performance of the Contract except costs of Vendor that comprise pricing under the Contract, unless otherwise agreed.

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

XX. Non-Collusion

- A.** The undersigned is the duly authorized agent of Vendor submitting the documentation herewith, for the purpose of certifying the facts pertaining to the existence of collusion between Alliance and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract.
- B.** I am fully aware of the facts and circumstances surrounding the making of this Contract and have been personally and directly involved in the proceedings leading to the submission of such Contract.
- C.** Neither Vendor nor anyone subject to Vendor's direction or control has been a party:
- i.** to any collusion among suppliers in restraint of freedom of competition by agreement to contract at a fixed price or to refrain from submitting supplier contract information,
 - ii.** to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - iii.** in any discussions with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to 74 O.S. §85.45j.1.
 - iv.** I certify, if awarded this contract, neither Vendor nor anyone subject to Vendor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State any money or other thing of value, either directly or indirectly, in procuring this Contract.
- D.** For the purposes of a contract for Services, Vendor also certifies that no person who has been involved in any manner in the development of this Contract while employed by the State shall be employed by Vendor to fulfill any Services hereunder.

XXI. Compliance with Applicable Laws

- A.** As long as Vendor has an obligation under the terms of the Contract and in connection with performance of its obligations, the Vendor shall comply with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:
- i.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. § 81.
 - ii.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
 - iii.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
 - iv.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
 - v.** Anti-Lobbying Law set forth at 31 U.S.C. § 1325 and as implemented at 45 C.F.R. part 93;
 - vi.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Circular A-133 with approval and work paper examination rights of the applicable procuring entity;
 - vii.** Be compliant with the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1312, and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. § 1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify; and
 - viii.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- B.** The Vendor shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- C.** The Vendor shall inform its employees, agents, and proposed subcontractors, if applicable, who provide Products or perform Services under the Contract of the Vendor's obligations under the Contract and shall require compliance accordingly. At the request of the State, Vendor shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.

- D. As applicable, Vendor agrees to comply with Governor's Executive Order 2012-01, effective August 06, 2012, which prohibits the use of any tobacco product on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.

XXII. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The Vendor certifies that the Vendor and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;
- B. Have not within a three-year period preceding the Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; for violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the foregoing offenses enumerated in this certification; and
- D. Have not within a three-year period preceding this Contract had one or more public (federal, state or local) contracts terminated for cause or default.

XXIII. Employment Relationship

The Contract does not create an employment relationship. Individuals performing Services required by the Contract are not employees of the State or any Customer. The Vendor's employees shall not be considered employees of the State nor of any Customer for any purpose, and accordingly shall not be eligible for rights or benefits accruing to such employees.

XXIV. Publicity

Vendor acknowledges and agrees that the existence of the Contract or any Acquisition thereunder is not in any way an endorsement by the State or any Customer of Vendor, the Products or the Services and shall not be so construed by Vendor in any advertising or publicity materials. Vendor agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which the connection of the State or any Customer therewith may, in the State's judgment, be inferred or implied as an endorsement. Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices without obtaining the prior written approval of the State.

XXV. Maintenance of Insurance, Payment of Taxes, and Worker's Compensation

- A.** As a condition of this Contract with the State, Vendor shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below. Such proof of coverage shall be provided to the State as designated by the State system if Services will be provided by any of Vendor's employees, agent or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of work for Customers. Vendor may not commence performance hereunder until such proof has been provided. Additionally, Vendor shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Vendor's obligation to maintain insurance coverage under the Contract is a continuing obligation through the term of the Contract and each purchase order issued to Vendor in connection with the Contract. The minimum acceptable insurance limits of liability are as follows:
- i.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
 - ii.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
 - iii.** Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence and in the aggregate, with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles;
 - iv.** Professional Errors and Omissions Insurance which shall include Consultant's Computer Errors and Omissions Coverage with limits not less than \$1,000,000 per claim and in the aggregate; and
 - v.** Additional coverage required by the State in writing in connection with a particular Acquisition.
- B.** Vendor shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Vendor or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Vendor further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither a Customer nor the State shall be liable to the Vendor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.
- C.** Vendor agrees to indemnify and hold harmless Customers, the State, and its employees, agents, representatives, contractors, and/or assignees from any and all liability, actions,

claims, demands, or suits, and all related costs and expenses and attorneys' fees relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract. In connection with indemnification of Customer, when a State agency is a named defendant in any lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General of Oklahoma may authorize the Vendor to control the defense and any related settlement negotiations; provided, however, Vendor shall not agree to any settlement of claims against the State without advance written concurrence from the State Attorney General. If the Attorney General of Oklahoma does not authorize sole control of the defense and settlement negotiations to Vendor, Vendor shall be granted authorization to equally participate in any proceeding related to this section but Vendor shall remain responsible to indemnify the State.

XXVI. Open Records Act

Vendor acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act. Vendor also acknowledges that such Customers will comply with the Oklahoma Open Records Act and with all opinions of the Oklahoma Attorney General concerning this Act. Except for a provision of the Contract specifically designated as confidential in a writing executed by both parties or a provision protected from disclosure in the Open Records Act, no Contract provision is confidential information and, therefore, any provision is subject to disclosure under the Open Records Act.

XXVII. Confidentiality

- A.** The Vendor shall maintain strict security of all State data and records entrusted to it or to which the Vendor gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as needed by Vendor for performance of its obligations under the Contract. The Vendor further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. If Vendor utilizes a subcontractor, Vendor shall obtain specific written assurance, and provide a copy to the State, that the subcontractor shall maintain this same level of security of all data and records entrusted to or accessed by the subcontractor and agree to the same obligations as Vendor, to the extent applicable. Such written assurance may be set forth in the required subcontractor agreement referenced herein.
- B.** No State data or records shall be provided or the contents thereof disclosed to a third party unless specifically authorized in advance to do so in writing by the State Purchasing Director, the State Chief Information Officer, the individual with administrative control over a Customer or in compliance with a valid court order. The Vendor shall immediately forward to the State and the State Purchasing Director any request by a third party for data or records in the possession of the Vendor or any subcontractor or to which the Vendor or subcontractor has access and Vendor shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

XXVIII. Security of Premises, Equipment, Data and Personnel

In connection with Vendor's performance under the Contract, Vendor may have access to Customer personnel, premises, equipment, and other property. Vendor shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, equipment, and other property of the Customer, in accordance with the instruction of the Customer. Vendor shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If Vendor fails to comply with Customer's security requirements, then Customer may immediately terminate the associated purchase order.

XXIX. Background Checks and Criminal History Investigations

Prior to the commencement of any Services, background checks and criminal history investigations of the Vendor's employees and subcontractors who will be providing Services to a Customer may be performed. If additional background checks are required beyond Vendor's normal hiring practices, such checks or investigations shall be noted at the time of the proposal effort. The costs of additional background checks shall be the responsibility of the Customer unless such additional background checks are required solely because Vendor will not provide results of its otherwise acceptable normal background checks; in such an instance, Vendor shall pay for the additional background checks. Vendor will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Vendor who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order associated with the project.

XXX. Assignment and Permitted Subcontractors

- A.** Vendor's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Vendor assign its rights to payment, in whole or in part, under the Contract, Vendor shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall contain details sufficient for the State and affected Customers to perform its payment obligations without any delay caused by the assignment.
- B.** If the Vendor is permitted to utilize subcontractors in support of the Contract, the Vendor shall remain solely responsible for its obligations under the terms of the Contract and for its actions and omissions and those of its agents, employees and subcontractors. Any proposed subcontractor shall be identified by entity name, and by employee name if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. Prior to a subcontractor being utilized by the Vendor, the Vendor shall obtain written approval of the State of such subcontractor and

each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Vendor. Such approval is within the sole discretion of the State. As part of the approval request, the Vendor shall provide a copy of a written agreement executed by the Vendor and subcontractor setting forth that such subcontractor is bound by and agrees to perform, as applicable, the same covenants and be subject to the same conditions, and make identical certifications to the same facts and criteria, as the Vendor under the terms of all applicable Contract Documents. Vendor agrees that maintaining such agreement with any subcontractor and obtaining prior approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

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

XXXI. Failure to Enforce

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

XXXII. Vendor's Compliance with State Policies

The Vendor's employees, agents and subcontractors must adhere to the applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. The Vendor must review and relay such policies covering the above to the Vendor's employees, agents and subcontractors.

XXXIII. Mutual Responsibilities of the Parties

- A. Neither the State nor the Vendor grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B. The Contract is a non-exclusive contract, and each party is free to enter into similar agreements with others.
- C. The Customer and Vendor each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.

- D.** The State and Vendor shall reasonably cooperate with each other and any vendor to which Products and/or Services under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by either a Customer, the State or the Vendor is required under the Contract, such action shall not be unreasonably delayed or withheld.

XXXIV. Patents and Copyrights

- A.** Without exception, a Product price shall include all royalties or costs owed by the Vendor to any third party arising from the use of a patent, intellectual property or copyright. Should any third party threaten or make a claim that any portion of a Product or Services provided by Vendor under the Contract infringes that party's patent or copyright, Vendor shall enable Customers to legally continue to use, or modify for use, the portion of the Product or Services at issue or replace such potentially infringing Product, or re-perform in the case of Services, with at least a functional non-infringing equivalent. Vendor's duty under this section shall extend to include other Products or Services rendered materially unusable as intended due to replacement or modification of the Products or Services at issue.
- B.** Vendor has no obligation regarding a claim based on any of the following: (i) modification of a product by any party other than Vendor, its employee, agent, subcontractor, or any State employee acting in conjunction with the Vendor; (ii) a program's use in other than its specified operating environment; (iii) the combination, operation, or use of a product with other products not provided by Vendor as a system or (iv) infringement solely by a non-Vendor product that has not been provided to the State by, through or on behalf of the Vendor as opposed to its combination with products Vendor provides to or develops for the State as a system.

XXXV. Indemnification

- A. Acts or Omissions**
 - i.** Vendor shall indemnify and hold harmless the Indemnified Parties, as applicable, from any and all liability, including costs, expenses and attorney fees, for actions, claims, demands and suits arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct of the Vendor or its agents, employees, or subcontractors in the execution or performance of the Contract.
 - ii.** To the extent Vendor is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Vendor, its employees, agents, representatives, or subcontractors,

the Vendor and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced by the Customer and is payable by Vendor sixty (60) calendar days after the date of the Vendor's receipt of an invoice for the negotiated settlement amount.

B. Infringement and Accessibility

- i.** **Vendor** shall indemnify and hold harmless the Indemnified Parties, as applicable, from any and all liability, including costs, expenses and attorney fees, for actions, claims, demands and suits arising out of, or resulting from any and all third party claims involving reliance on the Vendor's Voluntary Product Accessibility Template ("VPAT") by the State or a Customer or infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with Products and Services provided under the Contract. The parties agree to furnish timely written notice to each other of any such claim.
- ii.** If the Product or any part thereof, becomes, or in Seller's opinion may become, the subject of an infringement claim, Seller shall have the right, at its option, to (a) procure for Customer the right to continue using the Product; (b) modify or replace the product with a substantially equivalent non-infringing substitute; or (c) require the return of the Product and terminate the rights, license, and any other permissions provided to Customer with respect to the Product and refund to Customer the depreciated value (as shown Customer's official records) of the returned Product at the time of such return; provided that, no refund will be given for used-up or expired Consumables.
- iii.** For the avoidance of doubt, Seller has no obligation to defend, indemnify or hold harmless Customer for any infringement claim to the extent such infringement arises from: (i) use of the Product in any manner or for any Excluded Use, (ii) use of the Product in any manner not in accordance with the rights expressly granted to Customer under these terms and conditions, (iii) use of the Product in combination with any third party products, materials, or services (unless the Product's Documentation or Specifications expressly state such third party's good is for use with the Product), (iv) use of the Product to perform any assay or other process not supplied by Seller, (v) Seller's compliance with specifications or instructions for such Product furnished by, or on behalf of, Purchaser, or (vi) use of stand-alone third party goods that may be acquired or used with the Products (each of (i) – (vi), is referred to as an "Excluded Claim").

C. Coordination of Defense

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

XXXVI. Limitation of liability

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

XXXVII. Miscellaneous

A. Severability

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect.

B. Section Headings

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

C. Sovereign Immunity

Notwithstanding any provision of any Contract Document, the State does not waive its sovereign immunity or immunity from suit.

D. Survival

As applicable, performance under all license, subscription, service agreements and other similar Contract Documents entered into between Vendor and any Customer under the terms of the Contract shall survive expiration or termination of the Contract. Additionally, rights and obligations under the Contract which by their nature should survive including, but not limited to, payment obligations invoiced prior to expiration or termination; confidentiality obligations and indemnification remain in effect after expiration or termination of the Contract.

E. Entire Agreement

The Contract Documents taken together as a whole constitute the entire agreement between a Customer and Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract Document shall be binding or valid.

F. Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Vendor, its employee, agent, or another representative offered or gave a gratuity to any Customer employee directly involved in the Contract. In addition, a Vendor determined to be guilty of such a violation may be suspended or debarred.

XXXVIII. Administration Fee

Supplier agrees to pay an administrative fee in the sum of 1.0% of the combined total quarterly expenditures, as evidenced by the aggregate amount of Acquisitions under this Contract. All products prices shall be inclusive of the administrative fee. Notwithstanding anything to the contrary herein, the State reserves the right to increase or decrease the administrative fee as long as the Supplier has an obligation under this Contract without further requirement for an Amendment and shall provide written notice of such change to the Supplier. The administrative fee amount shall be noted on the quarterly "Contract Usage Report" and paid by the Supplier to the Oklahoma Office of Management and Enterprise Services within thirty (30) calendar days of the quarterly reporting period stated under the section below titled "Contract Usage Reporting Requirements". The Supplier shall list this Contract number and identify the reporting year and

quarter (for example, ITSW11754th Qtr. 2014) on the check stub of each administrative fee paid hereunder.

The check shall be mailed to:
Oklahoma Office of Management and Enterprise Services
Accounts Receivable
5005 North Lincoln Boulevard
Oklahoma City, Oklahoma 73118-8500
Attention: CFO

XXXIX. Information Technology Provisions

The parties further agree to the following terms, as applicable, for any Acquisition of information technology or telecommunication Products or Services:

A. Termination of Maintenance and Support Services

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

- i. Customer removes the Product for which the Services are provided, from productive use or;
- ii. The location at which the Services are provided is no longer controlled by Customer (for example, because of sale or closing of the facility).

If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fees, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license.

B. Compliance and Electronic and Information Technology Accessibility

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

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

C. Media Ownership (Disk Drive and/or Memory Chip Ownership)

- i. Any disk drives and memory cards purchased with or included for use in leased or purchased Products under the Contract remain the property of the State or Customer, as applicable.
- ii. Personal information may be retained within electronic media devices and components; therefore, the State shall not allow the release of electronic media either between Customers or for the resale of refurbished equipment that has been in use by a Customer, by the Vendor to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Vendor, its agents or subcontractors during the downtime (repair) of Products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

D. Offshore Services

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally, for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State.

E. High Technology System Performance and Upgrades

- i. Pursuant to 62 O.S. § 34.12.1, if an Acquisition pursuant to the Contract includes a "high technology system" as defined at 62 O.S. 34.11.1(O) the Vendor shall provide documentation of the projected schedule of recommended or required system upgrades or improvements to such system for the three (3) year period following the purchase date. If Vendor does not plan such system upgrades or improvements, the Vendor shall provide documentation that no system upgrades or improvements to the high technology system are planned for the three (3) year period following the purchase date.
- ii. Any Acquisition pursuant to the Contract of an upgrade or enhancement to a high technology system shall be conditioned upon one of the following: the Acquisition being provided at no charge to the State; the Acquisition being provided to the State at no additional charge pursuant to a previous agreement with the Vendor; the Vendor providing documentation that any required or recommended upgrade will enhance or is necessary for performance of the applicable State agency duties and responsibilities; or the Vendor providing documentation that it will no longer

supply maintenance assistance to the applicable State agency and the applicable State agency documenting that the functions performed by the high technology system are necessary for performance of the State agency duties and responsibilities.

F. Emerging Technologies

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

G. Source Code Escrow

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


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

Signature Block

IN WITNESS WHEREOF, each person executing this Contract below represents that he or she is authorized to enter into this Contract on behalf of such party and each party expressly agrees to the terms and conditions of this Contract.

VENDOR:

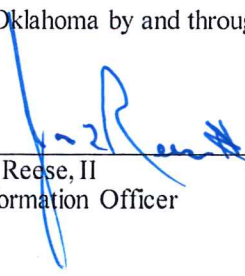
MY Consulting Group


Amber Mitchell
President

11-23-18
Date

STATE:

State of Oklahoma by and through the Office of Management and Enterprise Services


James L. Reese, II
Chief Information Officer

11/27/18
Date