

**PARTICIPATING ADDENDUM BETWEEN THE
STATE OF OKLAHOMA AND XEROX CORPORATION (“SW1034X”)
TO THE NASPO MASTER AGREEMENT NO. 140606**

NASPO ValuePoint

PARTICIPATING ADDENDUM

**COPIERS AND MANAGED PRINT
SERVICES**

Led by the State of Colorado



Master Agreement #: **140606**

Contractor: **Xerox Corporation**

Participating State or Entity: State of Oklahoma

The following products and services are included in this contract portfolio:

- Group A – MFD, A3
- Group B – MFD, A4
- Group C – Production Equipment
- Group D – Single-function Printers
- Group E – Large/Wide Format Equipment
- Managed Print Services (MPS)
- Supplies
- Software
- Accessories for Discontinued Base Units

1. **Scope:** This Participating Addendum (“Addendum”) is entered into and effective _____, 2019 (the “Effective Date”) by and between the State of Oklahoma, by and through the Office of Management and Enterprise Services (the “Participating State”, “State” or “Participating Entity”) and Xerox Corporation (“Contractor”) and covers the NASPO ValuePoint Master Agreement for Copiers and Managed Print Services led by the State of Colorado, for use by state agencies, interlocal entities, and affiliates authorized by the Participating State to utilize state contracts with the prior approval of the state’s Chief Procurement Officer.

This Addendum consists of the following documents, which are incorporated herein as part of this Addendum:

Exhibit 1-The State of Oklahoma Specific Terms and Conditions.

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by state entities, interlocal entities, or affiliates authorized by the Participating State (“Authorized Purchaser”) are subject to the approval of the State’s Chief Procurement Officer. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Officer.
3. **Access to Copiers and Managed Print Services:** Unless otherwise stipulated in this Addendum, specific services accessed through the NASPO ValuePoint Cooperative Master Agreement for Copiers and Managed Print Services by state executive branch agencies are

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subject to the authority and prior approval of the State Chief Information Officer’s office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.

4. Order of Precedence:

- a) A Participating Entity’s Participating Addendum;
- b) NASPO ValuePoint Master Agreement Terms & Conditions, including all Exhibits;
- c) An Order issued against the Master Agreement;
- d) The Solicitation, RFP-NP-18-001, Copiers and Managed Print Services;
- e) The Contractor’s response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
- f) The Contractor’s Supplemental Documents, including all Attachments.

5. Term of the Master Agreement:

- a) **Initial Term:** The Parties’ respective performances under the Master Agreement commenced on August 7, 2019, and shall terminate on December 31, 2021, unless terminated sooner, as specified in **Section 6.10, Defaults and Remedies**, of the Master Agreement.
- b) **Extension:** The Master Agreement may be extended beyond the original contract period for up to three (3) consecutive one (1) year additional terms, upon the mutual agreement of the Lead State and Contractor, via written Amendment. The total duration of the Master Agreement, including any extensions, shall not exceed five (5) years.

6. Participating State or Entity Modifications or Additions to the Master Agreement: The following are items that each Participating State or Entity should consider when drafting a Participating Addendum:

- a) **State specific terms and conditions:** Participating States or Entities may add statutory terms required to execute a Participating Addendum. The Master Agreement Terms and Conditions should be reviewed to ensure there is no conflict with what your state may accept. The Master Agreement Terms and Conditions are intended to be utilized as a baseline for state specific requirements.
- b) **Administrative Fees:** The Master Agreement allows Participating States and Entities to incorporate an administrative fee into the published Master Agreement pricing.

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- c) **Supplemental Documents:** The Contractor’s Supplemental Documents are attached to the Master Agreement as **Attachment A through Attachment N**. Each Participating State or Entity is responsible for negotiating the terms and conditions of each of these documents, if they so choose. The Lead State has only negotiated the language to the extent it aligns with the Master Agreement Terms and Conditions; however, any further negotiations are at the discretion and responsibility of the Participating State or Entity.
- d) **Authorized Dealers:** All Contractor approved Dealers are listed in **Exhibit C (Authorized Dealers by State)**. The Participating State or Entity may limit the number of Dealers they use, and/or request that the Contractor approve additional Dealers. The Contractor Dealer’s participation will be in accordance with the terms and conditions set forth in the Master Agreement.
- e) **Product Offerings:** The Contractor is authorized to provide Products as referenced on the first page of this template, and as detailed in **Section 4.3, Product Offerings**, of the Master Agreement. Each Participating State or Entity shall determine what Product Offerings they will limit, if any, in their Participating Addendum. Additional consideration should be given to the following:
- **Third-Party Software**
 - **Consumable Supplies**
 - **Remanufactured/Refurbished Equipment**
 - **Open Market Items**
 - **Emerging Technologies**
- f) **Service Offerings:** The Contractor is authorized to provide Services as referenced on the first page of this template, and as detailed in **Section 4.4, Service Offerings**, of the Master Agreement. Each Participating State or Entity shall determine what Service Offerings they will limit, if any, in their Participating Addendum. Additional consideration should be given to the following:
- **Managed Print Services – Attachment H (Xerox MPS Statement of Work Template)**, of the Master Agreement, provides a framework for any ensuing MPS engagement. Prior to any commencement, all MPS engagements must be agreed to and signed by both Purchasing Entity and Contractor
 - **Maintenance Agreements:**
 - Automatic renewals are not permitted under the Master Agreement
 - Contractor shall have the ability to blend the Service and Supply costs over a large Equipment fleet

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- **Manual Meter Reads** - As part of its Services, Contractor may, at its discretion and dependent upon device capabilities, provide electronic remote meter reading and equipment monitoring. This may allow for automated meter reading and submission, automatic placement of low toner alerts, automatic placement of service calls in the event of a critical Product failure and may enable firmware upgrades
 - **Customer-Owned Equipment**
 - **Lease or Rental Equipment**
 - **Legacy Equipment**
 - **Service Requirements** – Participating States and Entities may negotiate their own Service Level Agreement (SLA) with the Contractor; however, the minimum requirements are outlined in **Section 4.4.3(b)** of the Master Agreement. Additional consideration should be given to the following:
 - **Service Level Calculations**
 - **Reporting**
- g) Purchase, Lease, and Rental Programs:** Per **Section 4.5** of the Master Agreement the Contractor is authorized and/or required to provide and adhere to the following:
- **Acquisition Methods** – Participating States and Entities should determine which options they will allow:
 - Purchase
 - Fair Market Value (FMV) Lease
 - \$1 Buyout Lease
 - Straight Lease
 - Cancellable Rental
 - **Leasing and Rental Terms and Conditions** – Equipment leases and rentals are subject to the Terms and Conditions as set forth in the Master Agreement, and as negotiated by the Participating State or Entity.
- h) Security Requirements:**
- Per **Section 4.6.2, Sensitive Information**, of the Master Agreement, the Participating State or Entity shall define “sensitive information” in their Participating Addendum.

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- Per **Section 4.6.5, Hard Drive Removal and Surrender**, of the Master Agreement, the Participating State or Entity shall determine which hard drive disposal options they will require.

i) Shipping and Delivery Requirements

j) Inspection and Acceptance: Per **Section 4.10.3** of the Master Agreement, confirmation of Product Acceptance occurs upon signature of **Exhibit B (Sample D&A Certificate)**, or within five (5) Business Days after Product install, unless otherwise stated in a Participating Addendum.

k) Warranty Requirements – The Contractor must adhere to the warranty requirements as outlined in **Section 4.11** of the Master Agreement; however, Participating States and Entities may negotiate additional requirements with the Contractor.

Participating State or Entity must check one of the boxes below. These modifications or additions apply only to actions and relationships within the Participating State or Entity. A Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to their contractual relationship with the Contractor under the Terms and Conditions of the State of Colorado NASPO ValuePoint Master Agreement.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions: Please see attached Exhibit 1.

- 7. Master Price Agreement Number:** All purchase orders issued by an Authorized Purchaser within the jurisdiction of this Participating Addendum shall include the NASPO ValuePoint Master Agreement number: **140606**
- 8. Orders:** Any Order placed by an Authorized Purchaser for a Product and/or Service available under the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

Orders can be made out to (a) Contractor or (b) Authorized Dealers as approved by Contractor and the Participating State or Entity. To the extent the Authorized Purchaser and the Contractor agree on additional terms, the terms will be documented on the Purchasing Entity Order, and signed by both parties.

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All orders should contain the following (1) “PO is subject to NASPO ValuePoint Master Agreement, Contract # **140606**, and the Participating Addendum, Contract # _____” (2) Authorized Purchaser Name, Address, Contact, & Phone-Number (3) Order amount (4) Type of Order (Purchase, FMV Lease, \$1 Buyout Lease, Straight Lease, or Cancellable Rental) and purchase amount, or monthly payment amount (5) Itemized list of accessories (6) Type of Service program and rates (7) Any Supplemental Documents, including the MPS SOW Template (if applicable).

9. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Ann Russo
Address	
Telephone	440.339.6559
E-mail	Ann. Russo@xerox.com

Participating Entity

Name	Statewide Initiatives Lead
Address	5005 N. Lincoln Blvd. Ste. 200, Oklahoma City, Ok 73105
Telephone	(405) 521-4772
E-mail	purchasing@omes.ok.gov

10. **Terms:** The Participating State or Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.
11. **Participating Addendum Integration.** This Addendum and the Master Agreement sets forth the entire agreement between Contractor and Participating State with respect to the subject matter. There are no understandings, agreements, or representations, oral or written, not specified herein. Any attempt to modify or add or incorporate terms and conditions inconsistent with, and contrary to the terms and conditions of this Addendum and the Master Agreement through an Order or other document is null and void and hereby rejected, unless agreed to in writing by the parties to this Addendum. The terms and conditions of this Addendum and the Master Agreement shall prevail and govern in case of any attempted modifications or inconsistent terms.

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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: State of Oklahoma	Contractor: Xerox Corporation
By: 	By: <i>Ann M. Russo</i>
Name: <i>James L. Reese II</i>	Name: Ann M. Russo
Title: <i>Chief Information Officer</i>	Title: Account General Manager
Date: <i>10-25-19</i>	Date: October 10, 2019

For questions on executing a Participating Addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	tfosket@naspovaluepoint.org

**[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org, to support documentation of participation, and to
post in appropriate data bases]**

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Any and all licensing, maintenance, or order-specific agreements referenced within the terms and conditions of the NASPO Master Agreement No. 140606 are agreed to only to the extent that the terms do not conflict with the terms of the Participating Addendum, the Master Agreement, and to the extent the terms are not in conflict with applicable Oklahoma law. In the event of conflict among the terms and conditions, the Participating Addendum shall take precedence.

1. Definitions: The parties agree that, when used in the Agreement, the following terms are defined as set forth below:

A. Acquisition

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

B. Contract Document

The term ("Contract Document") means this Agreement, any statement of work, work order, or other similar ordering document related hereto and executed by the Contractor and the State of Oklahoma, as applicable; any purchase order related hereto; other mutually agreed documents; and any Addendum to any of the foregoing.

C. Authorized Purchaser

The term ("Authorized Purchaser") shall include the State of Oklahoma (the "State") and (a) any board, commission, committee, department or other instrumentality or entity designated to act on behalf of the State of Oklahoma or a political subdivision thereof; (b) any governmental entity specified as a political subdivision of the State of Oklahoma pursuant to the Governmental Tort Claims Act, including, without limitation, (i) any associated institution, instrumentality, board, commission, committee department, or other entity designated to act on behalf of the political subdivision; and (ii) a county or local governmental entity; and (c) entities authorized to utilize contracts awarded by the State of Oklahoma via a multistate or multi-governmental contract.

D. Destination

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The term ("Destination") means delivered to the receiving dock or other point specified in the applicable Contract Document.

E. Indemnified Parties

The term ("Indemnified Parties") means the State of Oklahoma and Authorized Purchasers, and/or their officers, agents, employees, representatives, contractors, assignees and/or designees.

2. Limitation of Authority

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

3. Administrative Fees

For Oklahoma-based Authorized Purchasers, Contractor agrees to submit a Contract Usage Report to the State of Oklahoma on a quarterly basis. "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 Participating Addendum 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 Participating Addendum.

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 whether this Addendum has been used during the applicable quarterly reporting period.
- c) Quarterly reporting periods
 - a. January 01 through March 31, due May 15
 - b. April 01 through June 30, due August 15
 - c. July 01 through September 30, due November 15
 - d. October 01 through December 31, due February 15

All Contact Usage Reports shall be delivered to:
E-mail: strategic.sourcing@omes.ok.gov

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For Oklahoma-based Authorized Purchasers, the State of Oklahoma assesses an administrative fee in the sum of one percent (1%) on all net sales transacted by any Authorized Purchaser under the Participating Addendum (the "Oklahoma Admin Fee").

Contractor shall submit the Oklahoma Admin Fee on a quarterly basis. Failure to remit the Oklahoma Admin Fee quarterly may result in cancellation of the Participating Addendum. Oklahoma Admin Fees shall not be reflected as a separate line item in Contractor's billing to participating state agencies and authorized users.

Payment of the Oklahoma Admin Fee shall be made via company check payable to OMES within forty-five (45) calendar days from the completion of the applicable quarterly reporting period set forth above.

To ensure payment is properly accounted for, Contractor shall identify payment in the applicable Contract Usage Report as an "Administrative Fee" and shall include the following information: (i) the applicable state contract number, (ii) Oklahoma Admin Fee amount(s) paid, and (iii) the applicable quarterly reporting period.

Oklahoma Admin Fees shall be mailed to:
Office of Management and Enterprise Services
Attention: Accounts Receivable
5005 N. Lincoln Boulevard, Suite 200
Oklahoma City, OK 73105

4. Pricing

- A.** Pursuant to 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, Authorized Purchasers under the Contract that are Oklahoma state agencies are exempt from the assessment of State sales, use, and excise taxes. Further, such Authorized Purchasers and Authorized Purchasers that are political subdivisions of the State of Oklahoma are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Authorized Purchasers will provide Contractor with a tax exemption certificate upon request. Any taxes of any nature whatsoever payable by the Contractor shall not be reimbursed by the Authorized Purchaser.
- B.** Pursuant to Okla. Stat. tit. 74, § 85.40, Oklahoma Authorized Purchasers shall not pay Contractor any travel expenses in addition to the total price of the products and/or services purchased; therefore, Contractor shall not invoice Oklahoma-based Authorized Purchasers for any travel expenses in addition to the total price of the products and/or services purchased hereunder.

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- C. The price to the Authorized Purchaser under the Participating Addendum shall include and Contractor shall prepay all shipping, packaging, delivery and handling fees. All Product deliveries will be Free on Board Authorized Purchaser's Destination. No additional fees shall be charged to the Authorized Purchaser for standard shipping and handling. If the Authorized Purchaser requests expedited or special delivery, Authorized Purchaser may be responsible for any charges for expedited or special delivery.

5. Invoices and Payment

As applicable, the Parties shall comply with applicable Oklahoma law with respect to invoicing and making payments hereunder. Payments for goods and services are generally due thirty (30) days after receipt of a proper invoice; provided, however, Contractor acknowledges and agrees that payment received in accordance with applicable Oklahoma law allowing forty-five (45) days to pay Contractor shall not constitute default hereunder nor entitle Contractor 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.

6. Termination for Non-appropriation

With respect to all Oklahoma-based transactions and all Oklahoma-based Authorized Purchasers, Participating State may terminate any order if funds sufficient to pay its obligations under the Participating Addendum are not appropriated by the applicable state legislature, federal government or other appropriate government entity or received from an intended third party funding source. In the event of such insufficiency, Participating State shall provide ten (10) calendar days' written notice of intent to terminate. Notwithstanding the foregoing, if an Authorized Purchaser issues an order and has accepted the products and/or services under such order, the Authorized Purchaser shall be obligated to pay for such products and/or services. In the event of termination of an order prior to delivery as provided in the foregoing, Participating State shall not be considered to be in default or breach under the Participating Addendum nor under the Master Agreement, nor shall it be liable for any further payments ordinarily due under, with respect to, related to, or arising out of such order, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

7. Notices

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If a party is to give notice under the Participating Addendum, all notices to the State of Oklahoma shall be address as follows:

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

8. Choice of Law

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

9. Choice of Venue

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

10. Conflict of Interest

In addition to any requirement of law or through a professional code of ethics or conduct, the Contractor, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Further, as long as the Contractor has an obligation under the Agreement, any plan,

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preparation or engagement in any such activity or interest shall not occur without prior written approval of the State.

11. Force Majeure

Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. In the event that a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, an Authorized Purchaser may terminate a purchase order if Contractor cannot cause delivery of Products in a timely manner to meet the business needs of the Authorized Purchaser. Contractor agrees that neither party will be in breach of their performance obligations if a force majeure event prevents the party from fulfilling its obligations. The Authorized Purchaser's payment obligation will be suspended with respect to any equipment that is rendered inoperable during a force majeure event if Contractor is prevented from providing maintenance services. The payment suspension will continue until the end of the force majeure event or until Contractor restores the equipment to operating condition. If payment is suspended, the term of the Contract will be extended for a period equal to Authorized Purchaser's payment suspension.

12. Invalid Term or Condition

To the extent any term or condition in the Participating Addendum conflicts with an applicable Oklahoma and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, Authorized Purchaser makes no representation or warranty

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regarding the enforceability of such term or condition and Authorized Purchaser does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the Contract term or condition.

13. Audits and Records Clause

- A.** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Contractor agrees any pertinent federal or State agency or governing entity of a Authorized Purchaser shall have the right to examine and audit all records relevant to the execution and performance of the Contract except costs of Contractor that comprise pricing under the Contract, unless otherwise agreed.
- B.** The Contractor is required to retain records relative to the Contract for the duration of the Contract and for a period of five (5) years following completion or termination of an Acquisition. If a claim, audit, litigation or other action involving such records is started before the end of the five-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the five (5) year retention period, whichever is later.

14. Compliance with Applicable Laws

- A.** As long as Contractor has an obligation under the terms of the Contract and in connection with performance of its obligations, the Contractor shall comply with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:
 - i.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. § 81.
 - ii.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;

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- iii.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
 - iv.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
 - v.** Anti-Lobbying Law set forth at 31 U.S.C. § 1325 and as implemented at 45 C.F.R. part 93;
 - vi.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Circular A-133 with approval and work paper examination rights of the applicable procuring entity;
 - vii.** Be compliant with the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1312, and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. § 1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify; and
 - viii.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- B.** The Contractor shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- C.** As applicable, Contractor agrees to comply with Governor's Executive Order 2012-01, effective August 06, 2012, which prohibits the use of any tobacco product on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.

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15. Employment Relationship

The Addendum does not create an employment relationship. Individuals performing Services required by the Addendum are not employees of the Authorized Purchaser. The Contractor's employees shall not be considered employees of the Authorized Purchaser for any purpose, and accordingly shall not be eligible for rights or benefits accruing to such employees.

16. Publicity

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

17. Open Records Act

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

Section 6.3, Confidentiality, Non-disclosure, and Injunctive Relief is hereby modified to add the following provision:

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- A. The Contractor shall maintain strict security of all State data and records entrusted to it or to which the Contractor gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as needed by Contractor for performance of its obligations under the Contract. The Contractor further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. If Contractor utilizes a subcontractor, Contractor shall obtain specific written assurance, and provide a copy to the State, that the subcontractor shall maintain this same level of security of all data and records entrusted to or accessed by the subcontractor and agree to the same obligations as Contractor, to the extent applicable. Such written assurance may be set forth in the required subcontractor agreement referenced herein.

- B. No State data or records shall be provided or the contents thereof disclosed to a third party unless specifically authorized in advance to do so in writing by the State Purchasing Director, the individual with administrative control over an Authorized Purchaser or in compliance with a valid court order. The Contractor shall immediately forward to the State and the State Purchasing Director any request by a third party for data or records in the possession of the Contractor or any subcontractor or to which the Contractor or subcontractor has access and Contractor shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

18. Assignment and Permitted Subcontractors

- A. Both parties obligations under the Addendum may not be assigned or transferred to any other person or entity without the prior written consent of the other party, except that Authorized Purchaser may assign its obligations under the Addendum to another Authorized Purchase without prior written consent. Should Contractor assign its rights to payment, in whole or in part, under the Addendum, Contractor shall provide the State of Oklahoma with written notice of the assignment. Such written notice shall contain details sufficient for the Participating Entity to perform its payment obligations without any delay caused by the assignment.

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- B.** If the Contractor is permitted to utilize subcontractors in support of the Addendum, the Contractor shall remain solely responsible for its obligations under the terms of the Addendum 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 Contractor, the Contractor 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 Contractor. Such approval is within the sole discretion of the State. As part of the approval request, the Contractor shall provide a copy of a written agreement executed by the Contractor 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 Contractor under the terms of all applicable Contract Documents. Contractor 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 of Oklahoma further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.
- C.** All payments under the Addendum shall be made directly to the Contractor, except as provided in Section A above regarding the Contractor's assignment of payment. No payment shall be made to the Contractor for performance by unapproved or disapproved employees of the Contractor or a subcontractor.

19. Failure to Enforce

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

20. Mutual Responsibilities of the Parties

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- A. Neither the State nor the Contractor grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B. The Addendum is a non-exclusive contract, and each party is free to enter into similar agreements with others.
- C. The Authorized Purchaser and Contractor each grant the other only the licenses and rights specified in the Addendum and all other rights and interests are expressly reserved.
- D. The State and Contractor shall reasonably cooperate with each other and any Contractor to which Products and/or Services under the Contract may be transitioned after termination or expiration of the Addendum.
- E. Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by either Authorized Purchaser, the State or the Contractor is required under the Addendum, such action shall not be unreasonably delayed or withheld.

21. Indemnification

A. Acts or Omissions

Contractor shall indemnify and hold harmless the Indemnified Parties, as applicable, from any and all liability, including costs, expenses and attorney fees, for actions, claims, demands and suits arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct of the Contractor or its agents, employees, or subcontractors in the execution or performance of the Addendum.

B. Coordination of Defense

IN CONNECTION WITH INDEMNIFICATION OF AN AUTHORIZED PURCHASER WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA

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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, CONTRACTOR 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 CONTRACTOR, CONTRACTOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION; PROVIDED, HOWEVER, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CONTRACTOR SHALL CONTINUE TO BE OBLIGATED TO INDEMNIFY THE PARTICIPATING ENTITY AND, TO THE EXTENT APPLICABLE, ANY AND ALL AUTHORIZED PURCHASERS, IN ACCORDANCE WITH AND TO THE EXTENT CONTRACTOR PROVIDES SUCH INDEMNITY UNDER THIS MASTER AGREEMENT.

23. Limitation of Liability

Any limitation of liability provision of a Contract Document 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 Contractor; the Contractor's indemnity obligations or Contractor's confidentiality obligations; the bad faith, gross negligence or intentional misconduct of the Contractor or its employees, agents and subcontractor; or other acts for which applicable law does not allow exemption from liability.

24. Warranties of Non-Infringement

Any warranty provision of a Contract Document which disclaims the implied warranties of non-infringement shall not apply.

25. Miscellaneous

A. Severability

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

B. Section Headings

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

C. Sovereign Immunity

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

D. Survival

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

E. Entire Agreement

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

F. Compliance and Electronic and Information Technology Accessibility

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Contractor shall comply with federal and State laws, rules and regulations related to information technology accessibility, as applicable, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at http://www.ok.gov/cio/documents/isd_itas.pdf, and shall provide a Voluntary Product Accessibility Template ("VPAT") describing such compliance, which may be provided via a URL linking to the VPAT. If Products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Contractor. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum. Accordingly, in each statement of work or similar document issued pursuant to the Addendum, Contractor 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.

G. Offshore Services

Contractor shall not store, access, nor process outside of the United States of America any data belonging to any such Authorized Purchaser without the prior written approval of the Participating State/Entity, which approval may be given or withheld at the sole and absolute discretion of the Participating State/Entity. Notwithstanding, this section shall not prohibit Contractor from providing Order related administration and/or support services available from its global locations outside of the United States.