

**OKLAHOMA CONTRACT
FOR PRODUCTS AND RELATED SERVICES**

DATA MANAGEMENT, INC.

This Oklahoma Contract for Products and Related Services (this “Agreement”) is entered into by and between the State of Oklahoma by and through the Office of Management and Enterprise Services (the “State of Oklahoma” or “Oklahoma”) and Data Management, Inc. (“Contractor” or “Vendor”), effective as of September 1, 2019. Oklahoma and Contractor are sometimes collectively referred to herein as the “Parties.”

RECITALS

- A. Oklahoma and the Texas Department of Information Resources (“DIR”) have entered into that certain Interlocal Procurement Participation Agreement, dated February 7, 2019, (the “IPPA”).
- B. Pursuant to the IPPA, certain DIR cooperative contracts may be utilized for procurement transactions of State of Oklahoma agencies and affiliates (each a “Customer”).
- C. DIR and Contractor entered into that certain Contract for Products and Related Services, a DIR cooperative contract also known as DIR Contract No. DIR-TSO-3867 (as amended from time to time, and, for the avoidance of doubt, inclusive of all Appendices thereto, the “DIR Contract”).
- D. Oklahoma desires to procure, purchase, or lease, as the case may be, from Contractor, and Contractor desires to provide, sell, or lease, as the case may be, to Oklahoma, certain products and services under the DIR Contract, each on a non-exclusive basis.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Scope.

The DIR Contract is incorporated herein by reference and made a part hereof. In connection with such incorporation by reference, the term “Contract” in the DIR Contract shall be interpreted to mean this Agreement unless the context clearly dictates otherwise. The Parties agree to modify the terms and conditions of the DIR Contract as set forth in the sections that follow (such modifications shall apply only to procurement transactions of Oklahoma Customers under the IPPA and do not apply to DIR or DIR Customers other than State of Oklahoma state agencies and affiliates) and incorporate Attachment A, titled Master SaaS Agreement; Attachment B, titled Hardware Maintenance Repair Plan; and Attachment C, titled

Hosting Agreement, attached hereto. With respect to Oklahoma Customers, references to DIR Contract No. DIR-TSO-3867 in any and all contract documents shall mean DIR Contract No. DIR-TSO-3867 as modified.

2. DIR Contract, Section 6. Notification, is hereby modified to add the following:

If sent to the State of Oklahoma:

James L. Reese, II
Chief Information Officer
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

With a copy to:

OMES-IS Deputy General Counsel
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

3. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts are as follows:

a. Section 3, Definitions, A. Customer is hereby replaced in its entirety with the following provision:

The defined term “Customer” shall include the State of Oklahoma and 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 in 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.

b. Section 3, Definitions, is hereby modified to add the following provision:

Acquisition - Items, products, 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.

c. Section 4, General Provisions, A. Entire Agreement is hereby replaced in its entirety with the following:

The Agreement, any Statement of Work issued pursuant to this Agreement, and the DIR Contract, including all Appendices and Exhibits, as modified and/or adopted into the Agreement, constitute the entire agreement between an Oklahoma Customer and Contractor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not

contained in the Agreement, any Statement of Work issued pursuant to the Agreement or the DIR Contract as modified and/or adopted into the Agreement, Appendices, or its Exhibits shall be binding or valid.

d. Section 4, General Provisions, B. Modification of Contract Terms and/or Amendments is hereby replaced in its entirety with the following:

1) The terms and conditions of the Agreement shall govern all transactions by Customers under the Agreement. The Agreement may only be modified or amended upon mutual written agreement of Vendor and the State of Oklahoma.

2) Customers shall not have the authority to modify the terms of the Agreement; however, additional Customer terms and conditions that do not conflict with the Agreement and are acceptable to Vendor may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Agreement. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Agreement, the Agreement term shall control.

3) Customers and vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Agreement with Vendor.

e. Section 4, General Provisions, C. Invalid Term or Condition is hereby replaced in its entirety with the following provisions:

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

2) If one or more term or condition in the Agreement, or application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of a court of competent jurisdiction with respect to procurement transactions for Customers, the remainder of the Agreement and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

f. Section 4, General Provisions, D. Assignment is hereby replaced in its entirety with the following provisions:

Vendor's obligations under the Agreement may not be assigned or transferred to any other person or entity without the prior written consent of the State of Oklahoma which may be withheld at Oklahoma's sole discretion. Should Vendor assign its rights to payment, in whole or in part, under the Agreement, Vendor shall provide the State of Oklahoma and all affected Customers with written notice of the assignment. Such written notice shall contain details sufficient for the State of Oklahoma and affected Customers to perform its payment obligations without any delay caused by the assignment.

g. Section 4, General Provisions, F. Choice of Law is hereby replaced in its entirety with the following provision:

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

Venue for any action, claim, dispute, or litigation relating in any way to the execution, interpretation, performance, or enforcement of the Agreement, shall be in Oklahoma County, Oklahoma.

h. Section 4, General Provisions, G. Limitation of Authority is hereby replaced in its entirety with the following provision:

Vendor shall have no authority to act for or on behalf of Customers or the State of Oklahoma, except as expressly provided for in this Agreement; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Customers or the State of Oklahoma.

i. Section 6, Product Terms and Conditions is hereby replaced in its entirety with the following provision:

Oklahoma Information Technology Accessibility Standards

Vendor shall comply with federal and state laws, rules and regulations related to information technology accessibility, as applicable to Vendor as the provider of information technology products and services under the Agreement, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at http://www.ok.gov/cio/documents/isd_itas.pdf. If products furnished by Vendor do not require additional development or customization, Contractor shall, upon request, but not later than thirty (30) calendar days after the State of Oklahoma's request, provide a Voluntary Product Accessibility Template ("VPAT") describing such compliance, which may be provided via a URL linking to the VPAT. If the products will require development or customization, the Vendor shall provide a VPAT describing such compliance without additional request by the applicable Oklahoma Customer. In such case,

additional requirements and documentation may be required and compliance therewith shall be required of Vendor. Such requirements may be stated in appropriate documents, including, but not limited to, state bids, requests for proposals, statements of work, riders, agreements, purchase orders and amendments. Accordingly, in each statement of work or similar document issued pursuant to this Agreement, Vendor shall describe such compliance and identify, if and as applicable, (i) which exception to the Standards applies or (ii) a description of the tasks and estimated cost to make the proposed products and/or services compliant with applicable Standards.

Vendor acknowledges and agrees that all representations contained in the VPAT provided by the Vendor will be relied upon by the Oklahoma Customer for accessibility-compliance purposes.

- j. Section 7, Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information, shall be deleted in its entirety.**
- k. Section 7, Contract Fulfillment and Promotion, F. DIR Logo, is hereby modified to add the following provision:**

The utilization of this Agreement by Oklahoma Customer is not in any way an endorsement by the Oklahoma Customer of Vendor or the products or services and shall not be so construed by Vendor in any advertising or publicity materials. Vendor agrees to submit to the Oklahoma Customer all advertising, sales promotion, and other publicity matters relating to this Agreement wherein the Oklahoma Customer's name is mentioned or language used from which the connection of the Oklahoma Customer's name therewith may, in the Oklahoma Customer's sole 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 concerning this Agreement without obtaining the prior written approval of the Oklahoma Customer.
- l. Section 7, Contract Fulfillment and Promotion, G. Vendor and Order Fulfiler Logo, references to the “DIR” are hereby replaced with “the State of Oklahoma and Oklahoma Customers”.**
- m. Section 7, Contract Fulfillment and Promotion, H. Trade Show Participation, references to the “DIR” are hereby replaced with “the State of Oklahoma and Oklahoma Customers”.**
- n. Section 7, Contract Fulfillment and Promotion, I. Orientation Meeting, is hereby deleted in its entirety.**
- o. Section 7, Contract Fulfillment and Promotion, J. Performance Review Meetings is hereby modified to add the following provision:**

The State of Oklahoma reserves the right, but shall have no obligation, to require the Vendor to attend periodic meetings to review the Vendor's performance under the Agreement with respect to Oklahoma transactions. Upon request by a Customer, Vendor shall provide such Customer with a detailed report of a representative sample of products sold or leased under the Contract to Oklahoma Customers.

p. Section 7, Contract Fulfillment and Promotion, K. DIR Cost Avoidance, references to the "DIR" are hereby replaced with "the State of Oklahoma".

q. Section 8, Pricing, Purchase Orders, Invoices, and Payments, E. Tax-Exempt is hereby replaced in its entirety with the following:

Pursuant to Section 6.A. of the Oklahoma Constitution and 68 O.S. §§ 1404, 1352, and 1356, Customers under this Agreement 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, 26 U.S.C. Sections 4253(i). Customers will provide Contractor with a tax exemption certificate upon request.

r. Section 8, Pricing, Purchase Orders, Invoices, and Payments, F. Travel Expense Reimbursement is hereby deleted in its entirety.

s. Section 8, Pricing, Purchase Orders, Invoices, and Payments, H. Purchase Orders is hereby modified to delete the second paragraph in its entirety.

t. Section 8, Pricing, Purchase Orders, Invoices, and Payments, I. Invoices, the section is modified to delete references to compliance with Chapter 2251, Texas Government Code.

u. Section 8, Pricing, Purchase Orders, Invoices, and Payments, J. Payments is hereby replaced in its entirety with the following:

As applicable, the parties shall comply with applicable Oklahoma law in invoicing and making payments. Payments for goods and services are due thirty (30) days after receipt of a proper invoice; however, Vendor agrees that payment received in accordance with applicable Oklahoma law allowing forty-five (45) days shall not constitute default hereunder nor entitle Vendor to late payment fees or interest. Any applicable late fees or interest incurred after forty-five (45) days of nonpayment shall be paid only in accordance with Oklahoma law. Payment made under the Agreement shall not foreclose the right to recover wrongful payments.

v. Section 9, Contract Administration, B. Reporting and Administrative Fees, is hereby replaced in its entirety with the following:

For Oklahoma Customers, Vendor agrees to submit a Contract Usage Report to the State of Oklahoma on a quarterly basis. Each “Contract Usage Report” shall include the following: (i) the applicable state contract number, (ii) report amount(s), (iii) reporting period covered, and (iv) the applicable state agency name(s). Contract Usage Reports shall also include usage of the Agreement by any other governmental entities (i.e. county, city, etc.). Continuous failure to submit Contract Usage Reports as required herein may result in termination of the Agreement with respect to Oklahoma Customers.

All Contract Usage Reports shall meet the following criteria:

- a) Must be submitted electronically in Microsoft Excel format.
- b) Reports shall be submitted quarterly, regardless of whether this Contract has been used during the applicable quarterly reporting period.
- c) Must be submitted within forty five (45) calendar days of the end of each quarterly reporting period.
- d) Quarterly reporting periods shall be as follows:
 - January 01 through March 31 – State of Oklahoma Quarter 3
 - April 01 through June 30 – State of Oklahoma Quarter 4
 - July 01 through September 30 – State of Oklahoma Quarter 1
 - October 01 through December 31 – State of Oklahoma Quarter 2

All Contract Usage Reports shall be delivered electronically (format: .xls) to:
E-mail: strategic.sourcing@omes.ok.gov

- w. **Section 9, Contract Administration, C. Records and Audit, is hereby modified to reflect that references to “State Auditor’s Office” shall mean and refer to the Oklahoma State Auditor’s Office and the fourth sentence of subsection 1) is hereby replaced in its entirety with the following:**

A Vendor that is the subject of an audit or investigation by the State of Oklahoma’s Auditor’s Office must provide the Auditor’s Office with access to any invoice, statement of work, or purchase order records or other such information the Auditor’s Office considers relevant to the investigation or audit. The records may be provided electronically, and the state agrees that in absence of fraud, the state may audit no more than once per year.

- x. **Section 9, Contract Administration, C. Records and Audit, subsection 2) is hereby replaced in its entirety with the following:**

As used in this clause, “records” includes an invoice, statement of work, purchase order records or such other documents related to this Agreement and kept by Contractor in the ordinary course of business, regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with an Oklahoma Customer, Vendor agrees any pertinent state or federal agency shall have the right to examine and audit all such records relevant to execution and performance of this Agreement.

Vendor is required to retain records relative to this Agreement and kept in the ordinary course of business for the duration of this Agreement and for a period of seven (7) years following completion and/or termination of this Agreement. If an 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 related to or arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

- y. **Section 9, Contract Administration, C. Records and Audit, subsection 3) is hereby modified to reflect that any and all references to “DIR” shall mean and refer to the “State of Oklahoma”**
- z. **Section 9, Contract Administration, C. Records and Audit, subsection 4) is hereby deleted in its entirety.**
- aa. **Section 10, Vendor Responsibilities, A. Indemnification, 1) INDEPENDENT CONTRACTOR is hereby modified to reflect that references to the “State of Texas” shall mean and refer to the “State of Oklahoma”.**
- bb. **Section 10, Vendor Responsibilities, A. Indemnification, 2) ACTS OR OMISSIONS is hereby modified to replace the second sentence of the paragraph with the following provision:**

IN CONNECTION WITH INDEMNIFICATION OF A CUSTOMER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA. THE ATTORNEY GENERAL OF OKLAHOMA MAY, BUT HAS NO OBLIGATION TO, AUTHORIZE CONTRACTOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS; PROVIDED, HOWEVER, THAT, IN SUCH EVENT, VENDOR SHALL NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING A CONCURRENCE FROM THE ATTORNEY GENERAL OF OKLAHOMA. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS FOR VENDOR, VENDOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, VENDOR SHALL, AT ALL TIMES, HAVE AN OBLIGATION TO INDEMNIFY THE CUSTOMER IN ACCORDANCE WITH AND TO THE EXTENT VENDOR PROVIDES SUCH INDEMNIFICATION IN THIS CONTRACT.

- cc. Section 10, Vendor Responsibilities, A. Indemnification, 3) INFRINGEMENTS a) the second, third, and fourth sentence in this provision are hereby replaced in their entirety with the following provision:**

IN CONNECTION WITH INDEMNIFICATION OF A CUSTOMER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA. THE ATTORNEY GENERAL OF OKLAHOMA MAY, BUT HAS NO OBLIGATION TO, AUTHORIZE CONTRACTOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS; PROVIDED, HOWEVER, THAT, IN SUCH EVENT, VENDOR SHALL NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING A CONCURRENCE FROM THE ATTORNEY GENERAL OF OKLAHOMA. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS FOR VENDOR, VENDOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, VENDOR SHALL, AT ALL TIMES, HAVE AN OBLIGATION TO INDEMNIFY THE CUSTOMER IN ACCORDANCE WITH AND TO THE EXTENT VENDOR PROVIDES SUCH INDEMNIFICATION IN THIS CONTRACT.

- dd. Section 10, Vendor Responsibilities, B. Taxes/Worker's Compensation/ UNEMPLOYMENT INSURANCE, subsection 2) the third and fourth sentence are hereby replaced in their entirety with the following provision:**

IN CONNECTION WITH INDEMNIFICATION OF A CUSTOMER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA. THE ATTORNEY GENERAL OF OKLAHOMA MAY, BUT HAS NO OBLIGATION TO, AUTHORIZE CONTRACTOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS; PROVIDED, HOWEVER, THAT, IN SUCH EVENT, VENDOR SHALL NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING A CONCURRENCE FROM THE ATTORNEY GENERAL OF OKLAHOMA. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS FOR VENDOR, VENDOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, VENDOR SHALL, AT ALL TIMES, HAVE AN OBLIGATION TO INDEMNIFY THE CUSTOMER IN

ACCORDANCE WITH AND TO THE EXTENT VENDOR PROVIDES SUCH INDEMNIFICATION IN THIS CONTRACT.

ee. Section 10, Vendor Responsibilities, C. Vendor Certifications is hereby modified to add the following provision:

For Oklahoma-based transactions and Customers, in connection with its performance of obligations under the terms of the Contract, Vendor shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, that are, by their terms, expressly applicable to Vendor's delivery of products and/or services under the Contract and impose obligations upon Vendor in its role as an information technology products and services provider, including, but not limited to, the following:

- a) Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;
- b) Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;
- c) Title VII of the 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; and
- d) Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93.

Without limiting the generality of the foregoing, Vendor shall, at all times during the term of this Contract, be registered as a business entity licensed to do business in the State of Oklahoma, have obtained and shall maintain a sales tax permit in the State of Oklahoma, and shall be current on all franchise- and/or other business-tax payments to the State of Oklahoma, as applicable.

ff. Section 10, Vendor Responsibilities, D. Ability to Conduct Business in Texas is hereby replaced in its entirety with the following:

Vendor and its subcontractors shall be authorized and validly existing under the laws of their state of organization, and shall be authorized to do business in the State of Oklahoma.

gg. Section 10, Vendor Responsibilities, F. Use of Subcontractors is hereby replaced in its entirety with the following:

If the Vendor is permitted to utilize subcontractors in support of the Agreement, the Vendor shall remain solely responsible for its obligations under the terms of the Agreement 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.

All payments under the Contract shall be made directly to the Vendor. No payment shall be made to the Vendor for performance by unapproved or disapproved employees of the Vendor or a subcontractor.

hh. Section 10, Vendor Responsibilities, H. Confidentiality is hereby replaced in its entirety with the following:

1) Vendor acknowledges that Oklahoma state agency and certain affiliate 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 such Act.

2) Under the terms of this Agreement, the State of Oklahoma may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

ii. Section 10, Vendor Responsibilities, K. Limitation of Liability is hereby modified to reflect that references to the “State” shall mean and refer to the “State of Oklahoma”.

jj. Section 10, Vendor Responsibilities, O. Use of State Property is hereby modified to reflect that references to the “State” and “DIR” shall mean and refer to the “State of Oklahoma”.

kk. Section 10, Vendor Responsibilities, Q. Public Disclosure is hereby replaced in its entirety with the following:

No public disclosures or news releases pertaining to this Agreement shall be made without prior with approval of the State of Oklahoma.

ll. Section 10, Vendor Responsibilities, R. Product and/or Services Substitutions is hereby replaced in its entirety with the following:

Substitutions are not permitted without the written permission of Oklahoma Customer.

mm. Section 10, Vendor Responsibilities, V. Accessibility of Public Information is hereby deleted in its entirety.

nn. Section 11, Contract Enforcement, A. Enforcement of Contract and Dispute Resolution is hereby replaced in its entirety with the following:

A party's failure to require strict performance of any provision of the Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision.

oo. Section 11, Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation, subsection a) Termination for Non-Appropriation by Customer, the first sentence is hereby replaced in its entirety with the following:

Customer may terminate any Purchase Order if funds sufficient to pay its obligations under the Agreement are not appropriated by the applicable state legislature, federal government or other appropriate government entity or received from an intended third-party funding source.

pp. Section 11, Contract Enforcement, B. Termination, 3) Termination for Convenience is hereby modified to reflect that reference to the "DIR" shall mean and refer to the "State of Oklahoma".

qq. Section 11, Contract Enforcement, B. Termination, 4) Termination for Cause, subsection b) Purchase Order, is hereby modified to reflect that references to the "DIR" shall mean and refer to the "State of Oklahoma" and to delete all references to compliance with Chapter 2260, Texas Government.

rr. Section 11, Contract Enforcement, B. Termination, 5) Immediate Termination or Suspension, is hereby modified to reflect that references to the "DIR" shall mean and refer to the "State of Oklahoma".

4. Appendix B, Historically Underutilized Business (HUB) Subcontracting Plan is hereby deleted in its entirety.

5. No amendment is effective unless signed by both parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below intending it to become effective on the Effective Date and thereby agreeing to its terms.

DATA MANAGEMENT, INC.

Derek L McIntyre
Signature

Derek L
McIntyre

Digitally signed by
Derek L McIntyre
Date: 2019.09.12
13:44:18 -05'00'

Derek L McIntyre

Name (please print)

COO

Title

1 Time Clock Drive, San Angelo, TX 76904

Address

September 12, 2019

Date

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

James Reese II
Signature

James Reese II

Name (please print)

Chief Information Officer

Title

3115 N. Lincoln Blvd, Oklahoma City, OK 73105

Address

9-24-19

Date

**ATTACHMENT A TO THE OKLAHOMA STATEWIDE CONTRACT (“SW1114”)
WITH DATA MANAGEMENT, INC.**

**TimeClock Plus OnDemand
Master SaaS Agreement**

WHEREAS, DMI and Client desire to enter into this Agreement for the provision of hosted services by DMI to Client, as provided herein.

NOW, THEREFORE, in reliance on the mutual covenants and promises, representations and agreements set forth herein, the parties agree as follows:

1. Definitions.

1.1 “Affiliate” means with respect to Client, any parent or subsidiary corporation, and any corporation or other business entity controlling, controlled by or under common control with Client.

1.2 “DMI Technology” means the computer hardware, software and other tangible equipment and intangible computer code contained therein used by DMI in the provision of the TCP Services.

1.3 “TCP Services” means the hosted TimeClock Plus software application hosted by DMI in accordance with DMI’s then-current hosting environment and including the ancillary services described in this Agreement.

1.4 “Client Equipment” means the computer hardware, software and other tangible equipment and intangible computer code employed by Client in its use of the TCP Services.

1.5 “Client Data” means Client’s information or other data processed, stored or transmitted by, in or through the TCP Services.

1.6 “Designated Users” means the number of identifiable unique persons who are authorized by Client at any one time to use the TCP Services as set forth in the Order Form.

1.7 “Use Fees” means the fees set forth on the applicable Order Form or Invoice.

1.8 “Internet Data Center(s)” means any of the facilities used by DMI to provide the TCP Services.

1.9 “Maintenance And Support Services” means the services and related terms and conditions as provided in the Maintenance And Support Terms attached as Exhibit A.

1.10 “Order Form” means a written document mutually agreed upon and executed by the parties for ordering products and/or services, and which expressly incorporates the terms of this Agreement.

1.11 “Term” means the meaning set forth in DIR-TSO-3448.

1.12 “Unsecured Client Data” means Client Data that has not been rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of at least 128 bit encryption technology.

1.13 “Employee” means Client’s individual employee, worker, consultant, substitute or contractor.

1.14 "Active Employee" means a Client Employee that has not been marked as either terminated or suspended within the TimeClock Plus OnDemand system for whom Customer is required to pay a fee under this Agreement.

1.15 "Monthly Employee Fee" means DMI's then current fee for each of Client's Employees to access and use the Services, measured over the course of each calendar month, no matter the term of this Agreement.

1.16 "Personal Data" means any information that can be used to identify, locate or contact an Employee or User.

1.17 "Subprocessor" mean any third party processor engaged by DMI for the purposes of processing Personal Data.

1.18 "Hardware Support and Maintenance Agreement" means any agreement that extends services to current TimeClock Plus terminals, clocks, and biometric devices, and maintenance releases for related products purchased or licensed by the Customer from DMI or a registered reseller.

1.19 "Supported Hardware" means any hardware purchased from DMI that is coverable under a DMI Support and Maintenance Agreement.

2. Provision of Services. Subject to the other terms and conditions of this Agreement and DMI's Global Data Privacy Policy, DMI grants to Client and its Affiliates only for their Designated Users a nonexclusive right and subscription license and to access and use the TCP Services during the Term only for internal business purposes of processing, storing and maintaining Client Data. DMI shall provide Customer and its authorized Employees and Users the TCP Services during the Term in accordance with the terms and conditions of this Agreement.

2.1 Client's Responsibilities. Client agrees to act as the Data Controller, and appoint DMI as Data Processor, of information entered by its authorized Employees and Users. Client agrees to impose similar data protection-related terms that will not be less protective than those imposed on DMI by this Agreement and the Global Data Privacy Policy.

2.2 Subprocessors. DMI has appointed third party data Subprocessors for the purposes of providing hosting and security services. These Subprocessors may process Personal Data in accordance with the terms of this agreement, SW1114, and the Global Data Privacy Policy. The Subprocessor agreements impose similar data protection-related processing terms on the third party Subprocessor that are not less protective than those imposed on DMI in this Agreement and the DMI Privacy Code for Client Data Processing Services. DMI has published an overview of the categories of Subprocessors involved in the performance of the relevant Services which can be found at www.timeclockplus.com/privacy.aspx.

3. Security. As part of the TCP Services, DMI shall implement reasonable security procedures consistent with industry best standards to protect Client Data from unauthorized access, including without limitation (i) 128-bit encryption of data at rest within DMI's servers, movable computing devices, and data communications, (ii) firewalls, (iii) virus detection and anti-virus software, (iv) authentication techniques, such as user names and passwords, or authorization formats, which limit access to particular users; and (v) additional security controls consistent with SOC 2 Type II reporting standards (the "Security Standard"). In addition, DMI shall not host or archive Client Data outside the United States.

4. Breaches of Security. DMI shall implement reasonable and appropriate security procedures consistent with prevailing industry standards and applicable data protection laws to protect Client Data from unauthorized access by physical and electronic intrusion. DMI will

promptly report to Client any unauthorized access to Client Data upon discovery and in accordance with applicable data breach notification laws. DMI will use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access. In the event notification to persons included in such Client Data is required, DMI and DMI's third party breach notification contractor will control all breach notifications.

5. Lost Data; Recovery. DMI shall undertake commercially reasonable efforts to backup Client Data. Client Data backups are made no less than two (2) times per day and restoration will be from the most recent backup. The parties agree, however, that DMI shall not be responsible for (i) the accuracy and adequacy of any Client Data or (ii) for maintaining procedures other than the TCP Services for reconstruction of lost data.

6. Relocation of DMI Supplied Equipment. In the event that DMI deems it necessary to relocate the DMI Technology to another Internet Data Center operated by or for DMI, Client will cooperate in good faith with DMI to facilitate such relocation. The terms of the Global Data Privacy Policy and this Agreement govern the transfer of Personal Data to a third party Subprocessor and DMI shall be solely responsible for any costs and expenses incurred by DMI in connection with any such relocation and will use commercially reasonable efforts, in cooperation with Client, to minimize and avoid any interruption to the TCP Services.

7. Restriction on Use. Client covenants and agrees that its use of the TCP Services will be in a manner consistent with this Agreement and with all applicable laws and regulations, including trade secret, copyright, trademark, data protection, and export control laws. Without limiting the generality of the foregoing, Client shall not knowingly, nor shall it knowingly permit or assist others, to:

- 7.1 abuse or fraudulently use the TCP Services;
- 7.2 obtain or attempt to obtain TCP Services by any fraudulent means or device with intent to avoid paying the Use Fees;
- 7.3 allow access to the TCP Services other than by the Designated Users;
- 7.4 permit any third party that is not an Affiliate to use or access the TCP Services;
- 7.5 process or permit to be processed the data of any third party that is not an Affiliate;
- 7.6 fail to implement data protection policies in accordance with applicable data protection laws;
- 7.7 attempt to copy, reverse-engineer, decompile, disassemble, create a derivative work from, or otherwise attempt to derive the source codes of any part of the DMI Technology; or
- 7.8 access, alter, or destroy any information of another customer of DMI by any fraudulent means or device, or attempt to do so.

8. Clause Intentionally Removed

9. Data Protection. DMI has adopted the provisions contained in the Global Data Privacy Policy for the processing of Client Employee Personal Data in accordance with GDPR and other applicable data protection laws.

9.1 Instructions. DMI will process certain categories and types of Personal Data only upon Client's instructions and in accordance with applicable data protection laws (e.g. GDPR). Client is responsible for ensuring that all Users who provide instructions are authorized to do so and agrees

that DMI will only perform processing activities that are necessary and relevant to provide the Services.

9.2 Requests. Client will have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which it was obtained. Client agrees to adopt a balanced and reasonable policy for managing Subject Access Requests (SARs) and 3rd party disclosures which safeguard the rights of all data subjects and respects the original purpose of the data collection. Client, as Data Controller, will be responsible for receiving, investigating, documenting, and responding to all User and Employee requests for inspection or erasure of Personal Data.

9.3 Assistance. Should Client request DMI's assistance for certain data requests, DMI shall assist the Client by providing the necessary information and documentation. DMI shall be given reasonable time to assist the Client with such requests in accordance with the applicable law.

9.4 Confidentiality. DMI shall treat all Personal Data and Customer Data, as defined in the Attachment C, Hosting Agreement, as strictly confidential information that may not be copied, transferred, or otherwise processed without the instruction of the Client. Transfer of Personal Data to another data controller or data processor (e.g. HRIS or Payroll application) is at the sole discretion of the Client and shall comply with applicable data protection laws.

9.5 Client Acknowledgement. Client acknowledges that DMI may not know the applicable data protection rights of any given employee and agrees to act in accordance with applicable data protection laws when providing instructions for the processing of Personal Data. Nothing in this Agreement relieves DMI of its own direct responsibilities and liabilities under the applicable data protection laws.

Further information about DMI's use of data and data retention policies can be found in the Global Data Privacy Policy at: www.timeclockplus.com/privacy.aspx.

10. Supplemental Services; Master Agreement.

10.1 DMI may provide to Client supplemental services in accordance with a Statement of Work and a separate services agreement.

10.2 Client may elect to purchase additional products and services via Order Forms, executed by both parties, from time to time. The parties agree that this Agreement is a contract document in connection with SW1114 and that additional transactions will be governed by the terms and conditions hereof.

11. Use Fees.

11.1 In consideration for the performance of the TCP Services, Client shall pay DMI the Use Fees. During the Term, Client will be billed in advance an amount equal to the annual charges as indicated in the applicable Order Form. All applicable and agreeable charges for TCP Services received and expenses incurred during a month will be billed at the end of the month in which the TCP Services were provided. Payment by Client for all fees is due upon receipt of each DMI invoice, and in no event shall payment be received by DMI later than forty-five (45) days after the invoice date. All payments will be made to DMI at its offices in San Angelo, Texas, in U.S. dollars.

11.2 Subsequent to the initial term specified in the applicable Order Form, DMI may increase the Use Fees at any time effective thirty (30) days after providing notice to Client; provided, however, that any such increase will not occur more than once in a consecutive twelve (12) month period and such increase shall not exceed the lower of either a three (3)% increase or the current CPI.

11.3 TCP Services charges will be equal to the number of total Employees multiplied by the Monthly Employee Fee. Client is responsible for Monthly Employee Fees for the total number of Active Employees who are made active during any calendar month. Client may add additional Employees as desired each month, by paying the Monthly Employee Fees on the next billing cycle.

11.4 Employees added at any time during a calendar month will be charged a prorated amount for the remainder of that billing period. Because you are billed in advance for Services, if Client increases their Active Employee count during a calendar month, Client's next statement and charges will reflect the increased employee count with overage charges incurred from the previous month and prorated over the number of months remaining in the term.

11.5 Hardware Support and Maintenance charges will be equal to the percentage set forth in the applicable Hardware Support and Maintenance Agreement multiplied by the total purchase price of the Supported Hardware.

13. Clause Intentionally Removed

14. Clause Intentionally Removed

15. Clause Intentionally Removed

16. Clause Intentionally Removed

17. Transition Services. Except for termination by DMI for voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, upon receipt by DMI of Client's final payment for TCP Services, for a period of time not to exceed six (6) months following DMI's receipt of such final payment (the "Termination Assistance Period"), DMI will provide the TCP Services and any and all assistance reasonably requested by Client to allow the TCP Services to continue without interruption or adverse effect. In accordance with the Personal Data transfer provision contained in the Global Data Privacy Policy and this Agreement DMI shall provide Client Data to Client in a SQL database file format; provided, however that the fees for the creation and delivery of the Client Data database shall be capped at 1/12th of the annual Use Fees per month. During the Termination Assistance Period, Client shall continue to pay DMI fees equivalent to the then-current Use Fees, such fees to be pro-rated and payable on a monthly basis.

18. Section Reserved.

19. Confidential Information.

19.1 By virtue of the Agreement, Client may be exposed to or be provided with certain confidential and proprietary information of the DMI. DMI shall clearly mark any such information as confidential. ("Confidential Information"). Client is a state agency and subject to the Oklahoma Open Records Act and DMI acknowledges information marked Confidential Information will be disclosed to the extent permitted under Client's Open Records Act and in accordance with this section. Client agrees to use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Client will not use DMI'S Confidential Information for purposes other than those necessary to directly further the purposes of the Agreement.

Exceptions. Information shall not be considered Confidential Information to the extent such information (i) is or becomes generally known or available to the public through no fault of the Client; (ii) was in the Client's possession before receipt from the DMI; (iii) is lawfully obtained from a third party who has the right to make such disclosure; or (iv) has been independently developed by Client reference to any Confidential Information..

Compelled Disclosure. In the event that Client is requested or required by legal or regulatory authority to disclose any Confidential Information, Client shall promptly notify the DMI of such request or requirement so that the DMI may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, Client agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand.

19.2 Client Data. The Client will be responsible for the accuracy and completeness of all Client Data provided to DMI. Client Data shall mean all data supplied by the Client in connection with the Contract. The Client shall retain exclusive ownership of all Client Data and such Client Data shall be deemed to be the Client's Confidential Information, as set forth in the Contract. DMI shall restrict access to Client Data to Client's employees and agents as necessary to perform the Services, and to DMI and its employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein). DMI will protect the Client Data from unauthorized dissemination and use with the same degree of care that it uses to protect its own Confidential Information and, in any event, will use no less than a reasonable degree of care in protecting Client Data. DMI shall promptly notify the Client upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Client Data or Client's use of the [hosted environment]. DMI shall notify the Client at the contact set forth [notification section] herein by the fastest means available and also in writing. In no event shall DMI provide such notification more than 24 hours after DMI receives the request. Except to the extent required by law, DMI shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Client without first notifying the Client and obtaining the Client's prior approval, which shall not be unreasonably withheld, of [vendor's] proposed responses. DMI agrees to provide its completed responses to the Client with adequate time for Client review, revision and approval.

20. Clause Intentionally Removed

21. Intellectual Property Ownership. Notwithstanding anything to the contrary this Agreement does not transfer from DMI to Client any ownership interest in the DMI Technology. The intellectual property rights embodied in the DMI Technology shall remain in and be the sole and exclusive property of DMI and its licensors. This Agreement does not transfer from Client to DMI any ownership interest in Client Data.

22. Client Representations and Warranties.

22.1 Client acknowledges that DMI, as Data Processor, exercises no control whatsoever over the content of the information passing through the TCP Services and that it is the sole responsibility of Client to ensure that the information it and its Users transmit and receive thereby complies with all applicable laws and regulations, whether now in existence or hereafter enacted and in force.

22.2 In the event of any breach of any of the foregoing representations or warranties in this Section 22, in addition to any other remedies available at law or in equity, DMI will have the right to suspend immediately any TCP Services if deemed reasonably necessary by DMI to prevent any harm to DMI and its business. DMI will provide notice to Client and an opportunity to cure, if practicable, depending on the nature of the breach. Once cured, DMI will promptly restore the TCP Services.

23. DMI Representations and Warranties. DMI represents and warrants that (i) it has the legal right to enter into this Agreement and perform its obligations hereunder, and (ii) the performance of its obligations and delivery of the TCP Services to Client will not violate any applicable laws or regulations of the United States or cause a breach of any agreements between DMI and any third

parties. In the event of a breach of the warranties set forth in this Section 23, Client's sole remedy is termination of this Agreement upon written notice to DMI.

24. Limited Warranty. DMI represents and warrants that the TCP Services will be free of errors and defects that materially affect the performance of the TCP Services ("Limited Warranty"). Client's sole and exclusive remedy for breach of the Limited Warranty shall be the prompt correction of non-conforming TCP Services at DMI's expense or if DMI is unable to correct and the TCP Service is unusable, Client shall be entitled to a refund of the remaining Use Fees.

25. Service Level Agreement. The TCP Services Level Agreement set forth in Exhibit B states Client's sole and exclusive remedy for any performance failure of the TCP Services in terms of levels of service.

26. Warranty Disclaimer. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 24 (LIMITED WARRANTY) and any warranty obligations set forth in SW1114, THE TCP SERVICES ARE PROVIDED BY DMI ON AN "AS IS" BASIS, AND CLIENT'S USE OF THE TCP SERVICES IS AT CLIENT'S OWN RISK. DMI AND ITS SUPPLIERS DO NOT MAKE, AND HEREBY DISCLAIM, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AGAINST HIDDEN DEFECTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. DMI DOES NOT WARRANT THAT THE TCP SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.

NOTHING STATED OR IMPLIED BY DMI WHETHER THROUGH THE TCP SERVICES OR OTHERWISE SHOULD BE CONSIDERED LEGAL COUNSEL. DMI HAS NO RESPONSIBILITY TO NOTIFY CLIENT OF ANY CHANGES IN THE LAW THAT MAY AFFECT USE OF THE TCP SERVICES. ANY ORAL STATEMENT, NOT REDUCED TO WRITING, OR IMPLICATION BY ANY PERSON CONTRADICTING THE RESPONSIBILITIES IN THIS PARAGRAPH IS UNAUTHORIZED AND SHALL NOT BE BINDING ON DMI. CLIENT ACKNOWLEDGES THAT IN ENTERING INTO THIS AGREEMENT, CLIENT HAS RELIED UPON CLIENT'S OWN EXPERIENCE, SKILL AND JUDGMENT TO EVALUATE THE TCP SERVICES AND THAT CLIENT HAS SATISFIED ITSELF AS TO THE SUITABILITY OF SUCH SERVICES TO MEET CLIENT'S REQUIREMENTS.

27. Clause Intentionally Removed

28. Clause Intentionally Removed

29. Liability Cap. Except for claims arising out of the indemnification obligations and the confidentiality, data security and breach notification obligations set forth in the Contract, in no event shall DMI's aggregate liability, if any, including liability arising out of contract, negligence, strict liability in tort or warranty, or otherwise, exceed the sum total any amounts payable by Client for the Use Fees during the twelve-month period immediately preceding the accrual of such liability. Notwithstanding anything to the contrary in the Contract, 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 DMI; the indemnification obligations set forth in this Contract; DMI's confidentiality obligations set forth in this Contract; data security and breach notification obligations set forth in in the Contract; the bad faith, gross negligence or intentional misconduct of DMI or its employees agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.

30. Clause Intentionally Removed

31. Clause Intentionally Removed

32. Continuing Obligations. Those clauses the survival of which is necessary for the interpretation or enforcement of this Agreement shall continue in full force and effect in accordance with their terms notwithstanding the expiration or termination hereof, such clauses to include the following: (i) any and all warranty disclaimers, limitations on or caps of liability and indemnities granted by either party herein, (ii) any covenant granted herein for the purpose of determining ownership of, or protecting intellectual property rights, including without limitation, the Confidential Information of either party, or any remedy for breach thereof, and (iii) the payment of any money to either party hereunder.

EXHIBIT A
MAINTENANCE AND SUPPORT TERMS

These Maintenance And Support Terms are intended to be part of the attached Master SaaS Agreement made and entered into by and between DMI and Client. DMI reserves the right to continuously improve the Maintenance And Support Services and to adapt such services to changes in technology and to DMI's business environment. Solely for these purposes, DMI reserves the right to modify, elaborate, remove or add to some or all of the provisions of these Maintenance And Support Terms at DMI's sole discretion, provided that any such improvement or adaptation shall not result in a diminution of the overall level of service. When reasonable, DMI shall provide advanced written notice to the Client of any such modification, elaboration, removal or addition to these provisions. If advanced notice is not possible, DMI shall provide written notice as soon as reasonably possible. All Support Services will be provided in accordance with applicable data protection laws and the Global Data Privacy Policy which can be found at www.timeclockplus.com/privacy.aspx.

These Maintenance And Support Terms are intended to be part of the attached Master SaaS Agreement made and entered into by and between DMI and Client.

1. Definitions. When used in these Maintenance Services Terms, the following terms will have the meaning set forth in this Section 1. Any capitalized terms not defined in these Maintenance Services Terms are as defined in the Master SaaS Agreement.

1.1 "CSR" means a DMI customer service representative.

1.2 "Error" means a failure of the TCP Services (i) to conform as to all material operational features and performance characteristics as provided in the documentation supplied by DMI and in any applicable Statements of Work for customizations to the TCP Services, and (ii) to be free of errors and defects that materially affect the performance of such features. This definition applies solely to TCP Services that have not been customized. Separate maintenance arrangements are available for customized TCP Services.

1.3 "Error Correction" means a software modification that corrects an Error when it is made or added to the TCP Services.

1.4 "Maintenance And Support Services" means the services described in Section 2 below.

1.5 "New Product" means a product that generates online services which may incorporate some functionality of the TCP Services in addition to one or more of the following changes to a different: (i) programming language, (ii) platform (e.g. .Java to .NET), (iii) style of computing (e.g. client server to web to cloud computing), or (iv) software model of deployment (e.g. local installation to SaaS).

1.6 "Support Term" means the Initial Term and any renewal terms in accordance with Section 14 of the Master SaaS Agreement.

1.7 "Third-Party Products" means any third-party software or hardware appliance product provided by DMI under an Order Form.

1.8 "Update" means TCP Services modifications consisting of Error Corrections, modifications, enhancements or future releases that are distributed generally to users of the same version of the TCP Services. Updates are generally designated by a change in the number to the right of the decimal point (e.g., Version 1.1 to Version 1.2).

1.9 "Upgrade" means a new version of the TCP Services that adds new features and functionality in addition to the original functional characteristics of the TCP Services that is distributed generally to users the TCP Services. Upgrades are generally designated by a change in the version number to the left of the decimal point (e.g., Version 1.1 to Version 2.1).

1.10 "Workaround" means a procedure or routine that eliminates the practical adverse effect of the Error when implemented in the regular operation of the TCP Services.

2. Maintenance And Support Services Description. DMI will provide the services described below in this Section 2 during Support Terms. These services are included in the annual Maintenance And Support Services fee.

2.1 Support Hours And Response Times. DMI will provide Maintenance And Support Services to Client during regular business hours which are 7:00 am to 7:00 pm CST Time, Monday through Friday, excluding company holidays ("Regular Business Hours"). If extended services are required beyond the Regular Business Hours, separate arrangements may be made with DMI in advance for support after Regular Business Hours or during weekends for significant go-live or upgrade events only.

2.2 Support Services. Support Services include:

2.2.1 issue determination services including (i) information gathering and analysis for TCP Services and Third-Party Products, and (ii) identification of Errors;

2.2.2 issue resolution services including (i) reasonable telephone consultation regarding the use and operation of the TCP Services and Third-Party Products that does not rise to the level of training, (ii) configuration changes for the TCP Services and Third-Party Products, (iii) validating that the TCP Services and Third-Party Products operate within documentation supplied by DMI, (iv) installation of stock (as distinguished from custom) templates for reports, documents, and forms for TCP Services and Third-Party Products, and (v) access to DMI's tcpusondemand.com website;

2.2.3 commercially reasonable efforts to cause Third-Party Product suppliers to cure promptly any error or failure of a Third-Party Product to conform the applicable third-party agreement;

2.2.4 repair or replacement of open source software with functionally equivalent software; and

2.2.5 Error Correction services in accordance with the Error Correction Services Table below.

**Error Correction Services Table
(Service Response Targets)**

Problem Severity	Based on the nature of the reported issue and the impact on Client's business operations, the CSR assigns a severity level to the issue. The severity will always be set to a reasonable and realistic level, reserving the Severity Level 1 only for urgent situations. The severity level may change as new information becomes available.
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<p><u>Level 1:</u> <u>Urgent</u></p>	<p><u>Definition:</u> Issues preventing (i) Client from conducting day-to-day business, such as an inoperable production system, a lack of data integrity, data corruption, or data unavailability, or (ii) a go-live deadline. Client is unable to do production work, and no Workaround is available.</p> <p><u>Response:</u> Level 1 issues always take priority above all other issues. A Level 1 issue will immediately be assigned to a CSR, who will contact Client within one hour with an initial response. The CSR will then work without interruption on the issue until a resolution is reached, either in the form of a complete fix, or an interim Workaround solution that will cause the level of urgency to drop to Level 2. During this time, Client must be available should further information be required to resolve the issue. If the CSR is unable to contact Client within a reasonable timeframe, the Level 1 status will be downgraded to Level 2 until Client provides the requested documentation. Note: Level 1 issues must be reported to DMI customer support via telephone, or created via email or Web form with a follow-up phone call to confirm receipt.</p> <p><u>Follow-Up:</u> The CSR will update Client at a minimum of once per hour until the issue has been resolved or downgraded to Level 2.</p>
<p><u>Level 2:</u> <u>High</u></p>	<p><u>Definition:</u> Client is able to do some production work, but a major component of the TCP Services is not functioning properly, and a partial Workaround is available. Or, an issue puts a “go-live” deadline at high risk.</p> <p><u>Response:</u> Level 2 issues take priority over all other issues except Level 1. A Level 2 issue will immediately be assigned to a CSR, who will contact Client within four (4) business hours with an initial response. The CSR will then work without interruption during standard support hours until a resolution is reached, either in the form of a complete fix, or an interim Workaround solution that will cause the level of urgency to drop to Level 3. Note: In order to facilitate a more prompt response, Level 2 issues should only be reported to DMI customer support via telephone, or created via email or Web form with a follow-up phone call to confirm receipt.</p> <p><u>Follow Up:</u> The CSR will provide feedback to Client on a daily basis (or at mutually agreed upon intervals) until the issue has been resolved or downgraded to Level 3.</p>
<p><u>Level 3:</u> <u>Medium</u></p>	<p><u>Definition:</u> The customer is able to do most production work, but has limited functionality in a certain component of the TCP Services, and a reasonable workaround is available.</p> <p><u>Response:</u> The CSR provides an initial response to Client within the one business day, and will work on the issue during standard support hours after higher priority issues have been resolved. The CSR will work on the issue during standard support hours. <u>Follow-Up:</u> The CSR will provide feedback to Client as mutually agreed upon until the issue has been resolved or a more suitable Workaround is identified.</p>
<p><u>Level 4:</u> <u>Low</u></p>	<p><u>Definition:</u> The customer is able to do all production work, but has general questions, enhancement requests, or documentation needs/questions.</p> <p><u>Response:</u> The CSR provides an initial response to Client within two business days, and will work on the issue as time permits.</p> <p><u>Follow-Up:</u> Feedback will be provided to Client at mutually agreed upon intervals.</p>

2.2.6 Notwithstanding the foregoing, DMI will not be obligated to provide Maintenance And Support Services for problems solely arising as a result of abuse, misuse, accident or neglect by Client, or unauthorized modification to the TCP Services by Client (not under DMI's recommendation or instruction) that would materially impact DMI's ability to provide the Maintenance And Support Services until such problems are fixed by Client. In addition, the following services are not covered under Maintenance And Support Services and will be provided only by mutual agreement regarding fees, deliverables, and delivery schedules: (i) support for software or other products that were not purchased from DMI, (ii) customizations for rules, reports, templates, forms, applications, Business Objects Universe, and interfaces, (iii) development or customization of documentation, (iv) troubleshooting for Client owned hardware not provided by DMI, networks, connectivity, or operating systems, (v) installation of Java application servers, (vi) on-site services, (vii) remote or on-site training, (viii) remote administration, (ix) scripting, programming, database design, and web development, (x) data recovery, (xi) consultation regarding the use and operation of the TCP Services and Third-Party Products that rises to the level of training.

2.3 Updates And Upgrades.

2.3.1 DMI will provide Client with all Updates and Upgrades that are commercially released by DMI at no additional charge. Updates and Upgrades will not require any additional software, hardware or technology to operate in conformance with the Specifications, except to the extent specified in writing by DMI. DMI will provide the Updates or Upgrades as soon as they are made available, but in no event later than DMI's providing the Updates or Upgrades to another SaaS licensee or DMI's using the Updates or Upgrades in its normal course of business operation.

2.3.2 DMI will work with Client to establish mutually beneficial Update and Upgrade schedules. If Client chooses to postpone an Update or Upgrade that would correct a particular Error without having a negative impact on the functionality or performance of the TCP Services, then DMI will not be required to correct such Error by another means, and provided, further that Client's non-acceptance of any Update or Upgrade will not affect Client's payment obligations for Use Fees.

Please enter the email address for update or upgrade notices to be sent to:

2.4 Version Limitation. Notwithstanding anything contained herein to the contrary, DMI will provide Maintenance And Support Services for at least the current version and any preceding versions of the TCP Services that have been released by DMI within the last twelve (12) months. If no version has been released within the last eighteen (18) months, DMI will support the immediately preceding version. The foregoing limitation does not apply to reasonable telephone consultation regarding the use and operation of the TCP Services and Third-Party Products that does not rise to the level of training.

2.5 Updates To Maintenance And Support Services. DMI reserves the right to update Maintenance And Support Services for any renewal Support Term for purposes of conforming the scope of Maintenance And Support Services to changes in technology and/or industry practice; provided, however, in no event shall any such update result in a degradation or diminution of Maintenance And Support Services.

3. New Products. New Products are optional and are not included in the annual Maintenance And Support Services fee. New Products will be made available to Client as soon as they are released to other licensees in the normal course. DMI reserves the right to charge a license fee for New Products.

EXHIBIT B SERVICE LEVEL AGREEMENT

This Service Level Agreement is intended to be part of the attached Master SaaS Agreement made and entered into by and between DMI and Client. DMI reserves the right to continuously improve the uptime and performance of its TCP Services and to adapt such services to changes in technology and to DMI's business environment. Solely for these purposes, DMI reserves the right to modify, elaborate, remove or add to some or all of the provisions of this Service Level Agreement at DMI's sole discretion provided that any such improvement or adaptation shall not result in a diminution of the overall level of service. When reasonable, DMI shall provide advanced written notice to the Client of any such modification, elaboration, removal or addition to these provisions. If advanced notice is not possible, DMI shall provide written notice as soon as reasonably possible. This Service Level Agreement shall comply with applicable data protection laws and the Global Data Privacy Policy which can be found at www.timeclockplus.com/privacy.aspx.

1. TCP Services Level Agreement. In the event that Client experiences any of the service performance issues defined in Sections 2.1 and 2.2 as a result of DMI's failure to provide TCP Services, DMI will, upon Client's request in accordance with Section 3, credit Client's account as described below (the "Service Level Agreement"). The Service Level Agreement shall not apply to performance issues (i) caused by factors outside of DMI's reasonable control; (ii) that resulted from any actions or inactions of Client or any third parties; or (iii) that resulted from Client Equipment or third party equipment that is not within the sole control of DMI.

2. Service Level Agreement Definitions. For purposes of this Agreement, the following definitions shall apply only to the TCP Services. References to Section numbers in this Exhibit B shall apply to Sections in Exhibit B, unless expressly provided otherwise.

2.1 "Downtime" shall mean "unplanned" network unavailability within DMI's United States network for thirty (30) consecutive minutes due to the failure of DMI to provide TCP Services for such period. Downtime shall not include any packet loss or network unavailability during DMI's scheduled maintenance of the Internet Data Center(s), network and TCP Services.

2.2 "Performance Problem" shall mean a material deterioration in the performance of the TCP Services excluding any Downtime.

2.3 "Service Credit" shall mean an amount equal to the pro-rata monthly recurring connectivity charges (i.e., all monthly recurring bandwidth-related charges) for one (1) day of TCP Services.

3. Downtime Periods. In the event Client experiences Downtime, Client shall be eligible to receive a one-time Service Credit for each Downtime period; provided, however, that in no event shall Client be entitled to more than two (2) Service Credits for any given calendar day. For example, if Client experiences one (1) Downtime period, then Client shall be eligible to receive one (1) Service Credit; if Client experiences two (2) Downtime periods, whether from a single event or multiple events, then Client shall be eligible to receive two (2) Service Credits.

4. Performance Problem. In the event that DMI discovers or is notified by Client that Client is experiencing a Performance Problem, DMI will take all commercially reasonable actions necessary to determine the source of the Performance Problem.

5. Discovery of Source; Notification of Client. Within four (4) hours of discovering or receiving notice of the Performance Problem, DMI will use commercially reasonable efforts to determine whether the source of the Performance Problem is limited to the DMI Technology or whether the

Performance Problem arises from the Client Equipment or Client's connection to the Internet. If DMI determines that the DMI Technology and Client and DMI connection are not the source of the Performance Problem, then DMI will use commercially reasonable efforts to determine the source of the Performance Problem within an additional four (4) hour period, DMI will notify Client of its findings regarding the source of the Performance Problem promptly after the additional four (4) hour period.

6. Correction. If the source of the Performance Problem is within the sole control of DMI, then DMI will use commercially reasonable efforts to remedy the Performance Problem within four (4) hours of determining the source of the Performance Problem. If the source of and remedy to the Performance Problem reside outside of the sole control of DMI, then DMI will use commercially reasonable efforts to notify the party responsible for the source of the Performance Problem and cooperate with it to resolve such problem as soon as possible.

7. Service Credits for Performance Problems. In the event that DMI (i) is unable to determine the source of the Performance Problem within the time periods described in Section 5; or (ii) is the sole source of the Performance Problem and is unable to remedy such Performance Problem within the time period described in Section 6, DMI will deliver a Service Credit to Client for each four (4) hour period incurred in excess of the time periods for identification and resolution described above; provided, however, that in no event shall Client be entitled to more than two (2) Service Credits for a given calendar day.

8. Client Must Request Service Credit. Upon receipt of a written request from Client for a prior calendar month requesting information regarding a specific instance of Downtime or Performance Problem, DMI will provide Client with a related incident report from which Client may determine any Downtime and/or Performance Problems. In order to receive a Service Credit in connection with a particular instance of Downtime or a Performance Problem, Client must notify DMI within thirty (30) days from the time Client becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Client's right to receive a Service Credit for the applicable instance of Downtime or Performance Problem.

9. Maximum Service Credit. The aggregate maximum number of Service Credits to be issued by DMI to Client for any and all Downtime and Performance Problems that occur in a single calendar month shall not exceed seven (7) Service Credits. Any Service Credits owed shall be issued in the DMI invoice in the month following the Downtime or Performance Problem, unless the Service Credit is due in Client's final month of Service. In such case, a refund for the dollar value of the Service Credit will be mailed to Client.

10. Termination Option for Chronic Problems. Client may terminate this Agreement and without liability or penalty to DMI by notifying DMI within ten (10) days following the occurrence of either of the following: (i) Client experiences more than five (5) Downtime periods in any three (3) consecutive calendar month period; or (ii) Client experiences more than eight (8) consecutive business hours of Downtime due to any single event. Such termination will be effective thirty (30) days after receipt of such notice by DMI.

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**TimeClock Plus Hardware Maintenance
Exchange Replacement Service Plan**

These Hardware Maintenance Terms are intended to be part of the OnDemand Service Agreement, Master SaaS Agreement, or EULA, hereafter referred to as the Licensing Agreement, made and entered into by and between Data Management, Inc. (“DMI”) and Customer (“You”). DMI reserves the right to continuously improve the Hardware Maintenance and Support Services and to adapt such Services to changes in technology and to DMI’s business environment.

When Coverage Begins and Ends?

Initial coverage is for 12 months and begins when you purchase your Service. The Service automatically renews every year until you provide DMI notice no less than 30 days prior to anniversary of renewal date.

What is Covered?

If during the coverage period, it is determined that a defect in materials or workmanship has occurred on covered hardware, DMI will incur expense to ship you replacement hardware to arrive at your specified location the next business day. The Service is preferably requested after troubleshooting assistance from the DMI Support Department. Service requests made after noon central time may be processed the following business day. Next business day delivery is limited to destinations within the 48 contiguous United States serviced by overnight express carriers. Cost to ship replacement hardware outside the 48 contiguous United States is the responsibility of Customer. Replacement hardware may not be identical, but a comparable device of like kind with the functional equivalent of the covered hardware.

If DMI replaces covered hardware, the original hardware becomes the property of DMI and the replacement hardware becomes your property for the remainder of the covered period.

The pre-paid shipping and instructions for return of the original hardware will be included in the packaging of the replacement hardware or can be provided upon request. DMI suggests you properly package and insure the shipment when returning the original hardware. The original hardware must be returned to DMI within 14 days of receiving the replacement hardware. You agree to pay DMI the Manufacturer’s Suggested Retail Price (MSRP) of the original hardware if you do not return it to DMI within 14 days of receiving the replacement hardware. Your ability to request Exchange Replacement Service on any other covered hardware will be suspended until the original hardware is returned to DMI or you pay DMI the MSRP of the original hardware.

What is Not Covered?

DMI is not responsible for any cost incurred by you related to this Agreement including, but not limited to travel, communications, telephone company charges, technical troubleshooting, downtime, training, customer services and equipment training, that are not already included in the Contract.

This plan does not apply to:

- Damage caused by accident, abuse, misuse, liquid contact, fire, earthquake, other external causes, or operating covered hardware outside its intended or permitted use;

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- Hardware with a serial number that has been defaced, altered, removed, or modified without written permission from DMI;
- Hardware that has been lost or stolen;
- Cosmetic damage including but not limited to scratches, dents, and broken plastics or ports;
- Consumable parts such as batteries;
- Preventative maintenance; or
- Defects caused by normal wear and tear or otherwise normal aging of product.

How to Obtain Service?

You may obtain Exchange Replacement Service by contacting the DMI Support Department (options listed below). You will need to provide the hardware serial number to confirm coverage. The DMI Support Department team members will ask you to troubleshoot the hardware in an attempt to get the hardware working to your satisfaction. After troubleshooting options are exhausted, the DMI Support Department team member will process your Service request and verify your preferred shipping address for the replacement hardware.

Phone: 325.223.9300 weekdays excluding holidays 7 A. M. to 7 P. M. CST

Email: Support@TimeClockPlus.com

Support Portal: <https://timeclockplus.force.com/TCPsupport/s/>

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**TimeClock Plus Hardware Maintenance
Expedited Depot Repair Service Plan**

These Hardware Maintenance Terms are intended to be part of the OnDemand Service Agreement, Master SaaS Agreement, or EULA, hereafter referred to as the Licensing Agreement, made and entered into by and between Data Management, Inc. (“DMI”) and Customer (“You”). DMI reserves the right to continuously improve the Hardware Maintenance and Support Services and to adapt such Services to changes in technology and to DMI’s business environment.

When Coverage Begins and Ends?

Initial coverage is for 12 months and begins when you purchase your Service. The Service automatically renews every year until you provide DMI notice no less than 30 days prior to anniversary of renewal date.

What is Covered?

If during the coverage period, it is determined that a defect in materials or workmanship has occurred on covered hardware, DMI will provide all parts, materials (including pre-paid shipping labels), and labor necessary to expedite the return of covered hardware to you in operating condition. DMI, at its discretion and its cost, may elect to replace covered hardware in lieu of repair. Replacement hardware in lieu of repair may not be identical, but a comparable device of like kind with the functional equivalent of the covered hardware. If DMI replaces covered hardware, the original hardware becomes the property of DMI and the replacement hardware becomes your property for the remainder of the covered period.

What is Not Covered?

DMI is not responsible for any cost incurred by you related to this Service including, but not limited to travel, communications, telephone company charges, technical troubleshooting, downtime, training, customer services and equipment training, that are not already included in the Contract.

This Service does not apply to:

- Damage caused by accident, abuse, misuse, liquid contact, fire, earthquake, other external causes, or operating covered hardware outside its intended or permitted use;
- Hardware with a serial number that has been defaced, altered, removed, or modified without written permission from DMI;
- Hardware that has been lost or stolen;
- Cosmetic damage including but not limited to scratches, dents, and broken plastics or ports;
- Consumable parts such as batteries;
- Preventative maintenance; or
- Defects caused by normal wear and tear or otherwise normal aging of product.

Turn-Around Time

Turn-around time is measured in elapsed days from receipt of the covered hardware by the DMI Service Department.

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- Delivery to destinations within the 48 contiguous United States serviced by standard carriers:
 - You will receive your repaired covered hardware or a replacement within 7 days from the arrival date of the covered hardware at the DMI Service Department.

- Delivery to destinations outside the 48 contiguous United States:
 - Cost to ship repaired covered hardware or a replacement is the responsibility of the Customer. Repaired covered hardware or a replacement will ship no later than 5 days after the arrival date of covered hardware at the DMI Service Department. Receipt by Customer is dependent on shipping method selected by Customer.

How to Obtain Service?

You may obtain Expedited Depart Repair Service by contacting the DMI Support Department (options listed below). You will need to provide the hardware serial number to confirm coverage. The DMI Support Department team members will troubleshoot the hardware in an attempt to get the hardware working to your satisfaction. After troubleshooting options are exhausted, the DMI Support Department team member will process your Service request. A Return Merchandise Authorization number will be issued along with instructions to send the covered hardware to the DMI Service Department.

Phone: 325.223.9300 weekdays excluding holidays 7 A. M. to 7 P. M. CST

Email: Support@TimeClockPlus.com

Support Portal: <https://timeclockplus.force.com/TCPsupport/s/>

**ATTACHMENT C TO THE OKLAHOMA STATEWIDE CONTRACT (“SW1114”) WITH
DATA MANAGEMENT, INC.**

HOSTING AGREEMENT

This Hosting Agreement (“Hosting Agreement”) is a Contract Document in connection with the Oklahoma Statewide Contract No. 1114 (the “Contract”) and entered into between Data Management, Inc. (“Vendor”) and the State of Oklahoma by and through the Office of Management and Enterprise Services (“State” or “Customer”), the terms of which are incorporated herein. This Hosting Agreement is applicable to any Customer Data stored or hosted by Vendor in connection with the Contract. Unless otherwise indicated herein, capitalized terms used in this Hosting Agreement without definition shall have the respective meanings specified in the Contract.

I. Definitions

- a. “Customer Data” shall mean all data supplied by or on behalf of Customer in connection with the Contract, excluding any confidential information of Vendor.
- b. “Data Breach” shall mean the unauthorized access by an unauthorized person that results in the access, use, disclosure or theft of Customer Data.
- c. “Non-Public Data” shall mean Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.
- d. “Personal Data” shall mean Customer Data that contains 1) any combination of an individual’s name, social security numbers, driver’s license, state/federal identification number, account number, credit or debit card number and/or 2) contains electronic protected health information that is subject to the Health Insurance Portability and Accountability Act of 1996, as amended.
- e. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the hosted environment used to perform the services.

II. Customer Data

- a. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Vendor by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer’s confidential information. Vendor shall restrict access to Customer Data

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to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).

- b. Vendor shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer’s use of the hosted environment. Vendor shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Vendor shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer’s prior approval, which shall not be unreasonably withheld, of Vendor’s proposed responses. Vendor agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
- c. Vendor will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Vendor. Vendor will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Vendor will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Vendor as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Vendor’s negligence or willful misconduct, Vendor, at the Customer’s expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

III. Data Security

- a. Vendor will use commercially reasonable efforts, consistent with industry standards, to provide security for the hosted environment and Customer Data and to protect against both unauthorized access to the hosting environment, and unauthorized communications between the hosting environment and the Customer’s browser. Vendor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Vendor applies to its own personal data and non-public data of similar kind.
- b. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Vendor is responsible for encryption of Personal Data.

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- c. Vendor represents and warrants to the Customer that the hosting equipment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Vendor will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Vendor will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Vendor, Vendor will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Vendor has used to remediate the virus. Should the virus propagate to Customer’s IT infrastructure, Vendor is responsible for costs incurred by Customer for Customer to remediate the virus.
- d. Vendor shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Vendor shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Vendor shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Vendor’s obligations under the Contract.
- e. Vendor shall allow the Customer to audit conformance to the Contract terms or provide SOC 2 reports and/or pen testing summaries, upon Customer’s request. The Customer may perform this audit or contract with a third party at its discretion and at Customer’s expense.
- f. Vendor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. Vendor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

IV. Security Assessment

- a. The State requires any entity or third-party vendor hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Vendor submitted to the review and met the State’s minimum security standards at time the Contract was executed. Failure to maintain the State’s minimum security standards during the term of the Contract, including renewals, constitutes a material breach.
- b. To the extent Vendor requests a different sub-contractor than the third-party hosting vendor already approved by the State, the different sub-contractor is subject to the State’s approval. Vendor agrees not to migrate State’s data or otherwise utilize a

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different third-party hosting vendor in connection with key business functions that are Vendor’s obligations under the Contract until the State approves the third-party hosting vendor’s State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party hosting vendor does not meet the State’s requirements under the State Certification and Accreditation Review, Vendor acknowledges and agrees it may not utilize such third-party vendor in connection with key business functions that are Vendor’s obligations under the Contract, until such third party meets such requirements.

V. Security Incident or Data Breach Notification: Vendor shall inform Customer of any Security Incident or Data Breach

- a. Vendor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Vendor will coordinate with Customer prior to making any such communication.
- b. Vendor shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).
- c. Vendor shall: (i) maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer’s request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.
- d. If Vendor has reasonable belief or actual knowledge of a Data Breach, Vendor shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

VI. Breach Responsibilities: This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Vendor.

- a. Vendor, unless stipulated otherwise, shall promptly notify the Customer identified contact within 24 hours or sooner, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach. Vendor shall (1) cooperate with Customer as reasonably requested by Customer to

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investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

- b. Unless otherwise stipulated, if a Data Breach is a direct result of Vendor’s breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – (2), (3) and (4) not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Vendor based on root cause.
- c. If a Data Breach is a direct result of Vendor’s breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall indemnify and hold harmless the Customer against all penalties assessed to indemnified parties by governmental authorities in connection with the Data Breach.

VII. Notice: Contact information for Customer for notifications pursuant this Hosting Agreement are consistent with the Contract with a copy sent to:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

And

Chief Information Security Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

And

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

For immediate notice which does not constitute written notice:

OMES Help Desk
405-521-2444

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helpdesk@omes.ok.gov

Attn: Chief Information Security Officer

VIII. Vendor Representations and Warranties: Vendor represents and warrants the following

- a. The product and services provided under this Hosting Agreement do not infringe a third party’s patent or copyright or other intellectual property rights.
- b. Vendor will protect Customer’s Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.
- c. The execution, delivery and performance of the Contract, the Hosting Agreement and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Vendor will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Vendor and any third parties retained or utilized by Vendor to provide goods or services for the benefit of the Customer.
- d. Vendor shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting Environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any “copy-protected” devices, or any other harmful or disruptive program.

IX. Indemnity

- a. Vendor’s Duty of Indemnification. Vendor agrees to indemnify and shall hold the State of Oklahoma and State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys’ fees) (collectively “Damages”) (other than Damages that are the fault of Customer) arising from or in connection with Vendor’s breach of its express representations and warranties or other obligations in this Hosting Agreement and the Contract. If a third party claims that any portion of the products or services provided by Vendor under the terms of the Contract or this Hosting Agreement infringes that party’s patent or copyright, Vendor shall defend and indemnify the State of Oklahoma and Customer against the claim at Vendor’s expense and pay all related costs, damages,

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and attorney’s fees incurred by or assessed to, the State of Oklahoma and/or Customer. The State of Oklahoma and/or Customer shall promptly notify Vendor of any third party claims and to the extent authorized by the Attorney General of the State, allow Vendor to control the defense and any related settlement negotiations. If the Attorney General of the State 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 Customer and the State of Oklahoma for all associated costs, damages and fees incurred by or assessed to the State of Oklahoma and/or Customer. Should the software become, or in Vendor’s opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated under this Hosting Agreement, Vendor may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

X. Termination and Suspension of Service:

- a. In the event of a termination of the Contract, Vendor shall implement an orderly return of Customer Data in a SQL database format at a time agreed to by the parties and the subsequent secure disposal of Customer Data.
- b. During any period of service suspension, Vendor shall not take any action to intentionally erase any Customer Data.
- c. In the event of termination of any services or agreement in entirety, Vendor shall not take any action to intentionally erase any Customer Data for a period of:
 - i. 10 days after the effective date of termination, if the termination is in accordance with the contract period
 - ii. 30 days after the effective date of termination, if the termination is for convenience or for cause.

After such period, Vendor shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

- d. The State shall be entitled to any post termination assistance generally made available with respect to the services.

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- e. Vendor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer.