# STATE OF OKLAHOMA STATEWIDE CONTRACT WITH MTD PRODUCTS COMPANY

This State of Oklahoma Statewide Contract is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services and MTD Products Company("Supplier") and is effective as of the date of last signature to this Contract.

## Purpose

The State is awarding this Contract to Supplier for the provision of Grounds Maintenance Equipment & Services across the State of Oklahoma. This contract includes agriculture, trees, and brush maintenance equipment, attachments, accessories, parts, Golf carts, ATVs, UTVs, utility vehicles, medical emergency utility cart, Mowers, Handheld grounds maintenance Equipment. and services related to the solutions described, including maintenance or repair, and warranty programs as more particularly described in certain Contract Documents. Supplier submitted a proposal which contained no exceptions to the Solicitation. This Contract Document memorializes the agreement of the parties with respect to terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.

2. The following Contract Documents are attached hereto and incorporated herein:

    2.1. Solicitation, Attachment A & Exhibit 1 Specifications.
    2.2. General Terms, Attachment B.
    2.3. Statewide Contract Terms, Attachment C.
    2.4. Exhibit 2- Bidder questionnaire,
    2.5. Exhibit 3 & 4: Prices.

3. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

**STATE OF OKLAHOMA**
**by and through the**
**OFFICE OF MANAGEMENT AND**
**ENTERPRISE SERVICES**

By: Dan Sivard

Name: Dan Sivard

Title: State Purchasing Director

Date: Feb 8, 2023

**MTD PRODUCTS COMPANY**

By: Jennifer Kucera
Jennifer Kucera (Feb 7, 2023 17:43 EST)

Name: Jennifer Kucera

Title: Pro Sales Support Lead

Date: Feb 7, 2023

Tim Tuck
Tim Tuck (Feb 8, 2023 10:48 CST)

Feb 8, 2023

Reviewed & Approved by OMES Legal

# ATTACHMENT A

# SOLICITATION NO. 0900000552

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded by the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract Document.

## PURPOSE

The contract is awarded as a statewide contract for SW0196 – Grounds Maintenance Equipment & Services across the State of Oklahoma. This contract includes agriculture, trees, and brush maintenance equipment, attachments, accessories, parts, Golf carts, ATVs, UTVs, utility vehicles, medical emergency utility cart, Mowers, Handheld grounds maintenance Equipment. and services related to the solutions described, including maintenance or repair, and warranty programs. Supplier may include related services to the extent that these solutions are complementary to the offering of the Grounds Maintenance equipment and products being proposed.

### 1. Contract Term and Renewal Options

The initial Contract term, which begins on the effective date of the Contract, is one year and there are four (4) one-year options to renew the Contract.

### 2. Scope of work

**2.1.** Certain Contract requirements are attached hereto as

Exhibit 1: Specifications,

Exhibit 2: Bidder questionnaire,

Exhibit 3: Price:

Golf carts ATV, UTV & services, Ground irrigation Equipment &services, Mowers- Handheld Ground Equipment & services, Beverage carts & services, and authorized dealer list for each one of them.

Exhibit 4: Price:

Agriculture/Farm Equipment, Implements & attachments, Forestry & brush Cutting & Maintenance equipment, Equipment repair, & authorized dealer list.

# EXHIBIT 1

Scope of Work

Solicitation 0900000552

1. **Contract Obligations**

In addition to obligations set forth in other Contract Documents, the following obligations are included in the Contract:

2. **Licensing**

Sales of motor vehicles in the State of Oklahoma are subject to the Oklahoma Motor Vehicle Commission Statutes. (Oklahoma Statutes, Title 47 - Motor Vehicles, Chapter 62) Offeror certifies by submission of a response that all required Oklahoma Motor Vehicle Commission licenses are in place and current, and that copies of all such licenses have been submitted with the Response. It is the Vendor's responsibility to keep all required Oklahoma Motor Vehicle Commission licensing current during the term of the contract and to furnish copies at any time upon request by Central Purchasing. If the Vendor does not maintain current licensing, Central Purchasing may immediately terminate the contract upon discovery of the expiration of the license. Contracts for motor vehicles to be sold within the state of Oklahoma may be made only with properly licensed Oklahoma Motor Vehicle Dealers.

2.1. Authorized Dealer list, Letter from Manufacturer, and service level agreement are required throughout the duration of the Contract period.

2.2. Electronic brochures for equipment may be requested from Supplier.

3. **Warranty for Equipment, Options, Accessories &Attachments**

3.1. The Supplier agrees the products furnished under this Contract shall be covered by all commercial warranties the Supplier provides for such products, and rights and remedies provided herein are in addition to and do not limit any rights afforded to the State of Oklahoma by any other clause of this Contract.

3.2. The Supplier warrants that at the time of delivery, all equipment and purchased under this Contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this Contract.

3.3. All warranty work performed, and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved by the customer contact person prior to installation.

3.4. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Supplier shall be required to make repairs or corrections at no additional cost to the customer.

3.5. Supplier shall furnish a copy of their warranty applicable for the equipment.

3.6. All equipment warranties shall start on the date of delivery and shall be for the full term of said warranty.

3.7. Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Customer requesting the service. The following information shall be provided in order to determine ownership of the equipment:

3.7.1. Name of Customer and division, if applicable.

3.7.2. Make, Model, and VIN of equipment

3.7.3. Control number of Customer (Inventory number)

3.8. Repairs made that are covered by a warranty shall not be paid for by the Customer.

3.9. The Supplier shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work.

3.10. All persons utilized in the performance of this Contract shall be employees of the Supplier and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

3.11. Equipment that will remain in the Supplier's possession overnight and for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Supplier shall be responsible for the proper care and custody of any Customer-owned equipment in the supplier's possession.

## 4. Quality of Parts

4.1. Parts under these specifications must be name brand, nationally advertised merchandise. Equivalent substitutions must be approved by the customer contact person.

4.2. After Market Repair parts must be equal to or exceed original equipment manufacturer's specifications.

4.3. Repair parts must be packaged and distributed under their respective nationally known name brands.

4.4. All rebuilt or remanufactured parts must meet the same requirements as listed above.

4.5. Some repair parts may be required to be original equipment manufactured repair parts. Suppliers must carry a complete line of OEM parts for all models of equipment they carry.

4.6. Preservation, packaging, and packing and marking will be in accordance with best standard industry practice to provide adequate protection against shipping damage.

5. **Warranty-Parts**

5.1. Suppliers are required to provide any buy-back, trade-in, or exchange policy concerning repair parts sold to Customer.

5.2. Supplier shall correct ordering errors without further cost to the Customer.

5.3. A copy of the Warranty shall be included for replacement parts purchased.

6. **Repair Services**

Pricing for parts and/or repair services post warranty must be provided on Exhibit 3 & 4.

7. **Ordering**

7.1. No minimum orders will be considered under this contract.

7.2. Suppliers shall identify any websites that can be of assistance in determining needs and calculating total cost of items purchased.

7.3. Any trade-in allowances determined by the Supplier shall be deducted from the established current price after the discount is applied. The formula will be to deduct the discount from the established current price and then take off the trade-in allowance.

Example: List price is $17,199, and the discount is 23% and the trade-in is $6,000. $17,199-23% = $13,243.23. $13,243-$6000 = $7,243.23, final price.

7.4. All equipment shall be delivered with one copy of the operator's manual and an illustrated repair parts manual or list. If other manuals are required by the customer, they shall be offered at the discount offered in the Price Sheet.

8. **Invoices**

To ensure prompt payment, the invoice shall include the following information:

8.1. Supplier's suggested retail price less any trade-in allowance if applicable, Contract percentage discount off, freight cost, set-up fees, and allied or incidentals used to customize the equipment, and the final price for each item delivered.

8.2. The copy of the current, dated Supplier's Price List showing the price of the equipment if requested by the ordering customer for their accounting purposes.

8.3. Name of company who provided the products/services.

8.4. Supplier shall be the only office authorized to receive orders, invoice and receive payment. Supplier shall be responsible for the equipment and chassis when being transported between locations and for additional installations performed.

9. **Delivery**

9.1. Delivery of equipment is to be made within 120 calendar days after receipt of order unless other arrangements are made between the ordering Customer and the Supplier. Earlier deliveries are encouraged; however, there shall be no change in Contract price or discount terms because of the earlier delivery.

9.2. All equipment is to be delivered new, unused, assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Customer. Liability for product delivery remains with the Supplier until delivered and accepted.

9.3. Delivery shall be made in accordance with instructions on purchase order from each Customer. If there is a discrepancy between the purchase order and what is listed on the Contract; it is the Supplier's obligation to seek clarification from the ordering Customer and, if applicable, from the contracting officer.

9.4. Delivery on parts is to be made within thirty (30) days.

9.5. One Operating Manual, an illustrated parts manual or List, and the Warranty, shall be furnished for each new item purchased, as well as any proprietary tools necessary to perform routine service or adjustments, all at no additional cost.

10. **Price Adjustments**

10.1 Supplier is to notify the contracting officer at least 30 days before a price adjustment will occur, or as soon as possible upon notification from the manufacturer.

10.2. Suppliers are to include information concerning their return policy.

11. **New Products**

11.1. New Products may be added to the Contract as they are introduced by Supplier, however, the discount cannot be lowered throughout the contract period.

11.2. If Supplier becomes authorized as a dealer for other products those products may be added to their Supplier's lists of equipment offered.

12. **Discontinued Products**

12.1. Supplier is to notify the Contracting Officer of any changes in schedule of equipment such as discontinued products or replacement models.

13. **Training**

13.1. Supplier shall provide any training opportunities for the equipment under Contract.

# ATTACHMENT B

# STATE OF OKLAHOMA GENERAL TERMS

This State of Oklahoma General Terms ("General Terms") is a Contract Document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract Document, Supplier and State agree to the following General Terms:

## 1 Scope and Contract Renewal

**1.1** Supplier may not add products or services to its offerings under the Contract without the State's prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.

**1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.

**1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier's performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract Documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Addendum. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.

**1.4** The State may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the State exercises such option to extend ninety (90) days, the State shall notify the

Supplier in writing prior to Contract end date. The State, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

**1.5** Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

## 2 Contract Effectiveness and Order of Priority

**2.1** Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until the Contract is effective.

**2.2** Contract Documents shall be read to be consistent and complementary. Any conflict among the Contract Documents shall be resolved by giving priority to Contract Documents in the following order of precedence:

**A.** any Addendum;

**B.** any applicable Solicitation;

**C.** any Contract-specific terms contained in a Contract Document including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;

**D.** the terms contained in this Contract Document;

**E.** any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation or applicable law;

**F.** any statement of work, work order, or other similar ordering document as applicable; and

**G.** other mutually agreed Contract Documents.

**2.3** If there is a conflict between the terms contained in this Contract Document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms provided by Supplier shall not take priority over this Contract Document or

Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Addendum.

**2.4** Any Contract Document shall be legibly written in ink or typed. All Contract transactions, and any Contract Document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

## 3 Modification of Contract Terms and Contract Documents

**3.1** The Contract may only be modified, amended, or expanded by an Addendum. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.

**3.2** Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.

## 4 Definitions

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

**4.1** **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.

**4.2** **Addendum** means a mutually executed, written modification to a Contract Document.

**4.3** **Amendment** means a written change, addition, correction or revision to the Solicitation.

**4.4** **Bid** means an offer a Bidder submits in response to the Solicitation.

**4.5** **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.

**4.6** **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract Documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.

**4.7** **Contract Document** means this document; any master or enterprise agreement terms entered into between the parties that are mutually agreed to be applicable to the Contract; any Solicitation; any Contract-specific terms; any Supplier's Bid as may be negotiated; any statement of work, work order, or other similar mutually executed ordering document; other mutually executed documents and any Addendum.

**4.8** **Customer** means the entity receiving goods or services contemplated by the Contract.

**4.9** **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.

**4.10** **Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.

**4.11** **Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.

**4.12** **Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.

**4.13** **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.

**4.14** **OAC** means the Oklahoma Administrative Code.

**4.15** **OMES** means the Office of Management and Enterprise Services.

**4.16** **Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.

**4.17** **State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.

**4.18** **Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.

**4.19** **Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.

**4.20** **Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.

**4.21** **Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract Document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date 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 by or on behalf of Supplier under the Contract and (vii) 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 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.

## 5 Pricing

**5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.

**5.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.

**5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

## 6 Ordering, Inspection, and Acceptance

**6.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.

**6.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

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

Pursuant to OAC 260:115-9-5, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

**6.3** Supplier shall deliver products and services on or before the required date specified in a Contract Document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract Document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.

**6.4** Product warranty and return policies and terms provided under any Contract Document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

## 7 Invoices and Payment

**7.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted.

The following terms additionally apply:

**A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.

**B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.

**C.** Payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.

**D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.

**E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.

**F.** Supplier shall have no right of setoff.

**G.** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.

**H.** The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.

## 8 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

**8.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set

forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a thirty (30) day notice of cancellation and name the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

**A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;

**B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than $5,000,000 per occurrence;

**C.** Automobile Liability Insurance with limits of liability of not less than $5,000,000 combined single limit each accident;

**D.** Directors and Officers Insurance which shall include Employment Practices Liability as well as Consultant's Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than $5,000,000 per occurrence;

**E.** Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits $5,000,000 per occurrence; and

**F.** Additional coverage required in writing in connection with a particular Acquisition.

**8.2** Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.

**8.3** Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

## 9 Compliance with Applicable Laws

**9.1** As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

**A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.

**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 of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;

**C.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;

**D.** 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;

**E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;

**F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);

**G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;

**H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations 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**;

**I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and

**J.** 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.

**9.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at https://omes.ok.gov/sites/g/files/gmc316/f/InfoSecPPG_0.pdf. Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.

**9.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.

**9.4** In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory

contract provisions required in connection with the receipt of federal funds or other funding source.

**9.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.

**9.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device 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.

**9.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, 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 party.

**9.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.

**9.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.

**9.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format

usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

## 10 Audits and Records Clause

**10.1** As used in this clause and pursuant to 67 O.S. §203, "record" includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, 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. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.

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

**10.3** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

## 11 Confidentiality

**11.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier 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 necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer's prior express written

permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.

**11.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.

**11.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll free telephone call center services.

**11.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.

**11.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents,

representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.

**11.6** The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

**11.7** Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) résumé, pricing or marketing materials provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

## 12 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, 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. Prompt disclosure is required under this section if the activity or interest is

related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

## 13 Assignment and Permitted Subcontractors

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

**13.2** Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

**13.3** If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier 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 Supplier. Such approval is within the sole discretion of the State. 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. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to

the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written 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.

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

**13.5** Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

## 14 Background Checks and Criminal History Investigations

Prior to the commencement of any services, background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to the State in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or services.

## 15 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property,

copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

## 16 Indemnification

### 16.1 Acts or Omissions

**A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) 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 Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.

**B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

### 16.2 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

**16.3 Notice and Cooperation**

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

**16.4 Coordination of Defense**

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

participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

### 16.5 Limitation of Liability

**A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.

**B.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.

**C.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

## 17 Termination for Funding Insufficiency

**17.1** Notwithstanding anything to the contrary in any Contract Document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

**17.2** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.

**17.3** The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

## 18 Termination for Cause

**18.1** Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.

**18.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier’s performance or obligations under the Contract; (ii) Supplier’s material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.

**18.3** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence

of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

**18.4** The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-9 is an example.

## 19 Termination for Convenience

**19.1** The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.

**19.2** Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but

there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

## 20 Suspension of Supplier

**20.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.

**20.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

**20.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

## 21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract.

A determination that Supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

## 22 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

## 23 Force Majeure

**23.1** 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 similar 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. If 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 to 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.

**23.2** Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

**23.3** Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay

or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

## 24 Security of Property and Personnel

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

## 25 Notices

All notices, approvals or requests allowed or required by the terms of any Contract Document shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the physical address set forth below. Notice information may be updated in writing to the other party as necessary. Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall not be delivered solely via e-mail.

**If sent to the State:**
State Purchasing Director
2401 N. Lincoln Blvd., Suite 116
Oklahoma City, Oklahoma 73105

**With a copy, which shall not constitute notice, to:**
Purchasing Division Deputy General Counsel
2401 N. Lincoln Blvd., Suite 116
Oklahoma City, Oklahoma 73105

## 26 Miscellaneous

### 26.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract Documents, in the singular or in the aggregate, shall be governed by the laws of the State without regard to application of choice of law principles. Pursuant to 74 O.S. §85.14, where federal granted funds are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents, shall be in Oklahoma County, Oklahoma.

### 26.2 No Guarantee of Products or Services Required

The State shall not guarantee any minimum or maximum amount of Supplier products or services required under the Contract.

### 26.3 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

### 26.4 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

### 26.5 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier 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 the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

### 26.6 Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 *et seq*. Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required.

### 26.7 Failure to Enforce

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

### 26.8 Mutual Responsibilities

**A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.

**B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.

**C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.

**D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.

**E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

### 26.9 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State 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, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

**26.10 Severability**

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**26.11 Section Headings**

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

**26.12 Sovereign Immunity**

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State.

**26.13 Survival**

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract Documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

**26.14 Entire Agreement**

The Contract Documents taken together as a whole constitute the entire agreement between the parties. 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. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

## 26.15 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent, or another representative violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

## 26.16 Import/Export Controls

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

# ATTACHMENT C

# OKLAHOMA STATEWIDE CONTRACT TERMS

## 1. Statewide Contract Type

**1.1** The Contract is a non-mandatory statewide contract for use by State agencies. Additionally, the Contract may be used by any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department or other entity designated to act on behalf of the political subdivision; a state, county or local governmental entity in its state of origin; and entities authorized to utilize contracts by the State via a multistate or multigovernmental contract.

**1.2** The Contract is a firm, fixed price contract for indefinite delivery and quantity for the Acquisitions available under the Contract.

## 2. Orders and Addendums

**2.1** Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations may be required.

**2.2** Any ordering document shall be effective between Supplier and the Customer only and shall not be an Addendum to the Contract in its entirety or apply to any Acquisition by another Customer.

**2.3** Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Addendum to the Contract shall be signed by the State Purchasing Director or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.

## 3. Termination for Funding Insufficiency

In addition to Contract terms relating to termination due to insufficient funding, a Customer may terminate any purchase order or other payment mechanism if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. The determination by the Customer of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

## 4. Termination for Cause

In addition to Contract terms relating to termination for cause, a customer may terminate its obligations, in whole or in part, to Supplier if it has provided Supplier with written notice of material breach and Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. The Customer may also terminate a purchase order or other payment mechanism or Supplier's activities under the Contract immediately without a thirty (30) day written notice to Supplier, if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements if such non-compliance relates or may relate to Supplier provision of products or services to the Customer or if Supplier's material breach is reasonably determined (i) to be an impediment to the function of the Customer and detrimental to the Customer, or (ii) when conditions preclude the thirty (30) day notice.

## 5. Termination for Convenience

In addition to any termination for convenience provisions in the Contract, a Customer may terminate a purchase order or other payment mechanism for convenience if it is determined that termination is in the Customer's best interest. Supplier will be provided at least thirty (30) days' written notice of termination.

## 6. Contract Management Fee and Usage Report

**6.1** Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract

management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

**6.2** While Supplier is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

**6.3** All Contract Usage Reports shall meet the following criteria:

**i.** Electronic submission in Microsoft Excel format to **strategic.sourcing@omes.ok.gov**;

**ii.** Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;

**iii.** Submission no later than forty-five (45) days following the end of each calendar quarter;

**iv.** Contract quarterly reporting periods shall be as follows:

**a.** January 01 through March 31;

**b.** April 01 through June 30;

**c.** July 01 through September 30; and

**d.** October 01 through December 31.

**v.** Reports must include the following information:

**a.** Procuring entity;
**b.** Order date;
**c.** Purchase Order number or note that the transaction was paid by Purchase Card;
**d.** City in which products or services were received or specific office or subdivision title;
**e.** Product manufacturer or type of service;
**f.** Manufacturer item number, if applicable;
**g.** Product description;
**h.** General product category, if applicable;
**i.** Quantity;
**j.** Unit list price or MSRP, as applicable;
**k.** Unit price charged to the purchasing entity; and
**l.** Other Contract usage information requested by the State.

**6.4** Payment of the contract management fee shall be delivered to the following address within forty-five (45) calendar days after the end of each quarterly reporting period:

State of Oklahoma
Office of Management and Enterprise Services, Central Purchasing
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

To ensure payment is properly accounted for, Supplier shall provide the following information with payment: (i) reference to the applicable Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s) and the amount of the contract management fee being paid for each contract number.

EXHIBIT 2

Bidder Questionnaire

Solicitation 0900000552

The following questions are to be answered in full.

Responses must use the numbering system to answer the questions.

**Questionnaire must be submitted with response.**

1. How long has the bidding company been in business?
2. Has bidding company ever filed for Bankruptcy?
3. Do you offer value-added incentives to purchaser? If yes, how would you incorporate special sale situations into the statewide contract?
4. Have you ever had a recall for the equipment your company sales? If yes, how much of a negative impact in dollar value was it to the company to repair/replace the equipment?
5. What is the average turnaround time from the build of the equipment until delivery?
6. Are discounts offered for extended warranties? If yes, bidder must include in the response the types of extended warranties and the terms. If no, bidder must include in the response the types of extended warranties and the terms.
7. Bid response must include the parts return policy, as well as any restocking fee for parts incorrectly ordered by the customer.
8. What Oklahoma counties do you service?
9. List the brands of parts that you can provide.
10. List the brands of the parts that you are factory authorized to sell.
11. List the brands of equipment that you can service, and the publication used for pricing the hourly labor rate.
12. Are you willing to deliver products? is there any delivery charge for that?
13. How will you notify us if there is a recall?
14. Can you please provide everything you offer for these types of equipment instead of only a certain brand?

## Exhibit 2: Bidder Questionnaire

1. **How long has the bidding company been in business?**
    - MTD Products Company was founded in 1932.
2. **Has bidding company ever filed for Bankruptcy?**
    - MTD Products Company has not previously filed for Bankruptcy.
3. **Do you offer value-added incentives to purchaser? If yes, how would you incorporate special sale situations into the statewide contract?**
    - MTD Products Company does not offer value-added incentives to the purchasers of this contract, rather product is offered at a set discounted rate from the Manufactured Suggested Retail Price.
4. **Have you ever had a recall for the equipment your company sales? If yes, how much of a negative impact in dollar value was it to the company to repair/replace the equipment?**
    - MTD Products Company has had product recalls in the past. Information on the recalls can be found at https://www.mtdproducts.com/en_US/product-recalls/.
5. **What is the average turnaround time from the build of the equipment until delivery?**
    - The timeframe for equipment to ship from our warehouse after a completed manufacturer production run may take up to 2 weeks or longer and may vary. In addition, delivery to a dealership location would be dependent on distance from the warehouse to the dealer location and on freight carrier transit times.
6. **Are discounts offered for extended warranties? If yes, bidder must include in the response the types of extended warranties and the terms. If no, bidder must include in the response the types of extended warranties and the terms.**
    - MTD Products Company does not offer extended warranties for product purchased off this contract therefore extended warranty discounts are not applicable.
7. **Bid response must include the parts return policy, as well as any restocking fee for parts incorrectly ordered by the customer.**
    - We realize that identifying the correct OEM replacement parts for maintaining or repairing your outdoor power equipment can be challenging. We will work with you to ensure you receive the correct replacement part for your machine and that you receive credit for your part return.
        - Prior to the return of new/unused parts, please review the instructions included on your packing slip.
        - Please do not return used parts, batteries or fluids as they are non-refundable.
        - Be sure to send incorrect parts back promptly. A processing fee of 25% will be charged for parts received 90 days after delivery (returns will not be accepted after a year from date received).

- Your refund will be credited to the original credit card used for your purchase within 1 - 2 billing cycles from receipt of returned merchandise at our warehouse.

8. **What Oklahoma counties do you service?**
   - MTD Products Company services all the counties in Oklahoma through our network of independently owned authorized dealers.
9. **List the brands of parts that you can provide.**
   - The MTD family of brands include Cub Cadet®, Troy-Bilt® and DEWALT®. The portfolio also includes Remington®, Yard Machines®, Columbia®, MTD Genuine Parts® and Arnold® brands.
10. **List the brands of the parts that you are factory authorized to sell.**
    - The MTD family of brands include Cub Cadet®, Troy-Bilt® and DEWALT®. The portfolio also includes Remington®, Yard Machines®, Columbia®, MTD Genuine Parts® and Arnold® brands.
11. **List the brands of equipment that you can service, and the publication used for pricing the hourly labor rate.**
    - Brands backed by the strong network of MTD sales, service and support include Cub Cadet®, Troy-Bilt® and DEWALT®, Remington®, Yard Machines®, Columbia®, Yard-Man®, and White Outdoor®. This does not include brands sold outside of the Americas. Hourly labor rates are determined by the independently owned authorized dealer(s) and are posted at their individual locations.
12. **Are you willing to deliver products? is there any delivery charge for that?**
    - MTD Products Company is willing to delivery product. Delivery charge would be $0.57 per mile from the local dealership to the delivery location.
13. **How will you notify us if there is a recall?**
    - Owners of recalled product are notified via the mailing address and email address, if provided, from the information provided at the time of registration.
14. **Can you please provide everything you offer for these types of equipment instead of only a certain brand?**
    - Product and model availability varies per brand, series and platform. Visit the brand website or ask your local representative and/or authorized dealer for the types of equipment offered.

**EXHIBIT 3**

**CARTS-ELECTRIC & SERVICES,GOLF CARTS-GAS OR DIESEL & SERVICES,GOLF CARTS-ALTERNATI**

**Loaders, Loader Attachments**

**If bidding different discounts for different sizes of equipment or options, bid response must list the items. If more**

| Brand Name /Model | Electric | Gas or Diesel | Alternative Fuel |
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Attachments/Accessories:_____%

Options:_____%

Trade-ins: _____Available _____Not Available

(Include any special conditions on a separate sheet)

Multiple Unit discount:_____% (In addition to the equipment discount) based on _____Units purchased

Extended Warranty offered? _____Yes _____No If yes, please attach information for the extended warranty

Comment:

## AUTHORIZED DEALER LIST

**All authorized dealers must be approved by the State for use in this contract. If responding bidder is a manufactur completed Exhibit 1, Attachment 5 outlining the authorized dealer name and information. Dealer name, address, p email address and point of contact phone number are all required fields.**

| Dealer Name | Dealer Address | Dealer Point of Contact Name | Dealer Point of Contact Email Address |
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| OFF ROAD UTV/ATV | Services | Rate for services |
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y purchase. Discount offered _____%

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| Dealer Point of Contact<br>Phone Number |
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Price sheet for GOLF

:hines and attachments, Small Articulated Loaders, Mini-Track

| Price Book/Catalog Date of Manufacturer's Current Published Retail Price List | Percentage off list |
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**Exhibit 3 : Ground Irrigation Equipment & Services**

**Price Book/Catalog Date of Manufacturer's Current Published Retail Price List. If bidding different disc**

| Brand Name/Model : | Model |
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Attachments/Accessories:_____%

Options:_____%

Trade-ins: _____Available _____Not Available

(Include any special conditions on a separate sheet)

Multiple Unit discount:_____% (In addition to the equipment discount) based on _____Units pur

Extended Warranty offered? _____Yes _____No If yes, please attach information for the extend

Comment:

## AUTHORIZED DEALER LIST

**All authorized dealers must be approved by the State for use in this contract. If responding bidder is a authorized dealer name and information. Dealer name, address, point of contact, point of contact emai**

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**ounts for different sizes of equipment or options, bid response must list the items. If more space ne**

| Descriptions | Services | Rate of Services |
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led warranty purchase. Discount offered _____%

**manufacturer, bid response must contain a completed Exhibit 1, Attachment 5 outlining the**
**il address and point of contact phone number are all required fields.**

| Dealer Point of Contact Name | Dealer Point of Contact Email Address | Dealer Point of Contact Phone Number |
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| Price Book/Catalog Date of Manufacturer's Current Published Retail Price List | Percentage off List |
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**EXHIBIT 3**

**Mowers and Handheld grounds maintenance Equipment Contains: Including but not limited to**

**Mowers:Riding Mowers, Professional Zero-Turn mowers, Professional stand-on zero turn mowers, Gang Mowers and single unit mowers, Self-Propelled Riding Mowers (Medium duty wide coverage and zero turn), Mowers for Golf Courses, Lawn tractors. Attachments & Accessories for the equipment. Options for the equipment, small pull behind trailers. Push Mowers, Walk Behind Mowers,Attachmentsfor the equipment. Options for the equipment.**

**Hand held grounds maintenance Equipments: Blowers, Chain Saws, chainsaws, Edgers, Trimmers, weed eaters, small leaf, Power Rakes, sod cutters, wood chip standalone mulchers, Sprayers, Sprayer Small standalone tillers, Hedge trimmers, pole saws, Pole saw**

**If bidding different discounts for different sizes of equipment or options, bid response must list the items. If more space needed then please add more rows.**

| Brand Name | Model | Mowers: Description | Hand Held Ground Equipments: Description | Services | Rate of services | Price Book/Catalog Date of Manufacturer's Current Published Retail Price List | Percentage off List |
|---|---|---|---|---|---|---|---|
| Cub Cadet | PRO Series | Commercial mowers | | Warranty & Repair | 100.00 per hr, .57 per mile | 9/15/2022 | 20% |
| Cub Cadet | Ultima Series | Residential zero turn mowers | | Warranty & Repair | 100.00 per hr, .57 per mile | 9/15/2022 | 15% |
| Cub Cadet | Lawn & Garden Tractors | Residential lawn & garden tractors | | Warranty & Repair | 100.00 per hr, .57 per mile | 9/15/2022 | 15% |
| Cub Cadet | Walk Behind Mower | Residential push, self-propelled and wide area walk behind mowers | | Warranty & Repair | 100.00 per hr, .57 per mile | 9/15/2022 | 15% |
| Dewalt | Electric & Battery | Electric & battery outdoor power equipment (mowers) | Blowers, trimmers, pole saws, chainsaws | Warranty & Repair | 100.00 per hr, .57 per mile | 9/15/2022 | 15% |
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Attachments/Accessories:____15___%

Options:_____%

Trade-ins: _____Available ___X__Not Available

(Include any special conditions on a separate sheet)

Multiple Unit discount:_____% (In addition to the equipment discount) based on _____Units purchased

Extended Warranty offered? _____Yes ___X__No If yes, please attach information for the extended warranty purchase. Discount offered _____%

Comments:

**AUTHORIZED DEALER LIST**

**All authorized dealers must be approved by the State for use in this contract. If responding bidder is a manufacturer, bid response must contain a completed Exhibit 1, Attachment 5 outlining the authorized dealer name and information. Dealer name, address, point of contact, point of contact email address and point of contact phone number are all required fields.**

| Dealer Name | Dealer Address | Dealer Point of Contact Name | Dealer Point of Contact Email Address | Dealer Point of Contact Phone Number |
|---|---|---|---|---|
| Ada Outdoors, LLC | 1030 West 12th Street, Ada, OK 74820 | Nathan Beauchamp | nathan@adaoutdoors.com | (580) 310-9898 |
| CIMR Sales & Service | 2623 East Highway 37, Tuttle, OK 73089 | Bruce Anthony | bruce@cimrsales.com | (405) 266-2663 |
| Corgill's Yamaha | 3010 North Broadway, Poteau, OK 74953 | Jimmy Corgill | corgillsmotorsports@windstream.net | (918) 647-2662 |
| Gilles Brothers Inc | 541 W Main St, Yukon, OK 73099 | Doug Gilles | gillesbros@yahoo.com | (405) 354-3565 |
| Lawton Motor Sports | 5110 Northwest Cache Road, Lawton, OK 73505 | Jordan Nassaney | lawtonmotorsports@yahoo.com | (580) 581-1600 |
| Shawnee Outdoors | 40960 Hardesty Road, Shawnee, OK 74801 | Nathan Beauchamp | nathan@shawneeoutdoors.com | (405) 395-9898 |
| Chupp Implement Company | 4701 South Mill St, Pryor, OK 74361 | Tim McCrate | tim@chuppimplementcompany.com | (918) 825-2044 |
| Tulsa New Holland, Inc. | 11919 East Pine Street, Tulsa, OK 74116 | Kelly Umphrey | shop1@tulsanewholland.com | (918) 438-5665 |
| Pro Power Equipment | 7405 South May, Oklahoma City, OK 73159 | Glenn Smith | glenn@okcpropower.com | (405) 634-7313 |
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**EXHIBIT 3**

**BEVERAGE CART & SERVICES**

**If bidding different discounts for diffe**

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Attachments/Accessories:____
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Options:_____%

Trade-ins: _____Available
_____Not Available
(Include any special conditions
on a separate sheet)

Multiple Unit discount:_____% (In addition to the equipment discount) based on _____Units purchas

Extended Warranty offered? _____Yes _____No If yes, please attach information for the extended w

Comments:

**AUTHORIZED DEALER LIST**

**All authorized dealers must be approved by the State for use in this contract. If responding bidder is a manu outlining the authorized dealer name and information. Dealer name, address, point of contact, point of conta**

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Comment:

**ɪrent sizes of equipment or options, bid response must list the items. If more**

| Rate of services | Price Book/Catalog Date of Manufacturer's Current Published Retail Price List |
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arranty purchase. Discount offered _____%

**ufacturer, bid response must contain a completed Exhibit 1, Attachment 5**
**act email address and point of contact phone number are all required fields.**

| Dealer Point of Contact Email Address | Dealer Point of Contact Phone Number |
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**space needed then  please add more rows.**

**Percentage off List**

**EXHIBIT 4:**
**Agriculture/Farm Equipment: PRICE**

## Agriculture/Farm Equipment.

Tractors and Farm Tractors, Heavy duty Tractors, Articulating Tractor (Slope Mower, Utility Tractor),Tractor attachments, Compact Tractors,Sub-Compact Tractors, Tractor attchments and Implements, Combines, Harvesters all complete with standard options and accessories,Aerators (Walk-behind or Stand-on), Aerators (Tow-Behind Sod Cutters, OverSeeders, Power Rakes, Detatchers,Turf equipment, Off road Utility vechiles, Standard bed, level lift bed. water tanks. Seeders, Sprayers,tillers, backhoes, parts, attachments, and accessories, Rollers, Fertilizer Spreaders. This does not mean residential lawn tractors. This is for large tractors and pieces of equipment used in farmering operations or for maintaining large aread of land and right of ways.Cotton, Hay & Forage, Tillage.

If bidding different discounts for different sizes of equipment or options, bid response must list the items. If more space needed then please add more rows.

| Brand Name | Model | Price Book/Catalog Date of Manufacturer's Current Published Retail Price List | Percentage off List |
|---|---|---|---|
| Cub Cadet | PRO Series | 9/15/2022 | 20% |
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Attachments/Accessories:___20____%

Options:_____%

Trade-ins: _____Available __X___Not Available
(Include any special conditions on a separate sheet)

Multiple Unit discount:_____% (In addition to the equipment discount) based on _____Units purchased

Extended Warranty offered? _____Yes __X___No If yes, please attach information for the extended warranty purchase. Discount offered _____%

Comment:

EX

**Implements and Attachments used c**

**Implements and Attachments used on Agriculture and Farm Equipment.** Equipment is for
to tractors such as tillers, rakes, blades, diggers, hoes, hay equipment, pluggers, cutters and mowers attached o

If bidding different discounts for different sizes of equipment or options, bic

| Brand Name |
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Attachments/Accessories:_____%

Options:_____%

Trade-ins: _____Available _____Not Available
(Include any special conditions on a separate sheet)

Multiple Unit discount:_____% (In addition to the equipment discount) based on _____Units purchased

Extended Warranty offered? _____Yes _____No If yes, please attach information for the extendec

Comment:

**‹HIBIT 4.**
**›n Agriculture and Farm Equipment: PRICE**

cultivation, planting, fertilizing, irrigation and harvesting. This is for the attachments and implements that are attached t a tractor such as a flex, rotary, booms. Equipment used ot maintain large areas of land and right-of-ways.

ł response must list the items. If more space needed then please add more rows.

| Model | Price Book/Catalog Date of Manufacturer's Current Published Retail Price List | Percentage off List |
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ł warranty purchase. Discount offered _____%

**Forestry & Brush Cutting and Maintenance Equipment.** This is for equipment used to trim, cut dc
chippers, Planting and seeding,C

If bidding different discounts for different sizes of equipment or optio

| Brand Name |
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Attachments/Accessories:_____%

Options:_____%

Trade-ins: _____Available _____Not Available
(Include any special conditions on a separate sheet)

Multiple Unit discount:_____% (In addition to the equipment discount) based on _____Units purch

Extended Warranty offered? _____Yes _____No If yes, please attach information for the

Comment:

**EXHIBIT 4**

**ıg and Maintenance Equipment : PRICE**

own and grind trees, and collect wood. Chippers, shredders, large equipment used ot cut thick brush such as grinders, utting & mowing , Landscapingand forestry mowers.

ns, bid response must list the items. If more space needed then please add more rows.

| Model | Price Book/Catalog Date of Manufacturer's Current Published Retail Price List | Percentage off List |
|---|---|---|
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extended warranty purchase. Discount offered _____%

**EXHIBIT 4**
**Equipment Repair: PRICE**

Suppliers shall furnish pricing in the spaces provided below.

Unit prices shall include all costs associated with repair services.

Cost for Repair Services

Labor Rate: Hourly rate for labor required to perform work.

Cost for Parts: Price quoted for parts shall be list price, less a percentage discount.
Discount to include shipping and handling. No additional shipping and handling fees will be assessed at the time of order.

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| Repair Services if for labor and parts<br>Labor Rate:<br><br>Parts, at list price, less a percentage discount | $_____100.00 per hr_____<br><br>_____10_____% |
| Parts only<br>Parts, at list price, less a percentage discount | _____10_____% |
| Travel Reimbursement if supplier repairs equipment at the government entity location.<br>(Travel must be OVER 20 miles from Supplier location). | $_____.57_____ per mile |
| If parts are to be shipped, bidder must provide the means by which the parts are shipped (i.e. UPS, FedEx, USPS, etc.).<br><br>Charge for shipping rate must be included in the discount percentage rate. | |
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Comment:

**EXHIBIT 4**

**AUTHORIZED DEALER LIST**

**All authorized dealers must be approved by the State for use in this contract. If responding bidder is a manufacturer, bid response must contain a completed Exhibit 1, Attachment 5 outlining the authorized dealer name and information. Dealer name, address, point of contact, point of contact email address and point of contact phone number are all required fields.**

| Dealer Name | Dealer Address | Dealer Point of Contact Name | Dealer Point of Contact Email Address | Dealer Point of Contact Phone Number |
|---|---|---|---|---|
| Ada Outdoors, LLC | 1030 West 12th Street, Ada, OK 74820 | Nathan Beauchamp | nathan@adaoutdoors.com | (580) 310-9898 |
| CIMR Sales & Service | 2623 East Highway 37, Tuttle, OK 73089 | Bruce Anthony | elvisindabldg@aol.com | (405) 266-2663 |
| Corgill's Yamaha | 3010 North Broadway, Poteau, OK 74953 | Jimmy Corgill | corgillsmotorsports@windstream.net | (918) 647-2662 |
| Gilles Brothers Inc | 541 W Main St, Yukon, OK 73099 | Doug Gilles | gillesbros@yahoo.com | (405) 354-3565 |
| Lawton Motor Sports | 5110 Northwest Cache Road, Lawton, OK 73505 | Jordan Nassaney | lawtonmotorsports@yahoo.com | (580) 581-1600 |
| Shawnee Outdoors | 40960 Hardesty Road, Shawnee, OK 74801 | Nathan Beauchamp | nathan@shawneeoutdoors.com | (405) 395-9898 |
| Chupp Implement Company | 4701 South Mill St, Pryor, OK 74361 | Tim McCrate | tim@chuppimplementcompany.com | (918) 825-2044 |
| Tulsa New Holland, Inc. | 11919 East Pine Street, Tulsa, OK 74116 | Kelly Umphrey | shop1@tulsanewholland.com | (918) 438-5665 |
| Pro Power Equipment | 7405 South May, Oklahoma City, OK 73159 | Glenn Smith | glenn@okcpropower.com | (405) 634-7313 |
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Comment:

# EXECUTABLE Contract SW0196 MTD

Final Audit Report 2023-02-08

| | |
|---|---|
| Created: | 2023-02-06 |
| By: | cini Zacharia (cini.zacharia@omes.ok.gov) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAY5ijS1WR_feS-HsKW7_DxcGaw3BMKWZA |

## "EXECUTABLE Contract SW0196 MTD" History

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Signature Date: 2023-02-08 - 4:58:58 PM GMT - Time Source: server- IP address: 165.225.216.100

Agreement completed.

2023-02-08 - 4:58:58 PM GMT

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