

**OKLAHOMA CONTRACT
FOR PRODUCTS AND RELATED SERVICES**

ALE USA Inc., A Delaware Corporation

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 ALE USA Inc. (“Contractor” or “Vendor”), effective as of the date of final signature. 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 March 9, 2021, (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-4304 (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. Term.

The term of this Agreement is one (1) year from the effective date with two (2) one-year options to renew.

2. 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). With respect to Oklahoma Customers, references to DIR Contract No. DIR- TSO-4304 in any and all contract documents shall mean DIR Contract No. DIR- TSO-4304 as modified.

Additionally, the parties agree that the State of Oklahoma's IT Hosting Terms are incorporated herein as Attachment A and made a part hereof.

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

If sent to the State of Oklahoma:

D. Jerry Moore
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

4. DIR Contract is hereby modified to incorporate the attached Attachment D, State of Oklahoma Information Technology Terms.

5. The following is hereby added to Appendix A, Standard Terms and Conditions:

a. 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.

6. Authorized Exceptions to Appendix A, Standard Terms and Conditions 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 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.

- j. Section 7, Contract Fulfillment and Promotion, G. Vendor Logo, references to the “DIR” are hereby replaced with “the State of Oklahoma and Oklahoma Customers”.**

- k. 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”.**

l. Section 7, Contract Fulfillment and Promotion, I. Orientation Meeting, is hereby deleted in its entirety.

m. 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 an 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.

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

o. Section 7, Pricing, Purchase Orders, Invoices, and Payments, I. Invoices, the section is modified to delete references to compliance with Chapter 2251, Texas Government Code.

p. 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

- q. 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.

- r. 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”**
- s. Section 9, Contract Administration, C. Records and Audit, subsection 4) is hereby deleted in its entirety.**
- t. 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”.**
- u. 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.

- v. **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.

- w. **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.

x. Section 9, 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.

y. 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.

z. 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.

aa. 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.

bb. 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”.

cc. 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.

dd. 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.

ee. 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”.

ff. 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.

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

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

[Signature Page Follows]

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.

ALE USA Inc.

Stephan Robineau

Stephan Robineau (Apr 2, 2022 02:21 GMT+4)

Signature

Stephan Robineau
Name (please print)

President, ALE USA Inc.

Title

26801 West Agoura Rd, Calabasas CA91301

Address

Apr 2, 2022

Date

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

Jerry Moore

Signature

Jerry Moore

Name (please print)

Chief Information Officer

Title

3115 N. Lincoln Blvd, Oklahoma City, OK 73105

Address

Apr 4, 2022

Date

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, OMES-Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

Definitions

- 1.1 **COTS** means software that is commercial off the shelf.
- 1.2 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier.
- 1.3 **Data Breach** means the unauthorized access by an unauthorized person that results in the use, disclosure or theft of Customer Data.
- 1.4 **Host** includes the terms **Hosted** or **Hosting** and means the accessing, processing or storing of Customer Data.
- 1.5 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name

registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

- 1.6 Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 1.7 Non-Public Data** means 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.
- 1.8 Personal Data** means 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) data subject to protection under a federal, state or local law, rule, regulation or ordinance.
- 1.9 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.10 State CIO** means the State Chief Information Officer or authorized designee.
- 1.11 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible

items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

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

1.13 Work Product means any and all deliverables produced by Supplier for Customer under a statement of work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or statement of work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or a statement of work, or with funds appropriated

by or for Customer or Customer's benefit: (a) by any Supplier personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2 Termination of Maintenance and Support Services

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

- 2.1** Customer removes the product for which the services are provided, from productive use or;
- 2.2** The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).

If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 Compliance and Electronic and Information Technology Accessibility

State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at https://omes.ok.gov/sites/g/files/gmc316/f/isd_itas.pdf. Supplier shall provide a Voluntary Product Accessibility Template ("VPAT") describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

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

4 Media Ownership (Disk Drive and/or Memory Chip Ownership)

4.1 Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the property of the Customer.

4.2 Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime (repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 Offshore Services

No offshore services are provided for under the Contract. Supplier offers “Diamond Level” services that comport with this requirement. No other level of services offered by supplier are compliant. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State’s sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 Compliance with Technology Policies

6.1 The Supplier agrees to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at https://omes.ok.gov/s/g/files/gmc316/f/InfoSecPPG_0.pdf.

Supplier's employees and subcontractors shall adhere to the applicable State IT Standard Methodologies and Templates including but not limited to Project Management, Business Analysis, System Analysis, Enterprise and IT Architecture, Quality, Application and Security Methodologies and Templates as set forth at <http://eclipse.omes.ok.gov>

- 6.2 Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.
- 6.3 Supplier shall comply with the CJIS Security Policy as more particularly described at Appendix 2 attached hereto and incorporated herein.

7 Emerging Technologies

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

8 Extension Right

In addition to extension rights of the State set forth in the Contract, the State CIO reserves the right to extend any Contract if the State CIO determines such extension to be in the best interest of the State.

9 Source Code Escrow

Pursuant to 62 O.S. § 34.31, except for "specified" standard configuration of COTS equipment, Supplier shall not perform any development or customization of computer software unless a separate software development agreement is entered between the parties, however, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Supplier shall pay all fees charged by

the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

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

10 Commercial Off The Shelf Software

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail.

11 Ownership Rights

Except for "specified" standard configuration of COTS equipment supplier shall not perform any development or customization of computer software unless a separate software development agreement is entered between the parties, however, any software developed by the Supplier under the terms of a separate Contract is for the sole and exclusive use of the State including but

not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as “Work Made for Hire”, Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded

agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 Intellectual Property Ownership

Except as to Supplier-offered COTS products the following terms apply to ownership and rights related to Intellectual Property:

12.1 As between Supplier and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. Configuration of existing Supplier products as specified in the COTS product documentation shall not be considered “Work Product” nor shall any such “specified” configuration be considered a “work for hire” hereunder. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier hereby agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is hereby effectively transferred, granted, conveyed, assigned and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.

12.2 Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but

not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier's signature due to the dissolution of Supplier or Supplier's failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier's agent and Supplier's attorney-in-fact to act for and in Supplier's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and

irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.

- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work

Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

- 12.9** Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.
- 12.10** To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.
- 12.11** If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such

Customer without permission from or additional compensation to the Supplier.

13 Hosting Services

13.1 If Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract Hosts Customer Data in connection with an Acquisition, the provisions of Appendix 1, attached hereto and incorporated herein, apply to such Acquisition.

13.2 If the Hosting of Customer Data by Supplier or its subcontractor, affiliate or any other person or entity providing products or services under the Contract contributes to or directly causes a Data Breach, Supplier shall be responsible for the obligations set forth in Appendix 1 related to breach reporting requirements and associated costs. Likewise if such Hosting contributes to or directly causes a Security Incident, Supplier shall be responsible for the obligations set forth in Appendix 1, as applicable.

14 Change Management

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon renewal or if future bids submitted by Supplier are evaluated by the State. These changes shall be noticed to Customer through Supplier's "eFlash" online notification system.

15 Service Level Deficiency

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits may be provided by Supplier based upon the mutual agreement of the parties as to resolution of the matters in question. Such service credits, if awarded by Supplier, shall have no cash value and may be used as credit against any service fee payment due. All such service credits must be used within the calendar year they were issued. Any and all unused service credits shall expire and may not be redeemed after December 31 of the year that the actual service credit was earned by Customer..

16 Notices

In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

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

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

Information Services Deputy Counsel
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Notices

ALE USA Inc.

26801 West Agoura Road

Calabasas, CA 91301

Appendix 1 to State of Oklahoma Information Technology Terms

The parties agree to the following provisions in connection with any Customer Data accessed, processed or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract

A. Customer Data

- 1.** Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier 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. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).
- 2.** Supplier 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. Supplier 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, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records 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 Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
- 3.** Supplier 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 Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct,

Supplier, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

B. Data Security

1. Supplier 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. Supplier 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 service provider applies to its own personal data and non-public data of similar kind.
2. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data.
3. Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier 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 Supplier, Supplier 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 Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
4. Supplier 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. Supplier 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. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.

5. Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.
6. Supplier shall perform an independent audit in accordance with ISO 270001 guidelines, of its data centers at its expense, and provide a redacted version of the most recent ISO 270001 audit report upon request. Supplier 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.
7. Any remedies provided in this Appendix are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

C. Security Assessment

1. The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier 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. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.
2. Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier

agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

D. Security Incident or Data Breach Notification: Supplier shall inform Customer of any Security Incident or Data Breach.

1. Supplier 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, Supplier will coordinate with Customer prior to any such communication.
2. Supplier 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).
3. Supplier shall:
 1. Maintain processes and procedures to identify, respond to and analyze Security Incidents;
 2. Make summary information regarding such procedures available to Customer at Customer's request;
 3. Mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Supplier; and
 4. Document all Security Incidents and their outcomes.
4. If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier 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.

E. 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 Supplier.

1. Supplier shall (1) cooperate with Customer as reasonably requested by Customer to 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.
2. Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal data and Non-Public Data or otherwise prevent its release, Supplier 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 – all 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 Supplier based on root cause.
3. If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

F. Notices

In addition to notice requirements under the terms of the Contract and those set forth above, a request, an approval or a notice in connection with this Appendix provided by Supplier shall be provided to:

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

and

servicedesk@omes.ok.gov.

G. Supplier Representations and Warranties

Supplier represents and warrants the following:

1. The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
2. Supplier 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.
3. The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier 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 Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.
4. Supplier 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.

H. Indemnity

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier's breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party's patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier 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.

I. Termination, Expiration and Suspension of Service

1. During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.
2. In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of any Customer Data that may have been stored in a format specified by the Customer and, as determined by the Customer. However, Supplier does not foresee any storage of Customer Data except for log files or data associated with support tickets:

- a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;
 - b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or
 - c. a combination of the two immediately preceding options.
3. Supplier shall not take any action to intentionally erase any Customer Data for a period of:
 - a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;
 - b. 30 days after the effective date of termination, if the termination is for convenience; or
 - c. 60 days after the effective date of termination, if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

4. The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.
5. Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. 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 within thirty (30) calendar day of its request for disposal of data.

Appendix 2 to State of Oklahoma Information Technology Terms

It is not contemplated or intended under the current Contract that Supplier will have access to CJI data in the provision of Supplier's COTS equipment. In the event that the terms of Appendix 2 of the Contract may become applicable between the State and Supplier, the parties agree to meet and revisit the section for good-faith discussion of any possible amendment(s) to the Contract.

INTRODUCTION

The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.

CJIS SECURITY POLICY REQUIREMENTS GENERALLY

The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information ("CJI"). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency ("CJA") and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. **Per Appendix "A" to said Security Policy, "access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI."**

DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI and CERTIFICATION

The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy **plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.**

In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;
2. the general policies in §4;
3. the Policies in §5;
4. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
5. the Supplemental Guidance in Appendices “J” & “K”.

This FBI Security Policy is located and may be downloaded at: <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>.

By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

Policy Requirement Checklist

Compliance checklist –

Policy Area 1	Information Exchange Agreements
Policy Area 2	Security Awareness Training
Policy Area 3	Incident Response
Policy Area 4	Auditing and Accountability
Policy Area 5	Access Control
Policy Area 6	Identification and Authentication
Policy Area 7	Configuration Management
Policy Area 8	Media Protection
Policy Area 9	Physical Protection
Policy Area 10	Systems and Communications

Protection and Information
Integrity

Policy Area 11

Formal Audits

Policy Area 12

Personnel Security

Request for Signature - DIR 4304 Alcatel Adoption -SW1115 OK and Alcatel(2)

Final Audit Report

2022-04-04

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