



## **STATE OF OKLAHOMA STATEWIDE CONTRACT WITH DELL MARKETING L.P.**

This State of Oklahoma Statewide Contract No. 1020 (“Contract”) is entered into between the state of Oklahoma by and through the Office of Management and Enterprise Services and Dell Marketing L.P. (“Supplier”) and is effective as of the date of last signature to this Contract. The initial Contract term, which begins on the effective date of the Contract, is one year and there are three (3) one-year options by the State to renew the Contract.

### **Purpose**

The State is awarding this Contract to Supplier for the acquisition and support of end-user computing devices, servers, storage, and peripherals, as more particularly described in certain Contract Documents. Supplier submitted a proposal which contained exceptions to the Solicitation, which contained additional terms, with certain information requested to be considered confidential, and also submitted a best and final offer. This Contract memorializes the agreement of the parties with respect to negotiated 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 0900000560, Attachment A;
  - 2.2. Contract Requirements, Attachment A, Exhibit 1;
  - 2.3. General Terms, Attachment B;
  - 2.4. Oklahoma Statewide Contract Terms, Attachment C;
  - 2.5. Information Technology terms, Attachment D;
  - 2.6. Information Security Requirements, Attachment D-1;

- 2.7. Portions of the Bid, Attachment E;
    - i. Master Lease Agreement, Attachment E-1;
    - ii. Best and Final Offer, Attachment E-2;
  - 2.8. Negotiated Exceptions to Contract, Attachment F; and
  - 2.9. Template for Contract Modifications for Quotes, Statements of Work, or other Ordering Documents, Attachment F-1.
3. The parties additionally agree:
- 3.1. except for the Dell Technologies Security Practices – SIGLite2022v1.0 and information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.
  - 3.2. revision to the Bid submitted as a best and final offer is attached hereto as Attachment E-1 and
  - 3.3. Unless mutually agreed to in writing by the Chief Information Officer utilizing Attachment F-1, no Contract Document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State. If Supplier is acting as a reseller, any third-party terms provided are also subject to the foregoing.
  - 3.4. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.
  - 3.5. Leasing is allowed under this Contract pursuant to the attached Dell Financial Services L.L.C. ("DFS") Master Lease Agreement ("MLA") between DFS and the State or eligible Affiliate under this Master Agreement. The DFS MLA will set forth the terms and conditions upon which the DFS shall lease to the State and/or its Affiliate and the State and/or its Affiliate shall lease from the DFS the Equipment, as defined in the MLA and as described on each lease schedule. The terms of such MLA and resulting lease schedules shall supersede any conflicting terms and

conditions contained herein, see amended Section 2.2 of Attachment B as modified in Attachment F.

Attachments referenced in this section are attached hereto and incorporated herein.

4. 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**

**DELL MARKETING L.P.**

By: Paul J McIntosh

By: *Katherine Castillo*

Name: Joe McIntosh

Name: katherine Castillo

Title: CIO

Title: Paralegal Advisor

Date: 07/20/2023

Date: 07/20/2023

**ATTACHMENT A**  
**SOLICITATION NO. 0900000560**

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded by the the State of Oklahoma, Office of Management and Enterprise Services (OMES), Central Purchasing Division on behalf of Information Services Division (ISD) which desires to enter into a mandatory use, multi-year award Contract 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 the acquisition and support of end-user computing devices, servers, storage, and peripherals

**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 three one-year options to renew the Contract.

**2. Specifications**

Certain Contract requirements and terms are attached hereto as Exhibit 1 and Exhibit 2 and incorporated herein.

Exhibit 1: Contract Requirements

Exhibit 2: Pricing Sheet

## **Exhibit 1**

### **Contract Requirements**

1. Category One – Desktop Computer configurations: A desktop computer is a personal computer intended for regular use at a single location. A desktop computer typically comes in several units connected during installation: (1) the processor, 2) display monitor and 3) input devices usually a keyboard and a mouse. Zero Clients, Thin clients, all in ones and workstations will also be included under desktops.
2. Category Two – Laptop Computer configurations: A laptop computer is a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad and speakers into a single unit. A laptop can be used away from an outlet using a rechargeable battery. All operating systems for tablets are allowed. Laptops will include notebooks, Ultrabook, mobile thin clients, Chromebooks, and netbooks. Computers with mobile operating systems will also be included under laptops. Tablets that have the option to be utilized with a keyboard can be sold in this category.
3. Category Three – Ruggedized Device configurations: Ruggedized refers to devices specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures and wet or dusty conditions.
4. Category Four – Mac Computer configurations: This category includes all desktop and laptop units that operate on MacOS.
5. Category Five – Servers: A server is a physical computer dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on a network. This also includes server appliances. Server appliances have their hardware and software preconfigured by the manufacturer. It also includes embedded networking components such as those found in blade chassis systems.
6. Category Six – Storage: Storage is hardware with the ability to store large amounts of data. This includes SAN switching necessary for the proper functioning of the storage environment.
7. Category Seven – Peripherals & Accessories: Examples of Peripherals & Accessories include but are not limited to input devices, monitors, instructional equipment, cabling, modems, and external drives. Software is an option which must be related to the purchase of equipment and subject to configuration limits. Third party products are allowed to be offered as peripherals & accessories at the discretion of OMES.
8. For reference on Oklahoma agency end user device configurations see Oklahoma's Workstation Standard at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/WorkstationStandard.pdf>

## **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 debaring 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 (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created,

prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or 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](http://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](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 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](mailto: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 118  
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.

## ATTACHMENT D

### STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

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

#### 1 Definitions

- 1.1 **COTS** means software that is commercial off the shelf.
- 1.2 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier.
- 1.3 **Data Breach** means the unauthorized access by an unauthorized person that results in the use, disclosure or theft of Customer Data.
- 1.4 **Host** includes the terms **Hosted** or **Hosting** and means the accessing, processing or storing of Customer Data.
- 1.5 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.6 **Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 1.7 **Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential

by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.

- 1.8 Personal Data** means Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.
- 1.9 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.10 State CIO** means the State Chief Information Officer or authorized designee.
- 1.11 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 1.12 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.
- 1.13 Work Product** means any and all deliverables produced by Supplier for Customer under a statement of work issued pursuant to the Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (i) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts,

personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or statement of work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or a statement of work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Supplier personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

## **2 Termination of Maintenance and Support Services**

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

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

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

## **3 Compliance and Electronic and Information Technology Accessibility**

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

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

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

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

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

#### **5 Offshore Services**

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

#### **6 Compliance with Technology Policies**

**6.1** The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at [https://omes.ok.gov/s/g/files/gmc316/f/InfoSecPPG\\_0.pdf](https://omes.ok.gov/s/g/files/gmc316/f/InfoSecPPG_0.pdf).

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

**6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

**6.3** Supplier shall comply with the CJIS Security Policy as more particularly described at Appendix 2 attached hereto and incorporated herein.

## **7 Emerging Technologies**

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

## **8 Extension Right**

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

## **9 Source Code Escrow**

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

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

## **10 Commercial Off The Shelf Software**

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

## **11 Ownership Rights**

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

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

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

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

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

shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

## **12 Intellectual Property Ownership**

The following terms apply to ownership and rights related to Intellectual Property:

**12.1** As between Supplier and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier hereby agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is hereby effectively transferred, granted, conveyed, assigned and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.

**12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier’s signature due to the dissolution of Supplier or Supplier’s failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier’s agent and Supplier’s attorney-in-fact to act for and in Supplier’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer’s sole expense, in the preparation and

prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or

necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

- 12.9** Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.
- 12.10** To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.
- 12.11** If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

## **13 Hosting Services**

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

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

#### **14 Change Management**

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

#### **15 Service Level Deficiency**

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

#### **16 Notices**

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

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

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

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

## Appendix 1 to State of Oklahoma Information Technology Terms

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

### A. Customer Data

1. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).
2. Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
3. Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

### B. Data Security

1. Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public

Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

2. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data.
3. Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
4. Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
5. Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.
6. Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
7. Any remedies provided in this Appendix are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

### **C. Security Assessment**

1. The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards

during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.

2. Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

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

1. Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
2. Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).
3. Supplier shall:
  - a. Maintain processes and procedures to identify, respond to and analyze Security Incidents;
  - b. Make summary information regarding such procedures available to Customer at Customer's request;
  - c. Mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Supplier; and

d. Document all Security Incidents and their outcomes.

4. If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

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

1. Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

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

3. If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

F. **Notices**

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

Chief Information Security Officer

3115 N. Lincoln Blvd

Oklahoma City, OK 73105

and

servicedesk@omes.ok.gov.

## **G. Supplier Representations and Warranties**

Supplier represents and warrants the following:

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

## **H. Indemnity**

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

opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

## **I. Termination, Expiration and Suspension of Service**

1. During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.

2. In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;

b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or

c. a combination of the two immediately preceding options.

3. Supplier shall not take any action to intentionally erase any Customer Data for a period of:

a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;

b. 30 days after the effective date of termination, if the termination is for convenience; or

c. 60 days after the effective date of termination, if the termination is for cause.

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

4. The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

5. Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

## Appendix 2 to State of Oklahoma Information Technology Terms

### INTRODUCTION

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

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

### CJIS SECURITY POLICY REQUIREMENTS GENERALLY

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

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

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

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

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

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

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

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

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

## Policy Requirement Checklist

## Compliance checklist –

Policy Area 1	Information Exchange Agreements
Policy Area 2	Security Awareness Training
Policy Area 3	Incident Response
Policy Area 4	Auditing and Accountability
Policy Area 5	Access Control
Policy Area 6	Identification and Authentication
Policy Area 7	Configuration Management
Policy Area 8	Media Protection
Policy Area 9	Physical Protection
Policy Area 10	Systems and Communications Protection and Information Integrity
Policy Area 11	Formal Audits
Policy Area 12	Personnel Security

## **Attachment D-1**

### **Information Security Requirements**

#### **1. General Information Security Requirements**

- a. No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.
- b. Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.
- c. Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.
- d. Contractor or its subcontractors agree to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

#### **2. HIPAA Requirements**

- a. Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).
- b. If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse, and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor’s security compliance as it pertains to this contract.
- c. Business Associate Terms Definitions:
  - i. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that “PHI” and “ePHI” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business

- Associate's workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.
- ii. Business Associate. "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
  - iii. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 C.F.R. 160.103.
  - iv. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
  - v. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.
- d. Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, "PHI") solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:
- i. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
  - ii. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
  - iii. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
  - iv. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
  - v. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA's compliance and the Secretary of the Department of Health and Human Services (HHS);
  - vi. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
  - vii. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the

- form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;
- viii. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
  - ix. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
  - x. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual who's Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;
  - xi. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
  - xii. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
  - xiii. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
  - xiv. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to

- respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- xv. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and
  - xvi. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.
- e. Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:
- i. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
  - ii. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
  - iii. disclose PHI to report violations of law to appropriate federal and state authorities; or
  - iv. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;

- v. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
  - vi. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § (d)(1)].
- f. Obligations of Covered Entity
- i. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
  - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.
  - iii. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
  - iv. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
  - v. Covered Entity shall provide the minimum necessary PHI to Business Associate.
- g. Term and Termination:
- i. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
    - (1) retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
    - (2) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
    - (3) continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
    - (4) not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under "Permitted Uses and Disclosures By Business Associate" that applied prior to termination; and
    - (5) return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- ii. All other applicable obligations of Business Associate under this Agreement shall survive termination.
  - iii. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D).
- h. Miscellaneous Provisions:
- i. No Third Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
  - ii. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
  - iii. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
  - iv. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
  - v. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
  - vi. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
  - vii. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s)

to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

### **3. 42 C.F.R. Part 2 Related Provisions**

- a. Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:
  - i. Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
  - ii. Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of an kind;
  - iii. Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
  - iv. Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).

- v. Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
  - vi. Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
  - vii. Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
  - viii. Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;
  - ix. Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.
- b. Data Security. The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.
  - c. Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.
  - d. Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.
  - e. Redisclosure of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

#### **4. Federal Tax Information Requirements IRS Publication 1075 (If Applicable)**

- a. **PERFORMANCE:** If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent

within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

- i. All work will be performed under the supervision of the State of Oklahoma.
- ii. The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- iii. FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- iv. FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- v. The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- vi. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- vii. All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- viii. No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- ix. Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- x. To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

- xi. In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- xii. For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- xiii. The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

b. CRIMINAL/CIVIL SANCTIONS

- i. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- ii. Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- iii. Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- iv. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material

in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- v. Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c. INSPECTION: The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

## **5. SSA Requirements (If applicable)**

- a. PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
  - i. All work will be done under the supervision of the State of Oklahoma.
  - ii. Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
  - iii. All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

- iv. No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- v. The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- vi. Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- vii. Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful assess and/or disclosure.
- viii. Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.
- ix. The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- x. Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- xi. SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- xii. SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.

- xiii. If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
  - xiv. In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
  - xv. The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.
- b. **CRIMINAL/CIVIL SANCTIONS:** The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.
- i. **Civil Remedies.**
    - (1) In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of —
      - (a) actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
      - (b) the costs of the action together with reasonable attorney fees as determined by the court.
    - (2) An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where

parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

ii. Criminal Penalties

- (1) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).
- (2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- (3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

**6. Child Support FPLS Requirements (If applicable)**

- a. Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.

- i. This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- ii. This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

**7. FERPA Requirements (If applicable)**

- a. If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

**8. CJIS Requirements (If applicable)**

- a. INTRODUCTION

This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

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

b. CJIS SECURITY POLICY REQUIREMENTS GENERALLY

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

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

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

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

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

1. the Definitions and Acronyms in §3 & Appendices “A” & “B”;

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

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

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

## Attachment E-1

### MASTER LEASE AGREEMENT (Oklahoma)

Between State Of Oklahoma by and through Office of Management and Enterprise  
Services

And Dell Financial Services, L.L.C. (“Lessor”)

Dated 07/20/2023

#### **1. Scope.**

This Master Lease Agreement (this “Agreement” or “MLA”), effective as of the Effective Date set forth above, is between the Lessor and the State of Oklahoma (the “State”) by and through the Office of Management and Enterprise Services (“OMES”). Capitalized terms have the meaning set forth in this Agreement.

Lessor hereby leases to Lessee (as defined below), and Lessee hereby leases from Lessor the Equipment described on each Lease Schedule (“Schedule”), which is a separate agreement executed from time to time by Lessor and Lessee under the terms of this MLA. The terms and conditions contained herein shall apply to each Schedule that is properly executed in conjunction with this MLA by each Lessee. Schedules may be entered into hereunder by the named State’s affiliates (as approved by Lessor) organized under the laws of a jurisdiction within the United States of America, which affiliates are listed in attached Exhibit A hereto (each, an “Affiliate”). For purposes of this Agreement, “Affiliate” means any agency, authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of the State’s government. The State by and through OMES and each Lessee (as defined below) has made an independent legal and management determination to enter into this transaction. Exhibit A may be amended from time to time by the undersigned Lessee and Lessor. Exhibit A may be amended from time to time by the undersigned Lessee and Lessor. Each such Affiliate which executes a Schedule shall be considered a “Lessee” under this Agreement and under each Lease to which it is a party. No Lessee hereunder shall have any obligation or liability for any other Lessee's obligations or liabilities under any Lease, and a default by one Lessee under a Lease shall not constitute a default by any other Lessee under any other Lease. Prompt payment of all Rent and other amounts due and performance of all obligations of each Lessee owed to Lessor and its successors and assigns as required under this Agreement and each Schedule shall be absolute and unconditional, regardless of any circumstance which might otherwise be a defense available to, or a discharge of, each Lessee, except as provided for within Section 7 of this MLA. Each Lessee agrees to provide a Certificate of Incumbency or similar evidence of authorization that any person signing a Schedule on behalf of such Lessee shall have the authority to bind such Lessee under the terms of the Lease.

Each Lessee has made an independent legal and management determination to enter into this MLA and each Schedule. The State by and through OMES has not offered or given any legal or management advice to the Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with the Lessor to satisfy individual procurements, such terms shall be developed by the Lessor and Lessee and stated within the Schedule. To the extent that any of the provisions of the MLA conflict with

any of the terms contained in any Schedule, the terms of the Schedule shall control. It is expressly understood that the term “Equipment” shall refer to the Products and any related Services as described on a Schedule and any associated items therewith, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, all document (technical and/or user manuals), operating system and application software as needed, as allowed by and procured pursuant to Oklahoma Statewide Contract No. 1020D, effective as of 07/20/2023, awarded via Solicitation No. 0900000560, between Dell Marketing, L.P. and the State of Oklahoma by and through the Office of Management and Enterprise Services (the “Contract”).

Any reference to “MLA” shall mean this Agreement, including the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement by Lessee and Lessor.

As to conditions precedent to Lessor’s obligations to purchase any Equipment, (i) Lessee shall accept the MLA terms and conditions as set forth herein and execute all applicable documents such as this MLA, the Schedule, the Acceptance Certificate, Opinion of Counsel (only required in connection with a Schedule of greater or equal to \$2,500,000), and any other documentation as may be required by the Lessor that is not in conflict with this MLA, and (ii) there shall be no material adverse change in Lessee’s financial condition except as provided for within Section 7 of this MLA.

**2. Term of MLA.**

The term of this MLA shall commence on the Effective Date above and shall continue until (i) the obligations of every Lessee under any and all Schedules are fully discharged, (ii) the full and final expiration date of the Contract, or (iii) either party terminates either this MLA or the underlying Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA or any Schedule, before any obligations of any Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or each Lessee thereunder shall survive said termination or expiration and remain in full force and effect.

**3. Term of Schedule.**

The term for each Schedule, executed under this MLA, shall commence on the date of execution of an Acceptance Certificate by the Lessee or twenty (20) days after the delivery of the last piece of Equipment to the Lessee (“Commencement Date”), and unless earlier terminated as provided for in the MLA, shall continue for the number of whole months or other payment periods as set forth in the applicable Schedule Term, commencing on the first day of the month following the Commencement Date (or commencing on the Commencement Date if such date is the first day of the month). The Schedule Term may be earlier terminated upon: (i) the Non-appropriation of Funds pursuant to Section 7 of this MLA, (ii) an Event of Loss pursuant to Section 18 of this MLA, or (iii) an Event of Default by Lessee and Lessor’s election to cancel the Schedule pursuant to Section 24 of this MLA.

#### **4. Administration of MLA.**

- (a) For requests involving the leasing of Equipment, Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within Attachment E-1 of the Contract or the price as agreed upon by Lessee and Lessor. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee. Lessor and Lessee shall use the negotiated templates for the Public Secretary/Clerk Certificate, Opinion of Counsel and True Lease Schedule templates negotiated by Lessor and OMES. Sample templates are attached hereto as Exhibit B. Any material deviation from the negotiated templates requires written approval from both Lessor and OMES.
- (b) Each Lease executed under this MLA qualifies as a statutory finance lease under Article 2A of the UCC and shall be treated as a “transaction” as defined in the underlying Contract, as applicable and to the extent said terms are not in conflict with the terms of this MLA, in regards to the requirements of the Lessor to report the sale and to the extent applicable to a finance lessor only, make payment of the contract management fee or other applicable regulatory authority.
- (c) Upon agreement by Lessor and each Lessee on pricing, availability and the like, each Lessee may issue a purchase order in the amount indicated on the Schedule to Lessor for the Equipment and reference this MLA as executed by the State by and through OMES and Lessor and each corresponding Schedule executed by and between each Lessee and Lessor on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and each applicable Schedule shall control in all respects.
- (d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

#### **5. Rent Payments.**

During the Schedule Term and any renewal terms, Lessee agrees to pay Lessor Rent Payments. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15<sup>th</sup> of the month, a payment of \$1,500 will be made.

Any amounts received by Lessor from the Lessee in excess of Rent Payments and any other sums required to be paid by the Lessee shall be applied to the next scheduled Rent Payment due under the applicable Schedule, or if prohibited by law, the Lessor shall return the excess funds directly to Lessee. All Rent

Payments shall be paid to the Lessor at the address stated on the Schedule or any other such place as the Lessor or its assigns may hereafter direct to the Lessee. Lessee shall abide by the terms and conditions provided for in this MLA regarding the leasing and financing of the Equipment and the underlying Contract, as applicable and to the extent said terms are not in conflict with the terms of this MLA regarding Lessee's procurement of the Equipment thereunder, in making payments to the Lessor under the MLA and each Schedule. Any sum received by the Lessor later than allowed by applicable Oklahoma law will bear interest in accordance with such applicable law. To the extent allowed by applicable law, late charges, attorney's fees and other costs or expenses necessary to recover Rent Payments and any other amounts owed by Lessee hereunder are considered an integral part of this MLA.

Each Schedule is a net lease and except as specifically provided herein or in a Schedule, Lessee shall be responsible for all costs and expenses arising in connection with the Schedule or Equipment. Lessee acknowledges and agrees, except as specifically provided for in Section 7 of this MLA, that its obligation to pay Rent and other sums payable hereunder, and the rights of Lessor and Lessor's assigns, shall be absolute and unconditional in all events, and shall not be abated, reduced or subject to offset or diminished as a result of any event, including without limitation damage, destruction, defect, malfunction, loss of use, or obsolescence of the Equipment, or any other event, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims Lessee may have against Lessor, Lessor's assigns, the manufacturer, vendor, or maintainer of the Equipment, or any person for any reason whatsoever.

"Price" shall mean the actual purchase price of the Equipment. Rent Payments shall be adjusted proportionately downward if the actual price of the Equipment is less than the estimate (original proposal), and the Lessee herein authorizes Lessor to adjust the Rent Payments downward in the event of the decrease in the actual Equipment price. However, in the event that the Equipment price is more than the estimate (original proposal), the Lessor may not adjust the Rent Payment without prior written approval of the Lessee.

## **6. Liens and Taxes.**

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom (e.g., State of Oklahoma Tax Commission Sales Tax Exemption Letter (Exemption No. 999999) for Oklahoma Government Entities dated January 17, 2023, State of Oklahoma Attorney General Opinion, 1978 OK AG 256 dated December 28, 1978, State of Oklahoma Attorney General Opinion No. 88-73, 1988 OK AG 73 dated March 16, 1989, etc.), Lessee shall promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

## **7. Appropriation of Funds.**

- (a) This paragraph applies only to Lessees designated as state agencies or other governmental entities authorized by Oklahoma law to utilize contracts awarded by the State of Oklahoma.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated or received from an intended third party funding source to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of Lessee beyond the Fiscal Period first in effect at the Commencement of the Schedule Term, Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall provide Lessor written notice within a reasonable time after which the Lessee has knowledge of such insufficiency and confirm the Schedule will be so terminated prior to the end of its current Fiscal Period. All obligations of Lessee to pay Rent due after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in the Equipment will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee beyond the Fiscal Period for which sufficient funds have been appropriated to pay Rent hereunder.

## **8. Selection of Equipment.**

The Equipment is the size, design, capacity and manufacture selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor. No representation by the manufacturer or a vendor shall in any way affect Lessee's duty to pay Rent and perform its other obligations hereunder. Each Schedule is intended to be a "finance lease" as defined in Article 2A of the Uniform Commercial Code. Lessor has acquired or will acquire the Equipment in connection with this MLA. Lessor shall not be liable for damages for any reason, for any act or omission of the supplying manufacturer. Lessor hereby assigns, to the extent they are assignable, to the Lessee, without recourse to Lessor, any warranties provided to Lessor with respect to the Equipment during the Term of the applicable Schedule. Lessee acknowledges that neither its dissatisfaction with any unit of Equipment, nor the failure of any of the Equipment to remain in useful condition for the Schedule Term, nor the loss of possession or the right of possession of the Equipment or any part thereof by the Lessee, shall relieve Lessee from the obligations under this MLA or Schedule Term.

Lessee shall have no right, title or interest in or to the Equipment except the right to use the same upon the terms and conditions herein contained. The Equipment shall remain the sole and exclusive personal property of the Lessor and not be deemed a fixture whether or not it becomes attached to any real property of the Lessee. Any labels supplied by Lessor to Lessee, describing the ownership of the Equipment, shall be affixed by Lessee upon a prominent place on each item of Equipment.

### **9. Inspection and Acceptance.**

Promptly upon delivery of the Equipment, Lessee will inspect and test the Equipment, and not later than ten (10) business days following the Commencement Date, Lessee will execute and deliver either (i) an Acceptance Certificate, or (ii) written notification of any defects in the Equipment. If Lessee has not given notice within such time period, the Equipment shall be conclusively deemed accepted by the Lessee as of the tenth (10<sup>th</sup>) business day. Lessor, its assigns or their agents, shall be permitted free access at reasonable times authorized by the Lessee, the right to inspect the Equipment.

### **10. Installation and Delivery; Use of Equipment; Repair and Maintenance.**

- (a) Except as provided otherwise in a Schedule, all transportation, delivery, and installation costs associated with the Equipment shall be borne by the Lessee. Lessor is not and shall not be liable for damages if for any reason the manufacturer of the Equipment delays the delivery or fails to fulfill the order by the Lessee's desired timeframe. Any delay in delivery by the manufacturer shall not affect the validity of any Schedule. Lessee shall provide a place of installation for the Equipment, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Equipment.
- (c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessor agrees that state agencies of Oklahoma may obtain internal maintenance services in lieu of a third party maintenance agreement, so long as any such maintenance service does not void the Equipment manufacturer's or supplier's warranty. Except as provided otherwise in a Schedule, Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to

the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. If Lessee desires to lease any such additions or attachments, Lessee hereby grants to Lessor the right of first refusal to provide such lease financing to Lessee for such items. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

### **11. Relocation of Equipment.**

Lessee shall at all times keep the Equipment within its exclusive possession and control. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may move the Equipment to another location of Lessee within the continental United States, provided (i) Lessee is not in default on any Schedule, (ii) Lessee executes and causes to be filed at its expense such instruments as are necessary to preserve and protect the interests of Lessor and its assigns in the Equipment, (iii) Lessee pays all costs of, and provides adequate insurance during such movement, and (iv) Lessee pays all costs otherwise associated with such relocation. Notwithstanding the foregoing, Lessee may move the Equipment to another location within Oklahoma without notification to, or the consent of, Lessor. Provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Equipment at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Equipment, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Equipment.

### **12. Ownership.**

The Equipment shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Equipment except a leasehold interest as provided for herein. Lessee agrees that the Equipment shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of the Lessor. Upon request, Lessee will enter into any and all agreements necessary to ensure that the Equipment remain the personal property of Lessor.

### **13. FMV End of Lease Options; Location and Return of Equipment.**

- (a) Not less than ninety (90) days (but no more than one hundred and eighty (180) days ) prior to the expiration of the initial Schedule Term (the "Expiration Date") Lessor shall notify a Lessee of the following end of lease options: (i) renew the Schedule Term for a minimum of six (6) months at a rate and for a term agreed upon by both parties, (ii) purchase all of the Equipment at the Fair Market Value (as defined below); or (iii) return all of the Equipment to Lessor in accordance with the Agreement. If Lessee desires to exercise one of the above options, it shall give Lessor irrevocable written notice of its intention to exercise such option at least ninety (90) days (but no more than one hundred and eighty (180) days) before the Expiration Date.

If the Lessee exercises the option to purchase the Equipment then, , upon Lessor's receipt of payment of the Fair Market Value (as defined below), plus any other amounts owing to Lessor under the

Schedule, Lessor will sell and transfer title to the Equipment to Lessee AS-IS-WHERE-IS, WITHOUT WARRANTY OR RECOURSE, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING ANY WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT. The Fair Market Value (as defined below) purchase price shall be paid no later than the last business day on or before the last day of the initial Schedule Term. The Fair Market Value shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee disagrees with the Fair Market Value, Lessee shall notify Lessor in writing within 60 days prior to the Expiration Date and, upon Lessee's request, and within ten (10) days after receipt of Lessee's notice, Lessor shall appoint a qualified appraiser reasonably acceptable to Lessee to appraise the retail value of the Products. The amount determined by such appraiser shall be the final Fair Market Value. Lessor and Lessee shall share the expense of such appraisal equally. If a Lessee desires to renew a Schedule, each Lessee and Lessor shall enter into a supplement to each Schedule describing the length of the renewal Schedule Term and the renewal Rent provided, however, all other terms of each Schedule and the Agreement shall remain in full force and effect.

- (b) **Location and Return.** The Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent and in accordance with Section 11 of this MLA. At the expiration or early termination of the initial Schedule Term of any Schedule, upon at least ninety (90) days prior written notice to Lessor, and except for Equipment purchased pursuant to the purchase option under the Schedule, each Lessee at its cost and expense except as provided otherwise in a Schedule or by Supplier Services ordered by Lessee, shall (a) removal all proprietary data from the Equipment and (b) immediately disconnect, properly package for transportation and return all of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair and working order, with no defects which affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Except as provided otherwise in a Schedule, Lessee shall return the Equipment to Lessor at a location specified by Lessor; provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. If the Equipment is not in Return Condition, Lessee shall remain liable for all reasonable costs and expenses for missing and damaged Equipment documented in writing to Lessee. Except as provided otherwise in a Schedule, Lessee shall arrange and pay for the de-installation and packing of the Equipment and the de-installation shall be performed by manufacturer-certified technicians and the Lessor shall have the right to supervise and direct the preparation of the Equipment for return. Lessee, except as provided otherwise in a Schedule or by Supplier Services ordered by Lessee, agrees to deinstall and package the Equipment for return in a manner which will protect them from damage. Upon return of the Equipment and only for Software provided by Lessor to Lessee, Lessee's right to the operating system Software in returned Equipment will terminate and each Lessee will return the Equipment with the original certificate of authenticity (attached and unaltered) for the original operating system Software. IF, UPON THE EXPIRATION OF THE SCHEDULE TERM OR

EARLIER TERMINATION (OTHER THAN FOR NON-APPROPRIATION) IN ACCORDANCE WITH THIS SECTION,, A LESSEE WHO FAILS OR REFUSES FORTHWITH TO RETURN AND DELIVER THE EQUIPMENT TO LESSOR, THE SCHEDULE TERM WITH RESPECT TO THE EQUIPMENT THAT IS NOT RETURNED SHALL CONTINUE TO BE RENEWED AS DESCRIBED IN THE SCHEDULE (NOT TO EXCEED 3 YEARS) AND LESSEE SHALL REMAIN LIABLE FOR ANY RENT PAYMENTS ACCRUED AND UNPAID WITH RESPECT TO ALL OF THE EQUIPMENT ON THE SCHEDULE AND SHALL PAY RENT UP TO THE DATE THAT THE EQUIPMENT IS RETURNED TO THE ADDRESS SPECIFIED BY LESSOR. Notwithstanding the foregoing, Lessor shall have the right, with due process of law, to enter a Lessee's premises or any other premises where the Equipment may be found and to take possession of and to remove the Equipment, at each Lessee's sole cost and expense. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the constitution and laws of the State of Oklahoma, each Lessee's obligation to return Equipment may, at Lessor's option, be specifically enforced by Lessor.

#### **14. Quiet Enjoyment.**

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Equipment provided that an Event of Default (as hereinafter defined in Section 22 of the MLA) has not occurred and remains uncured after any applicable cure period.

#### **15. Warranties.**

Lessor and Lessee acknowledge that manufacturer Equipment warranties, if any, inure to the benefit of the Lessee. Provided no Event of Default has occurred and is continuing, Lessor will assign to each Lessee for the Lease Term of each Lease the benefit of any Equipment warranty and any right of return provided by any Seller. OMES, on behalf of each Lessee, shall pursue any warranty claim directly against such manufacturer of the Equipment and neither Lessee nor OMES shall pursue any such claim against Lessor. Except as provided under Section 7 hereof, Lessee shall continue to pay Lessor all amounts payable under any Schedule under any and all circumstances.

#### **16. No Warranties.**

LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER OR LICENSOR OF THE EQUIPMENT. LESSEE AGREES THAT LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, OR QUALITY OF THE EQUIPMENT OR ANY UNIT THEREOF. LESSEE SPECIFICALLY WAIVES ALL RIGHT TO MAKE CLAIM AGAINST LESSOR FOR BREACH OF ANY EQUIPMENT WARRANTY OF ANY KIND WHATSOEVER; AND WITH RESPECT TO LESSOR, LESSEE LEASES EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT LEASED HEREUNDER, OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIRS, SERVICE OR ADJUSTMENT THERETO OR ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF

SERVICE OR LOSS OF USE THEROF, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATESOEVER AND HOWSOEVER CAUSED WITHOUT IN ANY WAY IMPLYING THAT ANY SUCH WARRANTY EXISTS AND WITHOUT INCREASING ITS LIABILITY HEREUNDER, TO ASSIGN TO LESSEE UPON LESSEE'S REQUEST THEREFOR ANY WARRANTY OF A MANUFACTURER OR LICENSOR OR SELLER RELATING TO THE EQUIPMENT THAT MAY HAVE BEEN GIVEN TO LESSOR.

## **17. Indemnification.**

- (a) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee shall indemnify, protect, save and hold harmless Lessor, its agents, servants and successors from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses and attorney's fees, of whatsoever nature, arising out of the use, misuse, condition, repair, storage, return or operation (including, but not limited to, latent and other defects, whether or not discoverable by it) of any unit of Equipment, regardless of where, how and by whom operated, and arising out of negligence (excluding the gross negligence or willful misconduct of Lessor). Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee is liable for the expenses of the defense or the settlement of any suit or suits or other legal proceedings brought to enforce any such losses, damages, injuries, claims, demands, and expenses and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of the MLA or a Schedule whether by expiration of time, by operation of law or otherwise. With respect to Lessor, Lessee is an independent contractor, and nothing contained herein authorizes Lessee or any other person to operate the Equipment so as to impose or incur any liability or obligation for or on behalf of Lessor.
- (b) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee assumes all risks and liabilities with respect to any claim made by any third party that the lease arrangements herein are not authorized by law. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee agrees to indemnify, save and hold harmless Lessor from any and all such claims and all expenses incurred in connection with such claims or to defend against such claims, including without limitation any judgments by a court of competent jurisdiction or settlement or compromise with such claimant.
- (c) Lessor is the owner of the Equipment and has title to the Equipment. If any other person attempts to claim ownership of the Equipment by asserting that claim against Lessee or through Lessee, Lessee agrees, at its expense, to protect and defend Lessor's title to the Equipment to the extent permitted by applicable law. Lessee further agrees that it will at all times keep the Equipment free from any legal process, encumbrance or lien whatsoever, and Lessee shall give Lessor immediate notice if any legal process, encumbrance or lien is asserted or made against the Equipment. Lessee's obligations herein do not apply to any claim of ownership asserted against or through Lessor.

## **18. Risk of Loss.**

Commencing upon delivery of the Equipment and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to any Equipment, whether partial or complete, from any cause whatsoever; provided, such loss or damage shall be covered by insurance Lessor includes in the Rent amount. In the event of loss, theft, destruction or damage of any kind to any item of Equipment, or if any Equipment is lost stolen, or taken by governmental action for a stated period extending beyond the Term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor. Lessee shall, at its option: (a) immediately place the affected Equipment in good condition and working order, (b) replace the affected Equipment with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value ("SLV" as hereafter defined) for such affected Equipment, plus any other unpaid amounts then due under the Schedule to the extent such amounts are not paid to Lessor as insurance proceeds. If an Event of Loss occurs as to part of the Equipment for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of Equipment for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of the Lessee with respect to such Equipment (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

## **19. Insurance.**

Lessor shall insure the Equipment. The cost to insure the Equipment shall be included in the Rent. With respect to insurance of the Equipment, (i) Lessor shall be responsible for its liability and shall not look to Lessee for recovery of any kind and (ii) Lessee shall be responsible for its liability as required under the Oklahoma Governmental Tort Claims Act and shall not look to Lessor for recovery of any kind.

## **20. Representations and Warranties of Lessee.**

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel (only required in connection with a Schedule of greater or equal to \$2,500,000.00) to the effect that, as of the time of execution of the MLA between the State by and through OMES and Lessor and each separately executed Schedule between Lessor and each Lessee:

- (a) This MLA as executed by the State by and through OMES and DFS, and each Schedule separately executed by a Lessee, has been duly or will be, as applicable, authorized, executed and delivered by each Lessee and constitutes or will constitute, as applicable, a valid, legal and binding agreement of each Lessee, enforceable with respect to the obligations of each Lessee therein, as applicable, in accordance with its terms regarding the leasing and financing of the Equipment and the terms of the underlying Contract, as applicable and to the extent said terms are not in conflict with the terms of this MLA, regarding Lessee's procurement of Equipment thereunder;

- (b) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by the State by and through OMES under this MLA with Lessor or any Schedule separately executed by a Lessee with Lessor, as applicable;
- (c) The entering into and performance under this MLA by the State by and through OMES and Lessor or any Schedule between Lessor and each named Lessee will not violate any judgment, order, law or regulation applicable to the State by and through OMES or any named Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the State by and through OMES and any named Lessee or on the Equipment leased under any Schedule between Lessor and each named Lessee pursuant to any instrument to which the State by and through OMES or any named Lessee is a party or by which it or its assets may be bound;
- (d) To the best of State by and through OMES and each Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting either the State by and through OMES nor any named Lessee, which if determined adversely to the State by and through OMES or any named Lessee will have a material adverse effect on the ability of State by and through OMES to fulfill its obligations under the MLA with Lessor or any name Lessee to fulfill its obligation under any Schedule with Lessor, as applicable;
- (f) The use of the Equipment is essential to each named Lessee's proper, efficient and economic operation, and each named Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and named Lessee hereto written certification to that effect; and
- (g) The State by and through OMES as it relates to the MLA with Lessor and each named Lessee as it relates to any Schedule executed under this MLA with Lessor represents and warrants that (i) It has or will have, as applicable, authority to enter into this MLA and any Schedule under this MLA, (ii) the person executing the MLA has been duly authorized to execute the MLA on Lessee's behalf, (iii) all information supplied to Lessor is true and correct to the best of its knowledge and belief, including all credit and financial information and (iv) subject to the provisions of Section 7 above, it is able to meet all its financial obligations, including the Rent Payments hereunder.

## **21. Representations and Warranties of Lessor.**

Lessor represents and warrants for the benefit of the State by and through OMES and its assigns as of the time of execution of the MLA with Lessor and for each Schedule separately executed thereunder between Lessor and each named Lessee:

- (a) Lessor is and shall remain an entity authorized and validly existing under the laws of its state of organization which is authorized to do business in Oklahoma, and is not in default as to taxes owed to the State of Oklahoma or any of its political subdivisions;

- (b) The MLA and each Schedule executed in conjunction to this MLA has been or will be, as applicable, duly authorized, executed and delivered by Lessor and constitutes or will constitute, as applicable, a valid, legal and binding agreement of Lessor, enforceable with respect to the obligations of Lessor herein or therein, as applicable, in accordance with its terms regarding the leasing and financing of the Equipment and the terms of the underlying Contract, as applicable and to the extent said terms are not in conflict with the terms of this MLA, regarding Lessee's procurement of any Equipment thereunder;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA with the State by and through OMES or any Schedule with a Lessee, as applicable;
- (d) The entering into and performance of the MLA with the State by and through OMES or any Schedule with a Lessee will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor, including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound;
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MLA with the State by and through OMES or any Schedule with a Lessee, as applicable; and
- (f) Lessor represents and warrants that the person executing the MLA with the State by and through OMES has been duly authorized to execute the MLA on Lessor's behalf.

## **22. Default.**

A Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable; (b) nonpayment or incomplete payment by Lessee of Rent or any other sum payable the latter of its due date or the date by which such sum is payable pursuant to applicable law; (c) failure by Lessee to perform or observe any other material term, covenant or condition of this MLA, the Schedule, or any applicable software license agreement, which is not cured within ten (10) business days after receipt of notice thereof from Lessor; (d) insolvency by Lessee; (e) Lessee's filing of any proceedings commencing bankruptcy or the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (f) subjection of a substantial part of Lessee's property or any part of the Equipment to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) any representation or warranty made by Lessee in this MLA, the Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Equipment being untrue when made. The parties agree to use ever increasing levels of executive escalation within their respective organizations to cure any breach based on (g) above prior to such event being declared an Event of Default.

### **23. Remedies.**

- (a) Upon the occurrence of an uncured “Event of Default” and as long as such Event of Default is continuing, Lessor may, in its sole discretion, do any one or more of the following provided, however, that Lessor may not recover value in excess of amounts as allowed under the terms of the Schedule and by applicable law: (i) After giving fifteen (15) days prior written notice to Lessee of default, during which time Lessee shall have the opportunity to cure such default, terminate the Schedule under which Lessor claims default of Lessee; (ii) without Lessee waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Oklahoma, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule and/or recover damages; (iii) whether or not the Schedule is terminated, upon notice to Lessee and with due process of law, take possession of the Equipment wherever located, and for such purposes Lessee, to the extent authorized by Oklahoma law, hereby authorizes Lessor, its assigns or the agents of either to cause Lessee to return such Equipment to Lessor in accordance with the requirements of Section 13 of the MLA; (iv) by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and not as a penalty, the sum of (a) the present value of the Rent owed from the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, to the extent the Lessor does not take possession, with due process of law, of the Equipment or the Equipment is not returned to Lessor, the present value of the estimated in-place fair market value of the Equipment as defined in Section 13 of MLA at the end of the Schedule Term as reasonably determined by Lessor, each discounted at the like-term Treasury Bill rate; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without Lessee and the state of Oklahoma waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Oklahoma, costs, fees (including all attorneys’ fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 ½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.
- (b) Upon return or repossession, with due process of law, of the Equipment, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Equipment, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Equipment, Lessor shall credit the Net Proceeds (as defined below) to the unpaid Rent and reasonable damages incurred by Lessee. Proceeds upon sale of the Equipment shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Without Lessee waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Oklahoma, “Net Proceeds” shall be the proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Equipment, in the remarketing or disposition thereof, or otherwise as a result of Lessee’s default, including any court costs and attorney’s fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including

liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be paid to Lessee.

- (c) No termination, repossession with due process of law or other act by Lessor in the exercise of its rights and remedies upon an Event or Default shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.

#### **24. Notices and Waivers.**

All notices shall be given in writing and, except for billings and communications in the ordinary course of business, shall be delivered by overnight courier service, delivered in person to an officer of the Lessor or Lessee or sent by certified mail, return receipt requested, and shall be effective from the date of receipt unless mailed, in which case the effective date will be four (4) business days after the date of mailing. All notices relating to this MLA and any Schedule thereunder to the Lessor by Lessee shall be sent to: Dell Financial Services L.L.C., Attn. Legal Department, One Dell Way, Round Rock, TX 78682, or such other mailing address designated in writing by Lessor. Notice to Lessee shall be to the address listed in Section 25 of this Agreement or such other mailing address designated in writing by Lessee. All notices shall be given in writing and, except for billings and communications in the ordinary course of business, shall be delivered by overnight courier service, delivered in person to an officer of the Lessor or Lessee, or sent by certified mail, return receipt requested, and shall be effective from the date of receipt unless mailed, in which case the effective date will be four (4) business days after the date of mailing. Lessee and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes. This MLA and each corresponding Schedule agreed to in conjunction herewith are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Event of Default shall not be a waiver of any other or subsequent Event of Default. No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor or Lessee, as applicable. No failure to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

#### **25. Assignment by Lessor; Assignment or Sublease by Lessee.**

- (a) Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MLA and/or any Schedule, but not Lessor's obligations; (ii) grant a security interest in the right, title and interest of Lessor in the MLA, any Schedule and/or any Equipment; and/or (iii) sell or transfer its title and interest as owner of the Equipment and/or as Lessor under any Schedule; and Lessee understands and agrees that Lessor's assigns may each do the same (hereunder collectively "Assignments"). If such assignment changes the party to whom Rent Payments are due herein, then Lessor shall provide Lessee notice of all such Assignments to the following addresses, and such Assignments shall be subject to Lessee rights under the MLA and corresponding Schedule(s):

- (b) **If sent to the Lessee, State of Oklahoma in connection with the MLA:**

Chief Information Officer  
3115 North Lincoln Boulevard  
Oklahoma City, Oklahoma 73105

**With a copy to:**

ISD Deputy General Counsel  
3115 North Lincoln Boulevard  
Oklahoma City, Oklahoma 73105

**If sent to Lessee Affiliate in connection with a Schedule:**

The address set forth on the purchase order, Schedule or as otherwise identified in writing by the Lessee.

Lessee hereby consents to such Assignments and agrees to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested and necessary pursuant to applicable Oklahoma law to affect such Assignment. Lessee acknowledges that the assigns do not assume Lessor's obligations hereunder and agrees to make all payments owed to the assigns without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which the Lessee(s) may possess against the Lessor or any other party for any other reason. Lessor shall remain liable for its performance under the MLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor, shall also include all such assigns, whether specific reference thereto is otherwise made herein.

- (c) **LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE OR OTHERWISE ENCUMBER, OR PERMIT A LIEN TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE, OR THE EQUIPMENT, OR REMOVE THE EQUIPMENT FROM ITS LOCATION REFERRED TO ON THE SCHEDULE, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT EXCEPT AS PROVIDED IN SECTION 11 OF THIS MLA. LESSOR MAY ASSIGN ITS INTEREST IN THIS LEASE AND SELL OR GRANT A SECURITY INTEREST IN ALL OR ANY PART OF THE EQUIPMENT WITHOUT LESSEE'S CONSENT. If LESSEE IS A STATE AGENCY, WITHOUT WAIVING THE DOCTRINE OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND ONLY AS MAY BE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF OKLAHOMA, LESSEE AGREES THAT IN ANY ACTION BROUGHT BY AN ASSIGNEE AGAINST LESSEE TO ENFORCE LESSOR'S RIGHTS HEREUNDER, LESSEE WILL NOT ASSERT AGAINST SUCH ASSIGNEE AND EXPRESSLY WAIVES AS AGAINST ANY ASSIGNEE, ANY BREACH OR DEFAULT ON THE PART OF LESSOR HEREUNDER OR ANY OTHER DEFENSE, CLAIM OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR EITHER HEREUNDER OR OTHERWISE. NO SUCH ASSIGNEE SHALL BE OBLIGATED TO PERFORM ANY OBLIGATION, TERM OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR HEREUNDER.** Without the prior written consent of Lessor, the Lessee shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement; provided, however, where Lessee is a state agency, no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the contract to another state agency.

## **27. Delivery of Related Documents.**

For each Schedule, each named Lessee will provide the following documents and information as required by and satisfactory to Lessor: (a) Certificate of Acceptance for accepted goods to be on lease with Lessor; (b) Opinion of Counsel (only required in connection with a Schedule of greater or equal to \$2,500,000.00); (c) financial statements or other financial information in lieu thereof as agreed to by Lessor's credit department in its sole judgment; (d) Secretary Clerk or Incumbency Certificate; and (e) other mutually agreed documents as reasonably required by Lessor.

## **28. Lessee's Waivers.**

To the extent permitted by applicable law, Lessee hereby waives, with respect to Lessor, the following rights and remedies conferred upon Lessee by Article 2A of the UCC: to (i) cancel any Schedule under the MLA; (ii) repudiate any Schedule; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breach of warranty by the manufacturer; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under any Schedule; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for the Equipment due from Lessor; (x) recover any special, punitive, incidental or consequential damages, for any reason whatsoever. Lessee agrees that any delay or failure to enforce Lessor's rights under this MLA or a Schedule does not prevent Lessor from enforcing any rights at a later time. This waiver of UCC rights does not include Lessee's right to terminate a lease subject to a non-appropriation of funds, pursuant to Section 7 above.

## **29. Security Interest and UCC Filings.**

To secure payments hereunder, Lessor reserves and Lessee hereby grants to Lessor a continuing security interest in the Equipment and any and all additions, replacements, substitutions, and repairs thereof. When all of the Lessee's obligations under this MLA and respective Schedules have been fully paid and satisfied, Lessor's security interest shall terminate. Nothing contained herein shall in any way diminish Lessor's right, title, or interest in or to the Equipment. Lessor and Lessee agree that a reproduction of this MLA and/or any associated Schedule may be filed as a financing statement and shall be sufficient as a financing statement under the UCC. Lessee hereby appoints Lessor, its agents, successors or assigns its true and lawful attorney-in-fact for the limited purpose of executing and filing on behalf of Lessee any and all UCC Financing Statements which in Lessor's sole discretion are necessary or proper to secure Lessor's interest in the Equipment in all applicable jurisdictions. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, as Lessor deems necessary or advisable for the protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto.

## **30. Miscellaneous.**

- (a) Jurisdiction. THE MLA AND EACH SCHEDULE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OKLAHOMA. In

the event of a dispute between the parties, suit may be brought in Oklahoma County, Oklahoma or in the case of an Affiliate Lessee, in the federal or state courts where Lessee has its principal office or where the Equipment is located.

- (b) **Counterpart.** Only original counterpart No. 1 of each Schedule shall be deemed to be an “Original” for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts shall be deemed to be a “Copy”. NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY “COPY” OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE “ORIGINAL” COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.
- (c) **Intentionally left blank.**
- (d) **Severability.** In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.
- (e) **Entire Agreement.** Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in this MLA, including the Contract, as applicable and to the extent said terms are not in conflict with the terms of this MLA, regarding Lessee’s procurement of Equipment thereunder and in each Schedule to which Lessor and Lessee are signatory parties. Lessor and Lessee further acknowledge that this MLA, including the Contract, as applicable and to the extent said terms are not in conflict with the terms of this MLA, regarding Lessee’s procurement of Equipment thereunder, and each Schedule to which Lessor and Lessee are signatory parties contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase order issued by Lessee, order acknowledgement and other forms issued by Lessor, and the like. Lessee and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and the Contract, as applicable and to the extent said terms are not in conflict with the terms of this MLA, regarding Lessee’s procurement of Equipment thereunder, and that both contain the entire agreement between them. The terms and conditions of this MLA may be amended only by written instrument executed by Lessor and undersigned Lessee. The terms of a Schedule may only be amended in a writing signed by both Lessee and Lessor.
- (f) **Headers.** The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.
- (g) **Language context.** Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.
- (h) **Lessor Certifications.** Lessor certifies that:

- (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this MLA and/or any Schedules executed hereunder;
- (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Oklahoma and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither it , nor anyone acting for it, has violated the antitrust laws of the United States or the State of Oklahoma, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) it has not received payment from the state of Oklahoma, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;
- (v) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the MLA;
- (vi) Neither it nor its affiliates are suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration;
- (vii) Neither it nor its affiliates, as of the effective date of the MLA, are listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (viii) to the extent applicable to the scope of this MLA, Lessor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (ix) That it will comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, including but not limited to being 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;
- (x) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;

During the term of the MLA, Lessor shall, for itself and on behalf of its subcontractors, promptly disclose to the State of Oklahoma all changes that occur to the foregoing certifications, representations and warranties. Lessor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties

- (i) Sovereign Immunity. Nothing herein shall be construed to waive the sovereign immunity of the state of Oklahoma.

**31. Amendments.**

The terms and conditions of this MLA may be amended only by written instrument executed by the Lessor and the undersigned Lessee.

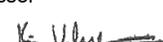
EXECUTED by the undersigned on the dates set forth below, to be effective as of the Effective Date.

**State of Oklahoma by and through the Office of Management and Enterprise Services (OMES)**  
"Lessee"  
BY:  Joe McIntosh (Jul 20, 2023 08:26 CDT)

NAME: Joe McIntosh

TITLE: CIO

DATE: 07/20/2023

**DELL FINANCIAL SERVICES, L.L.C.,**  
"Lessor"  
BY:  Kim Vodicka, Vice President

NAME: Kim Vodicka

TITLE: Vice President

DATE: 07/19/2023

**Attachment E-1  
Exhibit A  
State of Oklahoma Affiliate List**

<b>Agency #</b>	<b>Affiliate Name</b>
020	Accountancy Board
022	Abstractors Board
030	Able Commission
039	Boll Weevil Eradication
040	Agriculture Food and Forestry Department
045	Architects Board
047	Indigent Defense Systems
049	Attorney General
055	Arts Council
060	Aeronautics Commission
065	Banking Department
090	Office of Management and Enterprise Services
092	Tobacco Settlement Endowment Trust
125	Department of Mines
127	Children and Youth Commission
145	Chiropractic Examiners
148	State Board of Behavioral Health & Licensure
160	Department of Commerce
170	Construction Industries Board
185	Corporation Commission
215	Dentistry Board
265	State Department of Education
275	Office of Educational Quality & Accountability
285	Funeral Board
292	Department of Environmental Quality
296	Ethics Commission
298	Merit Protection Commission
305	Office of the Governor
306	Pardon and Parole Board
307	Interstate Oil Compact Commission
309	Emergency Management
310	State Fire Marshall
340	Health Department
342	Office of the Chief Medical Examiner
345	Transportation Department
350	Historical Society
353	Oklahoma Horse Racing Commission
385	Insurance Department

391	Multi Injury Trust Fund
400	Office of Juvenile Affairs
405	Department of Labor
430	Department of Libraries
445	Liquified Petroleum Gas Board
475	Motor Vehicle Commission
509	Long Term Care Administrators Board
510	Oklahoma Board of Nursing
520	Optometry Board
525	Oklahoma State Board of Osteopathic Examiners
557	Police Pension and Retirement System
560	Pharmacy Board
563	Private Vocational School
566	Tourism and Recreation Department
570	Professional Engineers & Land Surveyors Licensure Board
575	Psychologists Examiners Board
585	Department of Public Safety
588	Real Estate Commission
619	Physician Manpower Training
622	Oklahoma State Board of Licensed Social Workers
628	Oklahoma Center for Advancement of Science & Technology
632	Speech Language Pathology & Audiology Board
635	Department of Consumer Credit
645	Conservation Commission
650	Department of Veterans Affairs
678	Council on Judicial Complaints
715	Teachers Retirement System
740	State Treasurer
753	Oklahoma Uniform Building Code Commission
755	Used Motor Vehicle & Parts Commission
772	Board of Tests
790	Oklahoma Veterinary Board
800	Department of Career & Technology Education
803	Statewide Virtual Charter
805	Rehabilitation Services
835	Water Resource Board
131	Department of Corrections
830	Department of Human Services
629	Oklahoma School of Science & Math



### Secretary/Clerk Certificate Instructions

1. In the blocks under paragraph (ii) with the headings "NAME OF AUTHORIZED SIGNATORY", "TITLE OF AUTHORIZED SIGNATORY" and "SIGNATURE OF AUTHORIZED SIGNATORY", all persons who are authorized to execute and deliver the Agreement and any related Lease Schedule(s) from time to time thereunder between the Public Entity and Customer should write or type his/her name under the "Name of Authorized Signatory" heading, write or type his/her title under the "Title of Authorized Signatory" heading, and sign his/her name under the "Signature of Authorized Signatory" heading in the block across from his/her name and title. **The person(s) listed and executing in the blocks under paragraph (ii) must not be the same person executing the Certificate on behalf of the Public Entity (Clerk, Secretary, etc.) listed at the top of the Certificate and executing in the signature block at the bottom of the Certificate under the "In Witness Whereof" language;**
2. The Clerk, Secretary, etc. should insert the Agreement No. in paragraph (iii), if known;
3. **Intentionally Omitted; Reserved;**
4. **Intentionally Omitted; Reserved;**
5. The Clerk, Secretary, etc. should write or type the Fiscal Period of the Public Entity in paragraph (ix);
6. The Clerk, Secretary, etc. should write or type his/her name, title, name and State of the Public Entity in the top portion of the Certificate and date, sign & print his/her name and title at the bottom of the Certificate under the "In Witness Whereof" language; and
7. If required by local law, the Certificate should be notarized by a notary public. The notary public should be a person other than the Clerk, Secretary, etc. executing under the "In Witness Whereof" language of the Certificate.



**SECRETARY/CLERK CERTIFICATE**

I, \_\_\_\_\_, do hereby certify that:

(i) I am the duly elected, qualified, and acting \_\_\_\_\_ (Clerk, Secretary, etc.) of \_\_\_\_\_, a \_\_\_\_\_ public entity and named affiliate of the State of Oklahoma (the "State") under Exhibit A of the Agreement (as defined below) (the "Public Entity"). By executing this Certificate, the Public Entity shall be considered a "Lessee" under the terms of Agreement (as defined below) and under each Schedule (as defined below) to which it is a party.

(ii) Each of the persons whose name, title and signature appear below is a duly authorized representative of the Public Entity and holds on the date of this Certificate the formal title set forth opposite his/her name and the signature appearing opposite each such person's name is his/her genuine signature:

NAME OF AUTHORIZED SIGNATORY (cannot be Clerk/Secretary authenticating this certificate)	TITLE OF AUTHORIZED SIGNATORY	SIGNATURE OF AUTHORIZED SIGNATORY
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(iii) Each such representative is duly authorized for and on behalf of the Public Entity to execute and deliver any and all lease schedules (the "Schedules") between the Public Entity (as Lessee) and Dell Financial Services L.L.C. or its assignee (collectively, the "Lessor") that it may from time to time enter into under that certain Master Lease Agreement No. \_\_\_\_\_, dated \_\_\_\_\_ (the "Agreement") between the State by and through the Office of Management and Enterprise Services ("OMES") and Lessor, and all agreements, documents, and instruments in connection therewith, including without limitation, schedules, riders and certificates of acceptance. For any Schedule which Public Entity executes with Lessor, Public Entity shall be considered a "Lessee" under the terms of the Agreement and under each Schedule to which it is a party.

(iv) The execution and delivery of any such Schedule and all agreements, documents, and instruments in connection therewith for and on behalf of the Public Entity are not prohibited by or in any manner restricted by the terms of the Charter or other document pursuant to which the Public Entity is organized or of any loan agreement, indenture or contract to which the Public Entity is a party or by which it or any of its property is bound.

(v) **Intentionally Omitted; Reserved.**

(vi) No event or condition that constitutes (or with notice or lapse of time or both, would constitute) an Event of Default, as defined in the Agreement, exists at the date hereof.

(vii) All insurance required in accordance with the Agreement, specifically Section 19 thereof, is currently maintained by Lessor (if and where applicable) and/or the Public Entity (if and where applicable).

(viii) The Public Entity has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Rent payments scheduled to come due during the first Fiscal Period and to meet the Public Entity's other obligations for the first Fiscal Period, as such terms are defined in the Agreement, and such funds have not been expended for other purposes.

(ix) The Fiscal Period of the Public Entity is from \_\_\_\_\_ to \_\_\_\_\_.

(x) The foregoing authority and information shall remain true and in full force and effect, and Lessor shall be entitled to rely upon same, until written notice of the modification, rescission, or revocation of same in whole or in part, has been delivered to Lessor, but in any event shall be effective with respect to any documents executed or actions taken in reliance upon the foregoing authority prior to the delivery to Lessor of said written notice of said modification, rescission or revocation.

IN WITNESS WHEREOF:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(Clerk or Secretary)

Date: \_\_\_\_\_

Subscribed to and sworn before me:

Notary Public: \_\_\_\_\_  
(Name)

Date: \_\_\_\_\_

My commission expires: \_\_\_\_\_

[LESSEE LEGAL NAME]  
**TRUE LEASE SCHEDULE NO.** \_\_\_\_\_  
**TO MASTER LEASE AGREEMENT NO.** \_\_\_\_\_

THIS SCHEDULE, ENTERED INTO BETWEEN DELL FINANCIAL SERVICES L.L.C. ("Lessor") and \_\_\_\_\_ ("Lessee"), IS SUBJECT TO AND INCORPORATES THE TERMS AND CONDITIONS OF THE MASTER LEASE AGREEMENT NO \_\_\_\_\_ ("Agreement") DATED \_\_\_\_\_ BETWEEN DELL FINANCIAL SERVICES L.L.C. ("Lessor") AND STATE OF OKLAHOMA BY AND THROUGH THE OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES ("OMES"), as provided for under Oklahoma Contract number ITSW 1020D, awarded via Solicitation No. 0900000560, between Dell Marketing, L.P. and the State of Oklahoma by and through the Office of Management and Enterprise Services effective as of \_\_\_\_\_.

Lessor hereby agrees to lease and/or make available to Lessee subject to the terms, conditions and provisions set forth in this Schedule and in the Agreement, the Equipment described below. Any capitalized term used herein and not defined herein shall have the meaning ascribed to it in the Agreement.

**EQUIPMENT DESCRIPTION AND LOCATION:** See below or Exhibit "A" attached to and made a part hereof.

**EQUIPMENT SELLER:** [Dell Inc., One Dell Way, Round Rock, TX 78682]

<u>Equipment Description</u>	<u>Equipment Location</u>	<u>Lessee Purchase Order No.</u>	<u>Rent*</u>	<u>Initial Schedule Term (Mos.)</u>	<u>Commencement Date***</u>

**Total Equipment Acquisition Cost: \$** \_\_\_\_\_

Rent is payable:   X   in arrears [specify]

Payment Period:    Monthly    Quarterly    Annually    Other (specify) \_\_\_\_\_

\* Lessee is responsible for applicable taxes, shipping, and other amounts as described in the Agreement, and, with the first payment of Rent, any prorated Rent, if applicable. Such amounts are further described in Exhibit "A".

\*\* The Commencement Date may be extended for one Payment Period until the Schedule is returned in accordance with the terms stated in the Agreement. Lessor may charge Lessee prorated Rent accruing from the Acceptance Date to the Commencement Date, as such date is finally determined.

**TRUE LEASE PROVISIONS**

The following provisions shall apply to this Schedule in addition to the provisions in the Agreement:

**1. TRUE LEASE: The parties intend for this lease to constitute a true lease of Equipment under the UCC and all applicable laws.** If this Schedule is determined to be a lease intended as security, in no event shall Lessee be obligated to pay any time price balance differential in excess of the maximum amount permitted by applicable law (as specified herein or the state where the Equipment are located, whichever law permits the greater amount). In the event Lessor shall receive anything of value under a Schedule that is deemed interest which would exceed the maximum amount of interest allowed under the law, the excess amount shall be applied to the reduction of the unpaid time price balance or shall be refunded to Lessee. In order to reduce the unpaid time price balance, any amount deemed interest shall, to the fullest extent permitted by applicable law, be amortized and spread uniformly throughout the Schedule Term."

**2. END OF LEASE OPTIONS.**

(a) Provided that no Event of Default has occurred and is continuing, and at least ninety (90) days but no more than 180 days prior to the expiration of the initial Schedule Term (the "Expiration Date"), Lessor shall notify Lessee of the following end of lease options:

- (i) purchase all of the Equipment at the Fair Market Value (as defined below);
- (ii) renew the Lease Term for a minimum of six (6) months at a rate and for a term agreed upon by both parties; or
- (iii) return all of the Equipment in accordance with the Agreement.

If Lessee desires to exercise one of the above options, it shall give Lessor irrevocable written notice of its intention to exercise such option at least ninety (90) days (but no more than one hundred and eighty (180) days) before the Expiration Date.

(b) If Lessee exercises the option to purchase the Equipment then, upon receipt of payment of the "Fair Market Value" (defined below), plus applicable taxes, Lessor will sell the Equipment to Lessee AS IS-WHERE IS, WITHOUT WARRANTY OR RECOURSE, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING ANY WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT. The Fair Market Value (as defined below) purchase price shall be paid no later than the last business day on or before the last day of the initial Schedule Term. The "Fair Market Value" shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee disagrees with the Fair Market Value, Lessee shall notify Lessor in writing within 60 days prior to the Expiration Date and, upon Lessee's request, and within ten (10) days after receipt of Lessee's notice, Lessor shall appoint a qualified appraiser reasonably acceptable to Lessee to appraise the retail value of the Equipment. The amount determined by such appraiser shall be the final Fair Market Value. Lessor and Lessee shall share the expense of such appraisal equally.

(c) If Lessee desires to renew a lease, Lessee and Lessor shall enter into a supplement to this Schedule describing the length of the renewal Schedule Term and the renewal Rent provided, however, all other terms of this Schedule and the Agreement shall remain in full force and effect.

(d) In addition to the terms set forth in Subsection 13 of the Agreement, and regardless of whether or not Lessee has given Lessor notice if its intent as described above, if Lessee does not return or purchase the Equipment or renew the Schedule as required above, the Schedule Term shall automatically extend on a month-to-month basis at the Rent in effect on the Expiration Date (prorated on a monthly basis if the Payment Period was other than monthly during the initial Schedule Term). Such extension shall continue until Lessee: (i) provides thirty (30) days prior written notice of its intention to return or purchase the Equipment (to take effect on the next Rent payment date that is at least thirty (30) days after the notice is received by Lessor) and (ii) either returns or purchases all of the Equipment in accordance with the end of lease options set forth above. Payments of Rent during the month-to-month extension are due and payable monthly as specified in Lessor's invoice. If Lessee fails to return or purchase any Equipment, the Schedule and associated Rent for the Equipment that have not been returned or purchased shall extend on a month-to-month basis in accordance with the prior sentence. Notwithstanding the foregoing, no such extension shall exceed a three-year period.

### 3. SECTION 30. MISCELLANEOUS.

Insert the following at the end of subsection (b):

"Notwithstanding the foregoing, this Schedule may be signed in any number of counterparts each of which when so executed or otherwise authenticated and delivered shall be an original but all counterparts shall together constitute one and the same instrument. To the extent this Schedule would constitute chattel paper as that term is defined in the UCC, no security interest may be created through the transfer or control or possession, as applicable, of a counterpart of a Schedule other than the original in Lessor's possession marked by Lessor as either "original" or "Counterpart Number 1".

Insert the following at the end of subsection (e):

"If Lessee delivers this Schedule or any amendment (each a "Document") to Lessor by facsimile transmission, and Lessor does not receive all of the pages of that Document, Lessee agrees that, except for any pages which require a signature, Lessor may supply the missing pages to the Document from Lessor's database which conforms to the version number at the bottom of the page, and upon such substitution of the missing pages, shall provide Lessee with a complete copy of the fully executed Document. If Lessee delivers a signed Document to Lessor as an e-mail attachment, facsimile transmission or by U.S. mail, Lessee acknowledges that Lessor is relying on Lessee's representation that the Document has not been altered. Lessee further agrees that, notwithstanding any rule of evidence to the contrary, in any hearing, trial or proceeding of any kind with respect to a Document, Lessor may produce a tangible copy of the Document transmitted by Lessee to Lessor by facsimile or as an e-mail attachment and such signed copy shall be deemed to be the original of the Document. To the extent (if any) that the Document constitutes chattel paper under the Uniform Commercial Code, the authoritative copy of the Document shall be the copy designated by Lessor or its assignee, from time to time, as the copy available for access and review by Lessee, Lessor or its assignee. All other copies are deemed identified as copies of the authoritative copy. In the event of inadvertent destruction of the authoritative copy, or corruption of the authoritative copy for any reason or as the result of any cause, the authoritative copy may be restored from a backup or archive copy, and the restored copy shall become the authoritative copy. At Lessor's option, this electronic record may be converted into paper form. At such time, such paper copy will be designated or marked as the authoritative copy of the Document."

4. **COMPLETION OF SCHEDULE.** Lessee hereby authorizes Lessor to insert or update the serial numbers of the Equipment from time to time if necessary.

By signing below, each of the parties hereto agrees to be bound by the terms of the Agreement, this Schedule and the attached Exhibit "A".

**[LESSEE LEGAL NAME]**

(Lessee)

**DELL FINANCIAL SERVICES L.L.C.**

(Lessor)

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name/Title)

\_\_\_\_\_  
(Date)

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name/Title)

\_\_\_\_\_  
(Date)

**INSERT AND/OR REMOVE THE FOLLOWING LANGUAGE PER THE DRAFTING INSTRUCTION:** "The State of Oklahoma (the "State") is joining in the execution of this Schedule between Lessee and Lessor to evidence the (1) Lessee's compliance with the State's technology strategy and standards; and (2) the State's approval of the Schedule pursuant to 62 O.S., §§ 34.11.1(I), 34.12, 35.4."]

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name/Title)

\_\_\_\_\_  
(Date)

SAMPLE

**ACCEPTANCE CERTIFICATE**

Acceptance Certificate under Schedule No. \_\_\_\_\_ dated as of \_\_\_\_\_ between Dell Financial Services L.L.C. ("Lessor") and \_\_\_\_\_ ("Lessee") under Master Lease Agreement No. \_\_\_\_\_ dated as of \_\_\_\_\_ between Dell Financial Services L.L.C and State of Oklahoma by and through the Office of Management and Enterprise Services ("OMES"), pursuant to Oklahoma Contract number ITSW 1020D, awarded via Solicitation No. 0900000560, between Dell Marketing, L.P. and the State of Oklahoma by and through the Office of Management and Enterprise Service effective as of \_\_\_\_\_.

1. Asset(s). The Lessee hereby certifies that the Asset(s) set forth and described in the above-mentioned Schedule have been delivered to the location(s) set forth in the Schedule, inspected by the Lessee, found to be in good order and accepted, all on the Date of Acceptance set forth below:

Date of Acceptance: \_\_\_\_\_, 20\_\_

2. Representations by the Lessee. The Lessee hereby represents and warrants to the Lessor and any Assignees that on the Date of Acceptance set forth above:

(a) the representations and warranties of the Lessee set forth in the Lease are true and correct in all material respects as though made on and as of such Date of Acceptance; (b) the Lessee has satisfied or complied with all requirements set forth in the Lease to be satisfied or complied with on or prior to such Date of Acceptance; (c) no Default or Event of Default under this Lease has occurred and is continuing on such Date of Acceptance; and (d) the Asset(s) are insured in accordance with the provisions of the Master Lease Agreement.

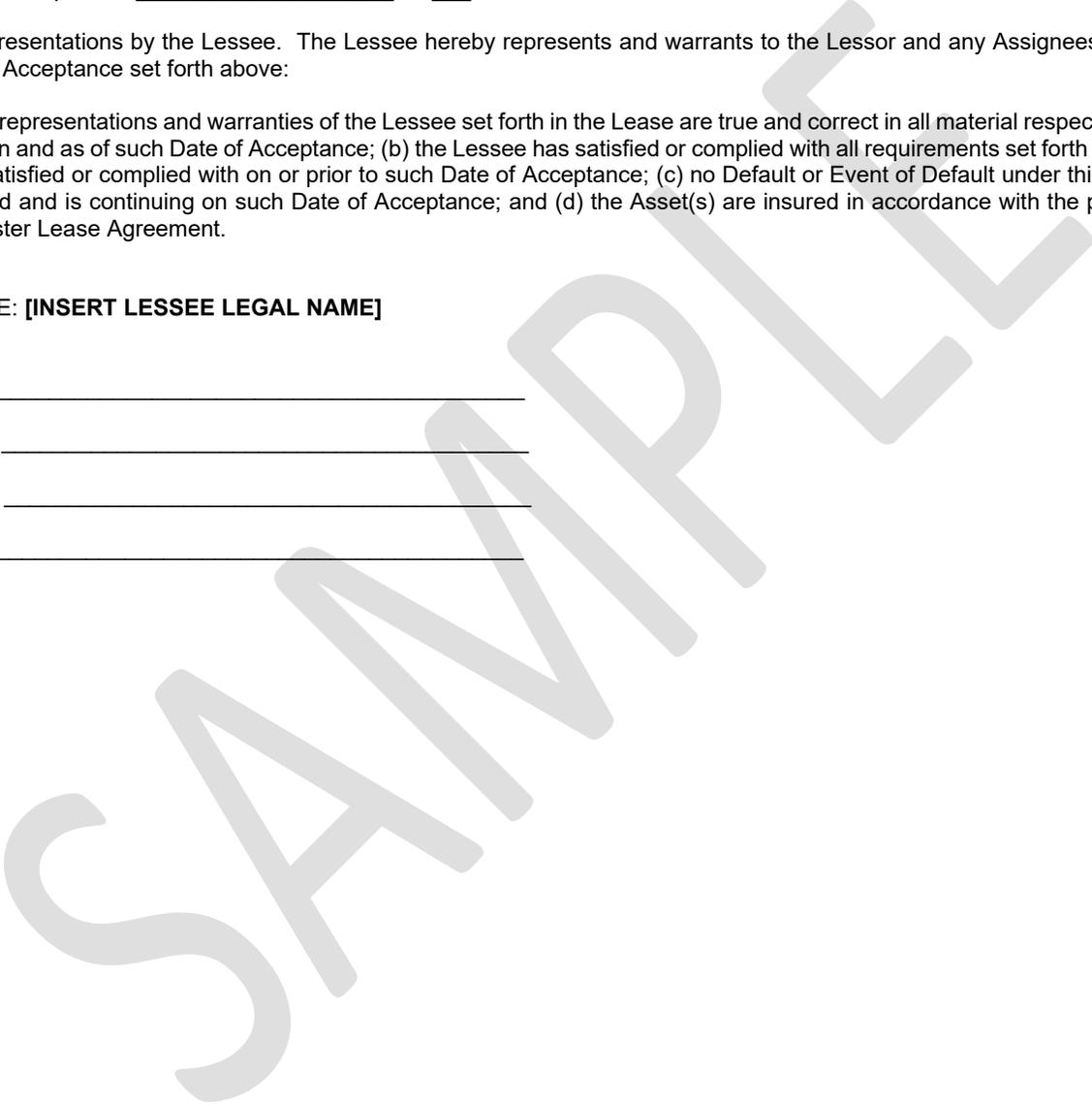
LESSEE: [INSERT LESSEE LEGAL NAME]

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



**SAMPLE VALIDITY OPINION LETTER  
TO BE EXECUTED ON COUNSEL'S LETTERHEAD**

To:

Ladies and Gentlemen:

We are counsel to \_\_\_\_\_ (the "Lessee") and, in that capacity, we have examined Master Lease Agreement No. \_\_\_\_\_, dated as of \_\_\_\_\_, and the Lease Schedule No. \_\_\_\_\_ to Master Lease Agreement No. \_\_\_\_\_ thereto, dated as of the Commencement Date [or Effective Date] (collectively the "Agreement"), between the Lessee and Dell Financial Services L.L.C. (the "Lessor").

Based on our examination of the Agreement and such other examinations as we have deemed appropriate, we are of the opinion as follows:

(a) The Lessee is an entity duly organized and existing under and by virtue of the authorizing statute or constitutional provisions of the State of \_\_\_\_\_ and is a state or political subdivision thereof as described in Section 103(a) of the Internal Revenue Code of 1986, as amended, with full power and authority to enter into the Agreement and the transactions contemplated thereby and to perform all of its obligations thereunder;

(b) The Agreement has been duly authorized, executed and delivered by \_\_\_\_\_\*, \_\_\_\_\_ of the Lessee by proper action of its governing board at a meeting duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of the Agreement against the Lessee;

(c) The Agreement constitutes the valid, legal and binding obligation of the Lessee, enforceable in accordance with its terms;

(d) No approval, consent or withholding of objection is required from any federal, state or local governmental authority or instrumentality with respect to the entering into or performance by the Lessee of the Agreement and the transactions contemplated thereby;

(e) Lessee has complied with any applicable public bidding requirements and other applicable state and federal laws in connection with the Agreement and the transactions contemplated thereby;

(f) The entering into and performance of the Agreement will not violate any judgment, order, law or regulation applicable to the Lessee or result in any breach of, or constitute a default under, any instrument to which the Lessee is a party or by which it or its assets may be bound, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of the Lessee or on the Products, other than those created by the Agreement;

(g) The Products are tangible personal property and when subject to use by the Lessee will not be or become fixtures or real property under the laws of the State of \_\_\_\_\_;

(h) There are no actions, suits, proceedings, inquiries or investigations, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting, nor to the best of our knowledge and belief is there any basis therefor, which, if determined adversely to Lessee, will have a material adverse effect on the ability of the Lessee to fulfill its obligations under the Agreement; and

(i) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for Lessee's current Fiscal Period to make the Rent payments scheduled to come due during Lessee's current Fiscal Period and to meet its other obligations under the Agreement for the current Fiscal Period, and such funds have not been expended for other purposes.

This opinion is delivered to the addressee for its benefit and the benefit of its assigns for the purpose contemplated by the Agreement.

Very truly yours,

\*Authorized Signatory of Lessee under the Agreement.

# Attachment E-2

Solicitation 090000560		
SW1020 Computer equipment, peripherals, and related equipment		
Vendor: Dell Marketing, L.P.		

Equipment Pricing - Desktop		OK OMES - BAFO
Description		Discount % off List
<b>Fixed Standard Configuration - OMES Workstations</b>		
Optiplex 7000 SFF - i5 12500/16GB/256GB SSD/AMD RX 640 4GB/Warranty - 3 years ProSupport Quote #US-3000137913521.2		62.00%
<b>Fixed Standard Configuration - OMES Workstations</b>		
OptiPlex OptiPlex 3000 Thin Client CTO - Pentium/ 8GB / 32GB SSD / Warranty - 3 years ProSupport Quote #US-3000137913521.2		62.00%
<b>Fixed Standard Configuration - Additional Configurations</b>		
Basic Desktop Optiplex 7000 - i5 i5-12500/16GB/512GB SSD/AMD RX 640 4GB/Warranty - 3 years ProSupport Quote #3000134851010.1		62.00%
<b>Fixed Standard Configuration - Additional Configurations</b>		
Basic Desktop Optiplex 7000 - i7 i7-12700/16GB/256GB SSD/AMD RX 640 4GB/Warranty - 3 years ProSupport Quote #3000134851238.1		62.00%
<b>Non-Standard Configurations</b>		
OptiPlex		37.00%
Fixed Workstations		37.00%

Equipment Pricing - Laptop		OK OMES
Description		Discount % off List
<b>Fixed Standard Configuration - OMES Workstations</b>		
Dell Latitude 5430 BTX Base - i5-1145G7/16GB/256GB SSD/ Discreet GPU/Warranty - 3 years ProSupport Quote #US-3000137913521.2		60.00%
<b>Fixed Standard Configuration - OMES Workstations</b>		
Dell Latitude 7320 Detachable - i7-1180G7/16GB/256GB SSD/Intel Iris graphics + KB/Pen/Warranty - 3 years ProSupport Quote #US-3000137913521.2		60.00%
<b>Fixed Standard Configuration - Additional Configurations</b>		
Economy Latitude 3420 i5-1145G7/16GB/256GB SSD/ Discreet GPU/Warranty - 3 years ProSupport Quote #3000134851449.1		55.00%
<b>Fixed Standard Configuration - Additional Configurations</b>		
Mobile Premium Latitude 7430 i7-1255U/16GB/256GB SSD/Intel Iris XE Graphics/Warranty - 3 years ProSupport Quote #3000134851663.1		60.00%
<b>Fixed Standard Configuration - Additional Configurations</b>		
Precision 3570 i5-1245U/16gb/256GB SSD/T550 GPU/Warranty - 3 years ProSupport Quote #3000134852370.1		60.00%
<b>Fixed Standard Configuration - Additional Configurations</b>		
Developer Precision 7670 i7-11850H/32GB/512GB SSD/Nvidia T1200 4GB/Non-Touch/Warranty - 3 years ProSupport Quote #3000135377143.1		60.00%
<b>Non-Standard Configurations</b>		
Latitude Devices		37.00%
Mobile Workstation		37.00%

Equipment Pricing - Ruggedized		OK OMES
Description		Discount % off List
<b>Fixed Standard Configuration - OMES Configuration</b>		
Rugged Latitude 5430 i5-1135G7.16GB/256GB SSD/Outdoor Viewable/Warranty - 3 years ProSupport Quote #3000134852688.1		60%
Latitude Rugged Devices		37%

Equipment - Mac OS		OK OMES
Description		Discount % off List
N/A - Dell is not authorized to sell MAC OS Products		N/A

Equipment Pricing - Servers		OK OMES
Description		Discount % off List
PowerEdge Servers		18.00%
Dell Branded Networking, OEM Networking		3.00%

Equipment Pricing - Storage		OK OMES
Description		Discount % off List
Dell Storage OEM		18.00%



Dell maintains a Retail Price list online located at: <http://ftpbox.us.dell.com/sg/weekly/dellpricereport.pdf>. The Price List is updated weekly, is available for download from this site in lieu of hard copy distribution and excludes promotional offers. Systems configured and discounted by your Dell's Sales Representatives or through on-line stores and Premier Pages, are based upon then-current retail pricing and exclude promotional offers. Regardless of the Category in which they may be sold, Dell shall not be obligated to provide any discounts with respect to APEX-branded products or offerings, if Apex is in scope of the contract.

Changes to retail prices are subject to Dell's discretion and generally take effect immediately, allowing us to provide price decreases and to introduce new products without waiting for a formal price list to be updated. Product Classifications and Categories may be changed by Dell without notice.

Where a Dell-branded product is comprised of both hardware and services, the resulting Discount Off List percentage will reflect a blend of the contract discounts associated with the hardware and tied services components of that product.

Where Dell sells third-party products on a "discount-off-list" basis and does not receive a list price from the manufacturer, Dell assigns a list price. Prices for custom services are agreed to through a separate Statement of Work and not included in the proposed prices herein. Where "discount off list", "cost plus", or "cost minus" calculations are used to determine pricing, Dell's standard discount product category list, product category or classification assignment for a particular product is subject to change by Dell and could affect pricing of that product.

Pricing, if included, may be subject to change in the event of an industry wide material constraint or shortages, including but not limited to memory, or other manufacturing materials or components, or due to other factors beyond Dell Technologies' reasonable control. Products may be discontinued or revised (including components thereto) at any time without notice. Should the initial proposed product(s) be discontinued before the replacement product(s) reach price parity with initial product(s), Dell Technologies reserves the right to re-negotiate pricing.

The Dell-branded products described in the Dell quotes referenced herein and incorporated into this Agreement as if set out in their entirety; "Standard Configurations") will be made available to Customer for purchases from Dell. If a Standard Configuration reaches the end of its life cycle ("EOL") during the Pricing Term, Dell will work with Customer to develop a plan for a transition to a comparable replacement (based on objective and industry-recognized performance criteria). Replacement of a Standard Configuration as is provided for in this paragraph will not require amendment to the Agreement. The prices provided for in this Section are based on a Fixed Discount Off List percentage and are subject to change: (i) in the event of industry-wide shortages in materials or resources, increases in the cost of manufacturing, or other factors outside Dell's control; or (ii) if Customer materially breaches this Agreement. Dell will give Customer as much notice of these price changes as is reasonably practicable under the circumstances. Price changes will apply only to future orders and will not affect the price for orders accepted by Dell before the effective date of the applicable price change.

- Dell is proposing Minimum Discount off List Percentages by Product, under each Product Category, as per section 8.1.E.i - of the Bidder Instructions Document.

- Standard Configurations are fixed configurations with no deviations of upgrades or downgrades (as defined in the referenced quote #).

- Volume Discounts do not apply to Fixed Standard Configuration discount percentages and Apex Branded Solutions.

- Volume Discounts only apply to Dell Branded products.

**Leasing Notes:**

\*\*Calculate lease payments by multiplying the appropriate Lease Rate Factor by the equipment cost. Sample payment calculation: \$1000.00 X

\*\*Flat Panel Monitors may qualify for a better lease rate if ordered in combination with a mobile or desktop computer

\*\*Rates are also based upon the configuration and specification of the supplied equipment specified in the RFP, and DFS reserves the right to revise pricing in the event of any change in the configuration or equipment specification or reduction in asset values as determined by DFS.

\*\*Rates assume monthly consolidation of invoices with one schedule per month.

\*\*The shown lease rate factors allow for DFS to be responsible for all personal property taxes and insurance.

\*\* Rates provided are Monthly payment in Arrears without interm rent.

\*\*The rates are based upon market conditions and are valid until February 26, 2023 (90 days) are subject to final credit approval, review of the economics of the transaction, and execution of mutually acceptable documentation.



**Attachment F to  
STATE OF OKLAHOMA CONTRACT WITH DELL MARKETING L.P.  
RESULTING FROM SOLICITATION NO. 0900000560**

**Negotiated Exceptions and Additional Terms to the Solicitation**

The Solicitation is hereby amended to include the terms as set forth below and supersedes all prior terms and exceptions submitted by **Dell Marketing L.P.** or discussed by the parties.

Requested Exceptions and Additional Terms not addressed below are declined by the State of Oklahoma.

RFP Section	Exception
Contract Effectiveness and Order of Priority (Section 2.2, page 2, Attachment B)	<p><b>Section 4.21 is deleted in its entirety and replaced with the following:</b></p> <p>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:</p> <ul style="list-style-type: none"> <li><b>A.</b> any Addendum;</li> <li><b>B.</b> any applicable Solicitation;</li> <li><b>C.</b> Master Lease Agreement (Attachment E-1).</li> <li><b>D.</b> 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;</li> <li><b>E.</b> the terms contained in this Contract Document;</li> <li><b>F.</b> 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;</li> <li><b>G.</b> any statement of work, work order, or other similar ordering document as applicable; and</li> <li><b>H.</b> other mutually agreed Contract Documents.</li> </ul>
Definitions (Section 4.21, pg. 6, Attachment B)	<p><b>Section 4.21 is deleted in its entirety and replaced with the following:</b></p> <p><b>Work Product</b> means any reports, analyses, scripts, code, other work results, or deliverables produced by Supplier for Customer within the framework of fulfilling obligations under a statement of work or other</p>

RFP Section	Exception
	Contract Document. For clarity, Work Product shall not include any Products.
Attachment B, Products (new Section 4.22, pg. 6)	<p><b>Section 4.22 is created to read as follows:</b></p> <p><b>Products</b> are either: (i) Supplier-branded IT hardware products (“Equipment”) or (ii) Supplier-branded generally available software, whether microcode, firmware, operating systems or applications (“Software”). Products exclude Services and Third Party Products.</p>
Attachment B, Services (new Section 4.23, pg. 6)	<p><b>Section 4.23 is created to read as follows:</b></p> <p><b>Services</b> are: (a) Supplier’s standard service offerings for maintenance and support of Products (“Support Services”) and (b) consulting, deployment, implementation and any other services that are not Support Services (“Professional Services”).</p>
Attachment B, Third Party Products (new Section 4.24, pg. 6)	<p><b>Section 4.24 is created to read as follows:</b></p> <p><b>Third Party Products</b> means hardware, software, products, or services that are not “Dell” or “Dell EMC” branded. Supplier may offer to supply Third Party Products that are provided by a third party manufacturer/supplier, including without limitation under Supplier’s “Extended Technologies Complete” program, Supplier’s “Brokerage” program or Supplier’s Software &amp; Peripherals (S&amp;P) program, or such other programs as Supplier may operate from time to time, and may include offerings from Supplier Affiliates using different brands other than “Dell” or “Dell EMC”. Notwithstanding any other provisions herein, such Third Party Products are subject to the standard license, services, warranty, indemnity and support terms of the third party manufacturer/supplier (or an applicable direct agreement between Customer and such manufacturer/supplier), to which Customer shall adhere as agreed to by Customer and permitted by law. Even if support fees are invoiced through Supplier, such Third Party Products are not supported by Supplier and Customer shall contact such third party directly for support. Any warranty, damages or indemnity claims against Supplier in relation to such Third Party Products are expressly excluded.</p>
Attachment B, Client Products (new Section	<p><b>Section 4.25 is created to read as follows:</b></p>

RFP Section	Exception
4.25, pg. 6)	<p><b>Client Products</b> means the Dell-branded commercial computer products intended for use by a single user, and generally include notebook, desktop and tablet platforms.</p>
Attachment B, Ordering, Inspection, and Acceptance (Section 6.2, pg. 23-24)	<p><b>Section 6.2 is deleted in its entirety and replaced with the following:</b></p> <p><b>6.2 (a).</b> Scope and details of Services and Product-specific terms are specified in the applicable standard service description that is attached to or referred in a Schedule or Quote, or is made available through the then-current Supplier website for product- or service-specific terms, currently located at <a href="http://www.dell.com/offeringspecificterms">www.dell.com/offeringspecificterms</a>. Such standard descriptions are from time to time referred to as “Service Description(s)”, “Product Notices” or “Service Briefs.” The version of the applicable document that is effective as of the date of the applicable Quote, shall be deemed incorporated into the Purchase Order. Scope and details of customized Professional Services not covered by such a standard description shall be documented in a mutually agreed Statement of Work (“SOW”).</p> <p><b>6.2(b).</b> Services will be performed in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify Supplier of any failure to so perform within 5 days after the date on which such failure first occurs. In such case, Supplier will use reasonable efforts to correct such failure within a reasonable period of time. If after reasonable efforts, Supplier is not able to correct such deficiencies for reasons for which Supplier is responsible, then Customer may terminate the affected Services for cause by providing written notice to Supplier.</p> <p>Supplier warrants that an Equipment, under normal usage and with regular recommended service, will be free from material defects in material and workmanship and that Equipment will perform substantially in accordance with the corresponding standard documentation issued by Supplier for the applicable Equipment. Unless provided otherwise in a Schedule, additional terms governing the limited warranties for Equipment are found at <a href="https://www.dell.com/learn/us/en/uscorp1/terms-of-sale-commercial-and-public-sector-warranties?c=us&amp;l=en&amp;s=corp">https://www.dell.com/learn/us/en/uscorp1/terms-of-sale-commercial-and-public-sector-warranties?c=us&amp;l=en&amp;s=corp</a> or in the applicable documentation or Product Notice for the specific Equipment.</p> <p>The following terms apply to the specific Software (“Warranted Software”) listed in the table located at</p>

RFP Section	Exception
	<p><a href="https://www.dell.com/content/dam/digitalassets/active/en/unauth/manual-warranty-informations/h4276-emc-prod-warranty-maint-table.pdf">https://www.dell.com/content/dam/digitalassets/active/en/unauth/manual-warranty-informations/h4276-emc-prod-warranty-maint-table.pdf</a> (the “Software Warranty Table”). Supplier warrants that Warranted Software will substantially conform in all material respects to its then-current documentation during the applicable warranty period specified in the Software Warranty Table (the “Software Warranty Period”).</p> <p>A defect in a product or deliverable furnished by or through the Supplier shall be subject to the return or warranty policy and addressed at no additional cost or expense to the Customer if such defect occurs during the warranty period.</p>
<p>Ordering, Inspection, and Acceptance (Section 6.3, pg. 10, Attachment B)</p>	<p><b>Section 6.3 is deleted in its entirety and replaced with the following:</b></p> <p>Unless otherwise agreed, Supplier shall arrange for shipment of the ordered Products to the ship-to address indicated in the Purchase Order, through a common carrier designated by Supplier. Delivery dates are indicative. Software may be provided by delivery of physical media or through electronic means. Customer shall notify Supplier within 21 days of the invoice date if Customer believes any Product included in its Order is missing, wrong, or damaged, and shall ensure that the intended installation site meets the specifications as per the product documentation.</p> <p>Risk of loss for physical media containing licensed Software transfers to Customer upon Delivery. Title to sold Equipment passes to Customer upon Acceptance. Delivery for Equipment occurs when Supplier provides the Equipment to Customer’s named destination or designated ship to point. “Delivery” for Software occurs either when Supplier provides physical media (or the Equipment on which it is installed) to the carrier at Supplier’s designated ship to point , or the date Supplier notifies Customer that Software or Independent Software is available for electronic download.</p> <p>Customer shall have 5 business days to inspect and accept all Products, 3<sup>rd</sup> Party Products, and Services-not including Software, after 5 business days all Products and Services are deemed accepted and inspected. Notwithstanding such acceptance, Customer retains all rights and remedies under the warranty terms stated below. Customer may only return Products to Supplier that are permitted to be returned pursuant to the return policy at <a href="http://www.dell.com/returnspolicy">www.dell.com/returnspolicy</a>.</p>

RFP Section	Exception
	<p>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.</p> <p>Pursuant to OAC 260:115-9-1, 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.</p>
<p>Ordering, Inspection, and Acceptance (new Section 6.5, pg. 11, Attachment B)</p>	<p>New Section 6.5 is added as follows:</p> <p>Other than the warranties set forth in this section 6 and the Schedules, and to the maximum extent permitted by applicable law, Supplier and Supplier Affiliates: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance or usage of trade.</p>
<p>Invoices and Payment (Section 7.1, pg. 11-12, Attachment B)</p>	<p>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.</p> <p>The following terms additionally apply:</p>

RFP Section	Exception
	<ul style="list-style-type: none"> <li data-bbox="526 279 1409 394"><b>I.</b> An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.</li> <li data-bbox="526 405 1409 520"><b>J.</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.</li> <li data-bbox="526 531 1409 730"><b>K.</b> 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.</li> <li data-bbox="526 741 1409 898"><b>L.</b> 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.</li> <li data-bbox="526 909 1409 1066"><b>M.</b> 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.</li> <li data-bbox="526 1077 1094 1108"><b>N.</b> Supplier shall have no right of setoff.</li> <li data-bbox="526 1119 1409 1318"><b>O.</b> 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.</li> <li data-bbox="526 1329 1409 1402"><b>P.</b> The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.</li> </ul>
<p data-bbox="207 1497 415 1696">Applicable Laws (Section 9.1(F), pg. 15, Attachment B)</p>	<p data-bbox="488 1497 1406 1528"><b>Section 9.1 is deleted in its entirety and replaced with the following:</b></p> <p data-bbox="488 1570 1409 1812">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 required and applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:</p>

RFP Section	Exception
	<p><b>A.</b> Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.</p> <p><b>B.</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;</p> <p><b>C.</b> Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;</p> <p><b>D.</b> 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;</p> <p><b>E.</b> Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;</p> <p><b>F.</b> Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);</p> <p><b>G.</b> 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 <a href="http://www.dhs.gov/E-Verify">www.dhs.gov/E-Verify</a>;</p> <p><b>H.</b> 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</p>

RFP Section	Exception
	<p>I. 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.</p>
<p>Audits and Records Clause (Section 10.1, pg. 17-18, Attachment B)</p>	<p><b>Section 10.1 is deleted in its entirety and replaced with the following:</b></p> <p>Customer, or any pertinent federal or State agency, shall have the right to audit invoice records or other records relevant to Supplier’s performance for a period of seven years following the date of the invoice. Invoice records shall be produced for Customer’s inspection in an electronic format, in accordance with the reporting format created by Supplier’s business system of record. Supplier shall not be required to furnish any data in a format other than that of the standard reports created by Supplier’s business system of record, unless Supplier stores the record in another format. A sample report can be furnished to Customer upon request. Customer shall not charge Supplier in any event for the cost of conducting an audit initiated by Customer or an agent duly authorized by Customer and Supplier shall not charge Customer or other authorized federal or State agency. Supplier shall not be required to perform any data analysis against data points that are known to Customer or should be known to Customer. This includes analysis of invoiced amounts against amounts in orders issued by Customer, or against pricing discounts that are designated in the contract.</p> <p>Nonetheless, Supplier shall provide Customer reasonable assistance as part of an audit.</p>
<p>Audits and Records Clause (Section 10.2, pg. 18, Attachment B)</p>	<p>Section 10.2 is modified to read as follows:</p> <p>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 (7) year period, the records are</p>

RFP Section	Exception
	<p>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.</p>
<p>Confidentiality, (Section 11.3, pg 14, Attachment B)</p>	<p>Section 11.3 is modified to read as follows:</p> <p>Supplier shall immediately report to the Customer a confirmed and/or reasonable probability of a confirmed 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 confirmed 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.</p>
<p>Attachment B, (Section 15, pg. 23-24)</p>	<p><b>Section 15 is deleted in its entirety and replaced with the following:</b></p> <p><b>Infringement Remedies</b></p> <p>Should any Product or Support Service provided by Supplier under the Contract infringes that third party's patent, copyright or trade secret enforceable in the country where Customer purchased the Product from Supplier, Supplier shall enable each affected Customer to (i) legally continue to use the affected Product or Support Service; (ii) modify the affected Product or Support Service to make them non-infringing; (iii) replace such affected Product or Support Service with non-infringing substitutes; (iv) provide a reasonable depreciated or pro rata refund for the affected Product; or (v) discontinue the Support Services and refund the</p>

RFP Section	Exception
	<p>portion of any prepaid Support Service fees that corresponds to the period of Support Services discontinuance.</p>
<p>Acts or Omissions (Attachment B Section 16.1)</p>	<p>Section 16 is deleted in its entirety and replaced with the following:</p> <ul style="list-style-type: none"> <li>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 tangible 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.</li>   <li>B. Supplier will: (i) defend Customer against any third party claim that Products or Support Services (but excluding Third Party Products, any Product provided for evaluation or without charge, and open source software) infringe that party’s patent, copyright, or trade secret enforceable in the country where Customer purchased the Product from Supplier (“Claim”); and (ii) indemnify Customer by paying: (a) the resulting costs and damages, including attorneys’ fees, finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (b) the amounts stated in a written settlement negotiated and approved, as provided in Section 16.4 of Attachment B, by Supplier. In addition, should any Product or Support Service become, or in Supplier’s opinion be likely to become, the subject of such a Claim supplier will act in accordance with section 15. Except as otherwise provided by law, this clause states Customer’s exclusive remedies for any third-party intellectual property claim relating to the Products or Support Services.</li>   <li>C. To the extent Supplier is found liable for loss, damage, or destruction of any tangible property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the</li> </ul>

RFP Section	Exception
	<p>Supplier and Customer shall use reasonable 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.</p>
<p>Infringement, (Section 16.2, Attachment B)</p>	<p>Section 16.2 is deleted in its entirety.</p>
<p>Notice and Cooperation (Section 16.3, Attachment B)</p>	<p>Subsection 16.3 is deleted in its entirety and replaced with the following:</p> <p>In connection with indemnification obligations under the Contract, the parties agree to furnish (i) prompt written notice to each other of any third-party claim and (ii) cooperating with the indemnifying party in the defense and resolution of the Claim and in mitigating any damages 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.</p>

RFP Section	Exception
<p>Limitation of Liability (Section 16.5, Attachment B)</p>	<p>Section 16.5 is deleted in its entirety and replaced with the following:</p> <ul style="list-style-type: none"> <li>A. EXCEPT FOR INFRINGEMENT/MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR AS OTHERWISE SET FORTH IN ANY APPLICABLE SCHEDULES, NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, SOFTWARE OR SERVICES PROVIDED HEREUNDER. EXCEPT FOR CUSTOMER’S BREACH OF PAYMENT OBLIGATIONS, NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING: (1) LOSS OF REVENUE, INCOME, PROFIT OR SAVINGS; (2) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK OR THE RECOVERY OF SUCH; (3) LOSS OF BUSINESS OPPORTUNITY; (4) BUSINESS INTERRUPTION OR DOWNTIME; OR (5) DELIVERABLES, DELL PRODUCTS OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE.</li>   <li>B. AS APPLICABLE UNDER OKLAHOMA LAW AND AS IT RELATES TO THIS CONTRACT, NO DIRECT OR INDIRECT LIMITATION OF LIABILITY, TO EXEMPT ONE FROM RESPONSIBILITY FOR HIS OWN FRAUD, WILLFUL INJURY TO THE PERSON OR PROPERTY OF ANOTHER OR VIOLATION OF LAW, WHETHER WILLFUL OR NEGLIGENT SHALL APPLY.</li>   <li>C. SUPPLIER'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT (INCLUDING ANY PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER) SHALL NOT EXCEED THE AGGREGATE AMOUNT OF 12 MONTHS TRAILING CONTRACT REVENUE UNDER THIS CONTRACT.</li>   <li>D. THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE,</li> </ul>

RFP Section	Exception
	<p>TORT OR OTHERWISE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THESE LIMITATION OF LIABILITY PROVISION ARE AN AGREED-UPON ALLOCATION OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR SUPPLIER'S SALE OF PRODUCTS, SOFTWARE, OR SERVICES TO PURCHASING ENTITY, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.</p>
<p>NEW Section 16.6 for Professional Services indemnity, Attachment B</p>	<p>A new Section 16.6 is added as follows:</p> <p>A. Indemnity. Supplier shall (a) defend Customer against any third party claim that Professional Services or Work Product (excluding Third-Party Products and services and open source software) infringe that party’s patent, copyright, or trade secret enforceable in the country where Supplier performed the Professional Services (a “Professional Services Claim”); and (b) indemnify Customer by paying (1) the resulting costs and damages, including attorneys’ fees, finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Professional Services Claim, or (2) the amounts stated in a written settlement negotiated and approved, as provided in Section 16.4 of Attachment B, by Supplier.</p> <p>In addition, should any such Professional Services or Work Product become, or in Supplier’s opinion be likely to become, the subject of such a Professional Services Claim, Supplier may, at its expense and in its discretion (a) obtain a right for Customer to continue using such Professional Services or Work Product; (b) modify such Professional Services or Work Product to make them non-infringing; (c) replace such Professional Services or Work Product with non-infringing substitutes; (d) provide a reasonable depreciated or pro rata refund for the allegedly infringing Professional Services or Work Product; or (e) discontinue the Professional Services and refund the portion of any pre-paid Professional Services fees that corresponds to the period of Professional Services. Except as otherwise provided by law, this Section states Customer’s exclusive remedies for any third-party intellectual property claim relating to</p>

RFP Section	Exception
	<p>Professional Services or Work Product, and nothing herein or elsewhere will obligate Dell to provide any greater indemnity.</p> <p>B. Exclusions from Indemnity. Supplier shall have no obligation under this Section: (a) if Customer is in material breach of the Agreement or an applicable SOW or an applicable Service Agreement or (b) for any Professional Services Claim to the extent resulting or arising from: (1) any combination, operation or use of Professional Services or Work Product with any other non-Supplier products, services, items, or technology, including Third Party Products and services and open source software; (2) use for a purpose or in a manner for which the Professional Services or Work Product were not designed unless Supplier recommended use of such manner in documentation or other guidance, instruction, or direction, or use after Supplier notifies Customer to cease such use due to a possible or pending Professional Services Claim; (3) any modification made, or services performed, by any person other than Supplier or its authorized representatives unless Supplier recommended or participated in such modification or by providing express written instructions; (4) services provided by Customer (including Professional Services Claims seeking damages based on any revenue Customer derives from Customer's services), but this subsection shall not exclude Supplier's obligations with regards to Supplier's Work Product; or (5) any data or information which Customer or a third party records on or utilizes in connection with the Professional Services or Work Product, but this provisions shall not exclude Supplier's obligations with regards to Supplier's Professional Services or Work Product.</p> <p>C. Indemnification Process. Supplier's duty to indemnify and defend under this Section is contingent upon: (a) Customer's prompt written notice of the Professional Services Claim; (b) Customer's cooperation in Supplier's defense and resolution of the Professional Services Claim, and in mitigating any damages.</p> <p>Indemnity Cap. Supplier's total liability, in the aggregate, for any and all Professional Services Claims accruing is limited to the amount listed in Section 16.5(C) of Attachment B.</p>
<p>Security of Property and Personnel (Section 24, pg</p>	<p>Section 24 is deleted in its entirety and replaced with the following:</p> <p>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</p>

RFP Section	Exception
25, Attachment B)	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.
Definitions (Section 1.5, pg. 1, Attachment D)	Section 1.5 is deleted in its entirety and replaced with the following:  <b>Intellectual Property Rights</b> means the patents, trade secrets and copyrights, trademark and any other proprietary or similar rights.
Definitions, Attachment D, Section 1.9	<b>Subsection 1.9 is deleted in its entirety and replaced with the following:</b>  <b>Security Incident</b> means the reasonable probability of a confirmed and/or confirmed successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the Hosted environment used to perform the services
Definitions (Section 1.11, pg. 2, Attachment D)	<b>Subsection 1.11 is deleted in its entirety and replaced with the following:</b>  <b>Supplier Intellectual Property</b> means the Intellectual Property Rights created or developed by Supplier (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract.
Attachment D, Section 1.13, Definitions, Work Product	<b>Section 1.13 is deleted in its entirety (see Attachment B, Section 4.21 definition).</b>
Attachment D, Compliance with Technology	This Security Policy governs all aspects of hardware, software, communications and information. It covers all State Agencies as well as contractors or other entities who may be given permission to log in, view or access State information.

RFP Section	Exception
Policies, Section 6.1	<p>The Supplier, <i>to the extent such Policies and Standards align and are not in conflict with Dell policies and standards</i> (International Standards Organization (“ISO”) 27001 (standard for managing information security governance risks) and National Institute of Standards and Technology (“NIST”) SP800-53), agrees to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at <a href="https://oklahoma.gov/omes/services/information-services/policy-standards-publications.html">https://oklahoma.gov/omes/services/information-services/policy-standards-publications.html</a> [oklahoma.gov] Supplier’s employees and subcontractors shall adhere to the applicable State IT Standards, policies, procedures and architectures as set forth at <a href="https://oklahoma.gov/omes/services/information-services/policy-standardspublications.html">https://oklahoma.gov/omes/services/information-services/policy-standardspublications.html</a> [oklahoma.gov] or as otherwise provided by the State.</p>
Attachment D, Section 6.3, Compliance with Technology Policies	<p><b>Section 6.3 is deleted in its entirety.</b></p>
Source Code Escrow (Section 9, pg. 5- 6, Attachment D)	<p><b>Subsection 9 is deleted in its entirety and replaced with the following:</b></p> <p>State and Supplier agree that Supplier is not planning to develop customized computer software developed or modified exclusively for the State. Should Supplier develop customized computer software developed or modified exclusively for the State then Supplier and the State will enter into in writing a mutually agreed upon a statement of work for such development and/or modification and the following terms will apply to any such mutually agreed upon in writing Statement of work:</p> <p>Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:</p>

RFP Section	Exception
	<p>9.1 A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;</p> <p>9.2 An assignment by the Supplier for the benefit of its creditors;</p> <p>9.3 A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;</p> <p>9.4 The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;</p> <p>9.5 The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier’s property;</p> <p>9.6 The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;</p> <p>9.7 Supplier’s ceasing of maintenance and support of the software; or</p> <p>9.8 Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.</p>
<p>Ownership Rights (Section 11, pg. 6-7, Attachment D)</p>	<p>Subsection 11 is deleted in its entirety and replaced with the following:</p> <p>Subject to the State’s compliance with the terms of the Contract and any applicable Service Specification, the State’s payment of applicable amounts due, and Supplier’s Intellectual Property Rights in any underlying intellectual property incorporated into any Work Products or used by Supplier to perform Professional Services,</p> <p>(a) State shall own all Intellectual Property rights, including copyrights, to the portion of Work Product that consists solely of written reports, analyses and other working papers prepared solely for the State and delivered by Supplier to State in the performance of Supplier’s obligation under the Service Specification; and</p>

RFP Section	Exception
	<p>(b) For the portion of Work Product for which State does not own copyright rights in accordance with section [11 (a)] (“Licensed Work Product”), Supplier grants the State, a non-exclusive, non-transferrable, irrevocable (except in case of non-payment, or any breach of the Contract or any applicable Service Specification), license (without the right to sublicense), solely for the internal business use of the State or otherwise required by law, to use the Work Product in accordance with the applicable Service Specification and subject to the Contract. The State may authorize its service providers to use the Work Product, but solely on the State’s behalf, solely for the State’s internal business purposes, and the State shall be responsible for such service provider’s compliance with these restrictions.</p> <p>The Supplier reserves for itself all Intellectual Property Rights that it has not expressly granted to the State herein. The license granted in this clause 11 does not apply to: (i) any Products; or (ii) items licensed or otherwise provided under a separate agreement. Supplier is not limited in developing, using, or marketing services or products that are similar to the Work Products or Professional Services provided hereunder, any Service Specification., or, subject to the Supplier’s confidentiality obligations to the State or Customer, Supplier may use in using the Work Products or performing similar Professional Services for any other projects., but in no case shall Supplier use Work product identified in this Section 11(a), State or Customer Intellectual Property, or State or Customer Data or records or information derived therefrom without the express written permission of the State.</p> <p>The parties further agree that in a written mutually agreed upon Statement of Work or other Contract Document the Supplier in accordance with this subsection 11 may grant a transferrable license and other rights to the State and Customer.</p>
<p>Intellectual Property Ownership (Section 12, pg. 7-10, Attachment D)</p>	<p><b>Subsection 12 is deleted in its entirety and replaced with the following:</b></p> <p><b>Ownership Rights</b></p> <p>The following terms apply to ownership and rights related to the State or Customer’s Intellectual Property:</p>

RFP Section	Exception
	<p>The State and/or Customer retains its Intellectual Property Rights in materials, documents, information or other items or things it furnishes to the Supplier for use in connection with the performance of Professional Services. The State and/or Customer grants Supplier a non-exclusive, non-transferable right, under the State's and/or Customer's Intellectual Property Rights, to use the State/Customer-provided materials solely for the benefit of the State and/or Customer in fulfilling Supplier's obligations under the Contract.</p>
<p>Attachment D Section 13. Hosting Services</p>	<p><b>Subsection 13 is deleted in its entirety.</b></p>
<p>Data Security, Attachment D Appendix 1, Sections A (Customer Data) and B (Data Security)</p>	<p><b>Sections A and B are deleted in their entirety.</b></p>
<p>Data Security, Attachment D Appendix 1, Section C (Security Assessment)</p>	<p><b>Section C is deleted in its entirety and replaced with the following:</b></p> <p>On an annual basis, Supplier engages an independent certification registrar to conduct ISO certification audits ((e.g., ISO 9001, ISO 14001, ISO 18001, ISO 27001) of several of Supplier's management systems related to the provision of services and support, as well as the manufacture of computer storage and technology products at specific Supplier data centers, service centers, and manufacturing facilities. The accredited registrar, scope of certification and physical locations covered by the certification are listed within each ISO certificate. Supplier attempts to post and update these certificates periodically and as necessary offers the ISO certificates it has achieved on an Internet accessible website at:</p> <p><a href="http://www.dell.com/learn/us/en/uscorp1/corpcomm/international-organization-for-standardizationcertifications?c=us&amp;l=en&amp;s=corp&amp;ref=rss">http://www.dell.com/learn/us/en/uscorp1/corpcomm/international-organization-for-standardizationcertifications?c=us&amp;l=en&amp;s=corp&amp;ref=rss</a>. Supplier has also received extensive industry certifications such as the Common Criteria for Information Technology Security Evaluation and the Federal Information</p>

RFP Section	Exception
	<p>Processing Standard (FIPS) 140-2. Additionally, Supplier has established thought leadership in software assurance through active participation in industry groups, including being a cofounder of the Software Assurance Forum for Excellence in Code (SAFE Code).</p> <p><b>Dell upon request will provide the SIGLite document.</b> This document provides Dell Technologies customers with a comprehensive assessment, demonstrating how cybersecurity, IT, operating and data security risks are managed across a broad spectrum of risk control areas within the Dell Technologies environment. This document can be requested once per year.</p>
<p>Attachment D Appendix 1- Section D (Security Incident or Data Breach Notification) and E (Data Breach Notification and Responsibilities )</p>	<p>Sections D and E are deleted in their entirety.</p>
<p>Attachment D Appendix 1 Sections G (Supplier Representations and Warranties) H (Indemnity) and I(1)-(4) (Termination, Expiration and Suspension of Service)</p>	<p>Sections G, H and I(1)-(4) are deleted in its entirety</p>
<p>Attachment D, Appendix 2</p>	<p><b>Appendix 2 is deleted in its entirety.</b></p>

<b>RFP Section</b>	<b>Exception</b>
Attachment D-1 Information Security Requirements	<p>The following is added to the beginning of Attachment D-1:</p> <p>The State and/or Customer has reviewed the Supplier's onsite data wipe for Client Products Service and confirmed that the onsite data wipe for Client Products Services meets its compliance requirements set out in D-1 for Client Products that Supplier will perform said Services on. For all other Supplier Products and Services, the State and/or Customer shall request and review the respective data sanitization Services and confirm in writing prior to ordering that the data sanitization Services description complies with D-1. If the confirmed onsite data wipe for Client Products Services or other applicable data sanitization Services are ordered, D-1 shall apply to that specific order.</p>

**Attachment F-1 to  
STATE OF OKLAHOMA CONTRACT WITH DELL MARKETING L.P.  
RESULTING FROM SOLICITATION NO. 0900000560**

**Template for Contract Modifications for Quotes, Statements of  
Work, or other Ordering Documents**

The parties agree to use this template as the process to formally approve any terms, conditions or clauses that are to supersede the terms and Conditions in the Contract for purposes of the applicable quote, statement of work or other ordering document.

## Contract Modifications for Quote, Statement of Work, or other Ordering Document

Solely for purposes of this ordering document, the terms and conditions of the Contract are hereby amended as set forth below. This amendment is considered an Addendum.

RFP Section	Exception/Additional Terms

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

**DELL MARKETING L.P.**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

The [INSERT AGENCY NAME] is additionally executing this document to memorialize its involvement in negotiation of and its agreement with the terms of this document.

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_