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**STATE OF OKLAHOMA CONTRACT WITH NITSOM PROMOTIONAL  
MANUFACTURING CORP.**

This State of Oklahoma Contract is entered into between the State of Oklahoma by and through the Oklahoma State Department of Health and Nitsom Promotional Manufacturing Corp. (“Supplier”) and is effective as of the effective date set forth on a properly issued purchase order or, if no effective date is listed, the date of last signature (“Effective date”). The term of the Contract begins on the Effective Date and expires on June 30, 2025, no option to renew.

**Purpose**

The State is awarding the Contract to Supplier for the purchase of Promotional Items for the Allied Health Technical Program, as more particularly described in certain Contract Documents. This Contract Document memorializes the agreement of the parties with respect to terms of the Contract that is being awarded to Supplier.

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

1. The parties agree that Supplier has not yet begun performance of work under the Contract. 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. Attachment A – Solicitation #EV00000690;
  - 2.2. Exhibit 1 - Executive Summary Template;
  - 2.3. Exhibit 2- Pricing and Specifications Template;
  - 2.4. Exhibit 3 – Required Artwork Template;
  - 2.5. Attachment B - General Terms;
  - 2.6. Attachment C – Agency Terms;
  - 2.7. Attachment D – IT Terms - Reserved;
  - 2.8. Attachment E1 – Pricing and Specifications Sheet;
  - 2.9. Exhibit 1 - Response to Executive Summary Template;
  - 2.10. Exhibit 2 - Response to Specifications - Scope of Work;
  - 2.11. Amendment #1 Bid Date; and
  - 2.12. Amendment #2 Q&A.

3. The parties additionally agree:
  - 3.1. Except for 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. 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.
4. The parties recognize that while the State of Oklahoma is executing this contract, payment obligations rest solely with the Office of the Oklahoma State Department of Health and OMES shall not be responsible for such.

Oklahoma State Department of Health  
Attn: Accounts Payable  
123 Robert S. Kerr Avenue, Suite 1702  
Oklahoma City, OK 73102  
[OSDH.AccountsPayable@health.ok.gov](mailto:OSDH.AccountsPayable@health.ok.gov)

5. 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.

**[THE REMAINDER OF THIS PAGE IF INTENTIONALLY LEFT BLANK]**

**SIGNATURES**

The undersigned represent and warrant that they are authorized, as representatives of the party on whose behalf they are signing, to sign this Agreement and to bind their respective party thereto.

**STATE OF OKLAHOMA  
by and through the OKLAHOMA STATE  
DEPARTMENT OF HEALTH :**

**NITSOM PROMOTIONAL  
MANUFACTURING CORP.**

By:   
Lisa Martinez-Leeper (Jun 20, 2025 15:49 CDT)

By:   
Terrence Hu (Jun 20, 2025 15:08 EDT)

Name: Lisa Martinez-Leeper

Name: Terrence Hu

Title: Deputy Chief General Counsel

Title: President

Date: Jun 20, 2025

Date: Jun 20, 2025

**Agency Counsel**

By:   
Molly Clinkscates (Jun 20, 2025 15:43 CDT)

Name: Molly Clinkscates

Title: Deputy Chief General Counsel

Date: Jun 20, 2025

**The State Purchasing Director is signing solely to ensure state agency compliance with provisions of the Oklahoma Central Purchasing Act pursuant to 74 O.S., 85.5 concerning acquisitions by state agencies.**

By:   
Amanda Otis (Jun 20, 2025 16:44 CDT)

Name: Amanda Otis

Title: State Purchasing Director

Date: Jun 20, 2025

# Attachment A

## Solicitation No. EV00000690

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

### I. PURPOSE

The Office of Management and Enterprise Services (OMES), Central Purchasing Division, is seeking responses on behalf of Oklahoma State Department of Health from potential Suppliers to provide a contract for the purchase of Promotional Items for the Allied Health Technical Program. The Allied Health Technical Program provides support for all Allied Health Services programs at the Oklahoma State Department of Health. This includes SoonerStart Early Intervention, Child Guidance, and Warmline programs. The program-branded items within this bid will be distributed to 24 local programs (SoonerStart and Child Guidance) at 12 county health departments. A Contract resulting from this Solicitation may be designated for use as a Statewide Contract.<sup>1</sup>

The Contract is awarded on behalf of Oklahoma State Department of Health for Promotional Items. The total budget for this shall not exceed \$95,000.00.

#### 1. Contract Term and Renewal Options:

1.1. The initial Contract term, which begins on the effective date of the Contract, and expires on 06/30/2025. There are no options to renew the Contract.

#### 2. Solicitation Criterion:

2.1. All or None Bid. There shall be no multiple awards made.

2.2. The Bid will be evaluated using lowest and best criterion, based on the following:

- i. Price
- ii. Specifications & Requirements

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<sup>1</sup> 74 O.S. 85.5(G)(3)

**3. Scope and Description:**

3.1. The Bid Response must reflect for each requirement, designated to each item, as listed in Exhibits 2&3; whether the requirement is met by an out-of-the-box solution or whether the requirement necessitates customization to the Bidder's proposed solution.

- i. Pricing shall be proposed using Exhibit 2: Pricing and Specifications.
- ii. Supplier shall use the artwork provided in Exhibit 3: Required Artwork
- iii. Items must be shipped to the address listed below:

Oklahoma State Department of Health (Central Office)  
ATTN: Allied Health Technical Program  
123 Robert S. Kerr Ave. Ste 1708, OKC, OK 73102.

4. Executive Summary and Company Information are in Exhibit 1: Executive Summary and Company Information.

**EXHIBIT 1: Executive Summary and Company Information**

Offeror must provide complete and succinct responses to each item below. **Insert your responses into this worksheet directly into the yellow boxes** If your response does not fit into the boxes below a clearly labeled response (Example: 7.2.etc). will be considered. Offeror should provide all information necessary to demonstrate Offeror's ability to meet the requirements of this RFP and the RFP's Scope of Work. Responses to the below questions in this Attachment are mandatory and will be evaluated. Failure to respond to any question may result in your proposal being deemed nonresponsive.

**Any bidder responses left blank to any of the below requirements will not proceed further in the evaluation phase.**

**Section Two: Executive Summary and Company Information**

Bidders Instructions		Record Responses Below
7.2	<b>Bidder marketing information, general company information and other similar resources the Bidder wishes to provide</b>	
7.2.a	<b>Provide the length of time the Bidder has been in business</b>	
7.2.b	<b>Insert a brief description of the company</b>	
7.2.c	<b>Indicate Company size and organization structure (an Organizational chart is recommended)</b>	
7.2.d	<b>The number of years the Bidder has been providing products and/or services of the type requested, (must be at least 36months)</b>	
7.2.e	<b>Describe the core competency of the company</b>	
7.2.f	<b>Estimated Number of clients</b>	
7.2.g	<b>Average client size (i.e., employee count)</b>	

**EXHIBIT 2 – PRICING AND SPECIFICATIONS**

Item #	Quantity	Item Description	Price Per Unit	Total Price
1	4800	Mardi Gras™ Hex Pen – Double injected rubber grip features hexagons; Glossy black & silver trim contrasts with bright white barrel; ultrasmooth writing cartridge <ul style="list-style-type: none"> <li>• 1,600 Pen with BLACK ink + each of the following Hexagon colors: RED, BLUE, ORANGE</li> <li>• Printing: SoonerStart Color Logo and Program name</li> </ul>	\$	\$
2	3200	Mardi Gras™ Hex Pen – Double injected rubber grip features hexagons; Glossy black & silver trim contrasts with bright white barrel; ultrasmooth writing cartridge <ul style="list-style-type: none"> <li>• 1,600 Pen with BLUE ink + each of the following Hexagon colors: DARK GREEN, LIGHT GREEN</li> <li>• Printing: SoonerStart Color Logo and Program name</li> </ul>	\$	\$
3	7600	Full Color Digi-Printed Crayons in individual boxes (4 Pack) - Print on one side full color logo and black program name. Different colors of boxes are acceptable. Prop 65. 1.25" W x 3.5" H <ul style="list-style-type: none"> <li>• Printing: SoonerStart Color Logo and Program name</li> </ul>	\$	\$
4	6200	Clipper Hand Sanitizer – Blue top and white sticker; Clipper 0.34 oz. Hand Sanitizer in a pump spray. The carabiner pen clip lid should be able to attach to a purse or other personal item. <b>Must be FDA approved</b> Prop 65. 5.75" H x 0.625" Diameter <ul style="list-style-type: none"> <li>• Printing: SoonerStart Color Logo and Program name</li> </ul>	\$	\$
5	5200	Pink Gel Beads Hot/Cold Pack (Heart Shape); non-toxic, pliable blend of water and glycerin. Complies with CPSIA, Prop 65. 4.5" L x 4.5" H <ul style="list-style-type: none"> <li>• Printing: SoonerStart White Logo and Program name</li> </ul>	\$	\$
6	12400	Round Safety Plugs; Electrical outlet safety plug; poly material. Complies with Prop 65. 1.25" Diameter x 0.75" D <ul style="list-style-type: none"> <li>• Printing: SoonerStart Full Color Round Logo</li> </ul>	\$	\$
7	4500	Blue Brain Stress Relievers; Prop 65. 5.4" L x 5.4" L x 5" Diameter <ul style="list-style-type: none"> <li>• Printing: White Child Guidance logo</li> </ul>	\$	\$
8	5200	Blue Gel Tekbeads/Gel Beads Hot/Cold Pack (Round Shape); non-toxic, pliable blend of water and glycerin. Complies with FDA, Prop 65. 4" Diameter <ul style="list-style-type: none"> <li>• Printing: White Child Guidance logo</li> </ul>	\$	\$
9	8100	Bendeez Sticks with various colors; Elongated bendable stick that are made of flexible plastic with a soft texture allowing the item to bend into various shapes. Half round shape to allow items not to roll off table (i.e. conference booth). 15" L x 3/8" W <ul style="list-style-type: none"> <li>• Colors desired: Blue, Green, Orange, Pink, Purple. Rainbow and White Marbled will accept others if available</li> <li>• Printing: Black font with Child Guidance elongated logo, phone number and website</li> </ul>	\$	\$
10	6200	Silver Element Stylus Pen; Pen should have silver body with blue rubber gripper, blue stylus, and blue clip. Prop 65. 5 1/2" L x 1/2" Diameter <ul style="list-style-type: none"> <li>• Printing: Blue Child Guidance logo</li> </ul>	\$	\$
11	3300	Clip-It 1oz Moisture Bead Hand Sanitizer; 62% ethyl alcohol, antibacterial gel, citrus scented moisturizing beads with aloe and vitamin E, that features a carabiner clip. FDA approved. Complies with FDA, Prop 65. 4" L x 1.375" W x 1" H <ul style="list-style-type: none"> <li>• Printing: Blue/Green Child Guidance logo on a white sticker</li> </ul>	\$	\$
12	6200	3x3 White square sticky note with program label on each page <ul style="list-style-type: none"> <li>• Printing: Blue/Green Child Guidance logo on each page</li> </ul>	\$	\$
13	7600	Band-Aid magnets with tan color and black font; approximately 0.020 mil thick that is imprinted with program name, logo and special message. Complies with Prop 65. 1.25" W x 4" H <ul style="list-style-type: none"> <li>• Printing Black font with Oklahoma Warmline logo, phone number and phrase</li> </ul>	\$	\$

## EXHIBIT 2 – PRICING AND SPECIFICATIONS

14	3800	Yellow Gel Beads Hot/Cold Pack (Star Shape); non-toxic, pearl beads with pliable blend of water and glycerin. Complies with CPSIA, FDA, Prop 65. 4.25" L x 4.25" W x 0.5" H <ul style="list-style-type: none"> <li>• Printing: Black font with Oklahoma Warmline logo</li> </ul>	\$	\$
15	6200	Round 1.5 – 2-inch white sticker/label on roll; material to be made from a durable material that resists water, heat, scratching and sunlight if possible. <ul style="list-style-type: none"> <li>• Printing: Child Guidance Full Color Round Logo</li> </ul>	\$	\$
16	6200	Round 1.5 – 2-inch white sticker/label on roll; material to be made from a durable material that resists water, heat, scratching and sunlight if possible. <ul style="list-style-type: none"> <li>• Printing: SoonerStart Full Color Round Logo 1.5 – 2 inches</li> </ul>	\$	\$
17	5200	Round 1.5 – 2-inch white sticker/label on roll; material to be made from a durable material that resists water, heat, scratching and sunlight if possible. <ul style="list-style-type: none"> <li>• Printing: Oklahoma Warmline Full Color Round Logo</li> </ul>	\$	\$
18	1	Set-up Fees		\$
19	1	Shipping Fees		\$
20		<b>Total Cost:</b>		\$

**EXHIBIT 3 – REQUIRED ARTWORK**  
**Printing: SoonerStart Color Logo and Program name**

For use on the following items:

SoonerStart Mardi Gras™ Hex Pen (Item #1 & 2)

SoonerStart Full Color Digi-Printed Crayons (Item #3)

SoonerStart Clipper Hand Sanitizer (Item #4)



Examples:



(Item #1 & 2)



(Item #3)



(Item #4)

### EXHIBIT 3 – REQUIRED ARTWORK

Printing: SoonerStart White Logo and Program name

For use on the following items:

Pink Gel Beads Hot/Cold Pack (Heart Shape) (Item #5)

**SAME LOGO AS ABOVE BUT IN WHITE**



Example:



**EXHIBIT 3 – REQUIRED ARTWORK**  
**Printing: SoonerStart Full Color Round Logo**

For use on the following items:

Round Safety Plugs (Item #6)

Example:



### EXHIBIT 3 – REQUIRED ARTWORK

Printing: White Child Guidance logo

For use on the following items:

Blue Brain Stress Reliver (Item #7)

Blue Gel Tekbeads Gel Beads Hot/Cold Pack (Round Shape) (Item #8)



Examples:



**(Item #7)**



**(Item #8)**

## EXHIBIT 3 – REQUIRED ARTWORK

Printing: Black font with Child Guidance elongated logo, phone number and website

For use on the following items:

Bendeez Sticks with various colors (Item #9)

I  CHILD GUIDANCE | 405-426-8100 | [Oklahoma.gov/health/childguidance](http://Oklahoma.gov/health/childguidance)

Example:



## EXHIBIT 3 – REQUIRED ARTWORK

### Printing: Blue Child Guidance logo

For use on the following items:

Silver Element Sylus Pen (Item #10)



Example:



### EXHIBIT 3 – REQUIRED ARTWORK

Printing: Blue/Green Child Guidance logo on a white background

For use on the following items:

Clip-It 1 oz Moisture Bead Hand Sanitizer (Item #11) – On Sticker



(Child Guidance EST. 1956)

Example:



## EXHIBIT 3 – REQUIRED ARTWORK

Printing: Blue/Green Child Guidance logo on a white background

For use on the following items:

3x3 White square sticky note with program label on each page (Item #12)



Example Below Only:



## EXHIBIT 3 – REQUIRED ARTWORK

**Printing: Printing Black Warmline logo with phone number and phrase**

For use on the following items:

Band-Aid magnets with tan color and black font (Item #13)



Example:

(Note: Logo printed in black)



## EXHIBIT 3 – REQUIRED ARTWORK

Printing: Black Warmline logo



For use on the following items:

Yellow Gel Beads Hot/Cold Pack (Star Shape) – (Item #14)

Example:



## EXHIBIT 3 – REQUIRED ARTWORK

### Printing: Child Guidance Full Color Round Logo

For use on the following items:

Round 1.5 – 2 Inch white sticker/label on roll (Item #15)

Example:



## EXHIBIT 3 – REQUIRED ARTWORK

### Printing: SoonerStart Full Color Round Logo

SoonerStart Round 1.5 – 2 Inch white sticker/label on roll (Item #16) - Labels on roll similar to Child Guidance Item #15

Example:



## EXHIBIT 3 – REQUIRED ARTWORK

### Printing: Warmline Full Color Round Logo

For use on the following items: (Item #17)

Warmline - Round 1.5 – 2-inch white sticker/label on roll



Labels on roll similar to Item #15 & 16

## ATTACHMENT B

### STATE OF OKLAHOMA GENERAL TERMS

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

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 Amendment. 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 Amendment;
- B. terms contained in this Contract document
- C. any Contract-specific State terms including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
- D. any applicable Solicitation;
- 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 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 Amendment.

- 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 Amendment. 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.
- 3.3** Except for 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.
- 3.4** Unless mutually agreed to in writing by the State of Oklahoma by and through the Office of Management and Enterprise Services, 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.
- 3.5** 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.

#### 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 **Amendment** means a mutually executed, written modification to a Contract document.
- 4.3 **Bid** means an offer a Bidder submits in response to the Solicitation.
- 4.4 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.5 **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.
- 4.6 **Customer** means the governmental entity receiving goods or services contemplated by the Contract.
- 4.7 **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.
- 4.8 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract document.
- 4.9 **Governmental Entity** means any governmental entity specified as a political

subdivision of the State pursuant to the Governmental Tort Claim Act including any associated institution, instrumentality, board, commission, committee, department, or other entity designated to act on behalf of the state.

- 4.10 Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees, and designees thereof.
- 4.11 Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.12 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.
- 4.13 OAC** means the Oklahoma Administrative Code.
- 4.14 OMES** means the Office of Management and Enterprise Services.
- 4.15 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.16 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.
- 4.17 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.
- 4.18 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.
- 4.19 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.

**4.20 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 or 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 260:115-9-1, 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.

- 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 notice of cancellation and includes 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 2,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$2,000,000 combined single limit each accident;
- D.** If the Supplier will access, process, or store state data, then 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 a limit of not less than \$5,000,000 per occurrence; and
- E.** 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 Supplier's 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, Supplier's 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 2 C.F.R. part 376 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 <http://www.dhs.gov/E-Verify>. 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 reasonably 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's 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 Contract.

- 11.8** Except for 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 the Supplier.

## **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 13.1 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 service.

## **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 State Shall Not Indemnify**

The State of Oklahoma cannot lawfully agree to indemnify a private contractor. The credit of the State shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality, or political subdivision of the State

pursuant to Oklahoma Constitution article 10, Section 15, OAC 260:115-7-32(k)(3)(A) and Attorney General Opinion 2012-18.

## **16.2 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.

## **16.3 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.

#### **16.4 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.

#### **16.5 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.

#### **16.6 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 Contract or 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** The State may terminate the Contract if the scope includes PR Vendor services and the Supplier, or Supplier's employee, violate the lobbying clause. PR Vendor services is defined to include a contract for public relations (PR), marketing or communication services. The State may immediately terminate the Contract with no more than 10-days notice under this section.

**18.4** 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.

- 18.5** 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 260:115-9-1 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 nor 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 a 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., Second Floor Oklahoma City, Oklahoma 73105

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

Purchasing Division Deputy General Counsel 2401 N. Lincoln Blvd., Second Floor  
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. §85.7(F), 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. The State expressly declines any terms that minimize its rights under Oklahoma law, including but not limited to, Statutes of Limitations.

## **26.2 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.

## **26.3 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.

## **26.4 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.

## **26.5 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. 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) pricing 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.

## **26.6 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.

## **26.7 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.

#### **26.8 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.

#### **26.9 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.

#### **26.10 Section Headings**

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

### **26.11 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.

### **26.12 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.

### **26.13 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.

### **26.14 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.

### **26.15 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: OSDH GENERAL TERMS**

**1 Scope and Contract Renewal**

- 1.1 Supplier may not add products or services to its offerings under the Contract without OSDH'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 OSDH.
- 1.2 At no time during the performance of the Contract shall the Supplier have the authority to obligate OSDH 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, OSDH shall subjectively consider the value of the Contract to OSDH, 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 OSDH determines changes to the Contract are required as a condition precedent to renewal, OSDH 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 OSDH may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the OSDH exercises such option to extend ninety (90) days, the OSDH shall notify the Supplier in writing prior to Contract end date. The OSDH, 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 OSDH 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 OSDH 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 OSDH 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 Supplier-supplied documents, including a 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 OSDH, 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. This document may be executed in counterparts, with each such copy considered an original. Facsimile/scanned and PDF signatures shall be accepted as original. Electronic signatures must be an authorized copy of the hand-written signature or created using a technology that allows the process of signature authentication to be validated. In all cases, the name of the authorized signatory shall be identified as visible on the document. Each party will be responsible for maintaining the security of its electronic signature technology and represents through

submission of the signed document that the individual's signature is authorized and valid to bind the organization.

### **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. OSDH bears no liability for performance, payment or failure thereof by the Supplier 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 **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 OSDH and may also result in cancellation of existing contracts with OSDH.
- 4.9 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.
- 4.10 **Indemnified Parties** means OSDH and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 4.11 **Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.12 **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.
- 4.13 **OAC** means the Oklahoma Administrative Code.
- 4.14 **OMES** means the Office of Management and Enterprise Services.
- 4.15 **OSDH** means the entity receiving goods or services contemplated by the Contract.
- 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 OSDH enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with OSDH.

- 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 OSDH, 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 or benefit of OSDH in connection with this Contract or with funds appropriated by or for OSDH or OSDH's benefit (a) by any Supplier personnel or OSDH personnel or (b) any OSDH 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 OSDH.

## **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 OSDH's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If OSDH requests expedited or special delivery, OSDH 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 OSDH. 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 OSDH 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 OSDH at Destination. The OSDH assumes no responsibility for a product until accepted by the OSDH. 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 OSDH. 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 OSDH. 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 a like product for others similarly situated.

## **7 Invoices and Payment**

- 7.1 A properly completed invoice must be submitted to OSDH Accounts Payable identified in Section 0.7 within 30 days of the end of the month in which services were delivered or products provided and include the following items:
- a. name, address, and FEI number of the Supplier;
  - b. invoice date;
  - c. period covered by invoice;
  - d. purchase order number;
  - e. any other data, reports, information or documentation required by other conditions of the contract;
  - f. detail of the services provided and be in accordance with the terms and conditions of this agreement; and
  - g. For invoices involving payment for the Supplier's time, the Supplier and any approved subcontractor shall maintain Personnel Activity Reports (PARs) on all employees reimbursed in whole or in part by this contract. PARs must be completed in accordance with the Federal Cost Principles applicable to the Supplier's specific entity type found at 2 CFR Part 200.430, 45 CFR Part 75, and 7 CFR Part 3016, among others. The invoice must be signed and contain the following statement:

**“By my signature I attest that this invoice is an accurate and true representation of my time in relation to the services provided to OSDH.”**

- 7.2 OSDH may withhold or delay payment to any Supplier failing to provide required programmatic documentation and/or requested financial documentation. OSDH reserves the right not to process invoices submitted by the Supplier to OSDH more than 30 days after the month in which services were delivered. OSDH will not pay invoices received more than sixty (60) days after the end of the applicable contract period.
- 7.3 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. Advance payments are allowed only under the circumstances outlined in the Statewide Accounting Manual, Section 8.34.1.
- 7.4 The following terms additionally apply:
- A. 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.
  - 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.
  - C. 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.
  - D. 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.
  - E. Supplier shall have no right of setoff.
  - F. 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 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 OSDH 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 OSDH employee.
- 8.2 If the Supplier does not carry workers' compensation insurance because it considers their business to be that of an Independent Contractor, as defined by the Workers Compensation Act (85A O.S. § 1 et. seq.), the Supplier must complete the Affidavit of Exempt Status under the Administrative Workers' Compensation Act (CC-FORM-36A) through the Oklahoma Worker's Compensation Commission and provide proof of completion to the OSDH before any contractual services are provided.
- 8.3 Supplier agrees to indemnify OSDH, 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); and
  - 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.
- 9.2 Supplier certifies that it is a registered as a business entity licensed to do business in the State, has obtained a sales tax permit, and is current on franchise tax payments to the State, as applicable.
- 9.3 The Supplier's employees, agents and subcontractors shall adhere to applicable OSDH 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.

- 9.4 At no additional cost to OSDH, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.5 In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable OSDH-specific mandatory contract provisions required in connection with the receipt of federal funds or other funding source.
- 9.6 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 OSDH or 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.
- 9.7 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.
- 9.8 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.
- 9.9 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.
- 9.10 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 OSDH and Supplier is not aware of any other litigation, claim or threat thereof.
- 9.11 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. 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 OSDH shall have the right to examine and audit, at no additional cost to OSDH, 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 OSDH, the State Auditor and Inspector and the State Purchasing Director.
- 10.4 As applicable, Supplier agrees to comply with all record retention requirements of 2 CFR §§ 200.334 - 200.338.

## **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 OSDH’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 OSDH'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 OSDH.
- 11.3 Supplier shall immediately report to the OSDH 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 OSDH 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 OSDH in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the OSDH in connection with any litigation and investigation deemed necessary by the OSDH 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 OSDH 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 OSDH 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 OSDH, 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 OSDH 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 OSDH 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 and Non-Collusion**

- 12.1 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.

12.2 Supplier attests to the following:

- a. I am the duly authorized agent of the above-named Supplier submitting the documentation herewith, for the purpose of certifying the facts pertaining to the existence of collusion between the Supplier and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract;
- b. I am fully aware of the facts and circumstances surrounding the making of this contract to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such contract; and
- c. Neither the Supplier nor anyone subject to the Supplier's direction or control has been a party:
  - i. to any collusion among Suppliers in restraint of freedom of competition by agreement to contract at a fixed price or to refrain from submitting supplier contract information; nor
  - ii. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract; nor
  - iii. in any discussions between the awarded Supplier and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract; nor
  - iv. to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to Section 85.45j.1. of this title.
- d. Neither Supplier nor anyone subject to the Supplier's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this 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 OSDH which may be withheld at OSDH's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide OSDH and all affected parties with written notice of the assignment. Such written notice shall be delivered timely and contain details

sufficient for affected OSDHs to perform payment obligations without any delay caused by the assignment. Sole Source contracts shall not be assigned or delegated.

- 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 OSDH and all affected parties 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 OSDH 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 OSDH. 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 OSDH of any subcontractor and associated employees shall be a continuing obligation. OSDH 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 in the case of 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 OSDH under the terms of this Contract may be assigned or transferred, at no additional cost, to other State 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 OSDH in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to OSDH. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the OSDH 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 OSDH 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 OSDH 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 OSDH 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, OSDH 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 OSDH due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and OSDH 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 OSDH's or user's content; (b) modifications by OSDH 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 OSDH 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 OSDH by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for OSDH or a OSDH 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 OSDH 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 OSDH 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 OSDH 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, OSDH 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 OSDH 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 Supplier certain obligations are terminated shall be refunded.
- 17.3 OSDH'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 OSDH with written notice of material breach and (ii) OSDH fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one OSDH, material breach by a OSDH does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. OSDH 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 OSDH 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 OSDH and detrimental to OSDH or to cause a condition

precluding the thirty (30) day notice or (iii) when OSDH 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 OSDH'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**

By signing the contract, the Supplier attests and assures that no employee or any of its principals performing hereunder:

- a. are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
- b. have, within a three year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- c. have, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal, State or local entity; nor,
- d. are presently indicted for, or otherwise criminally indicted, or charged by a governmental entity with any of the offenses enumerated above in this section.

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**

- a. 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.

- b. 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 OSDH. 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.
- c. 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 OSDH 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 OSDH. 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 OSDH property in its possession, regardless of cause. If Supplier fails to comply with OSDH'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. Miscellaneous**

### **a. 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.

**b. 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.

**c. Employment Relationship**

The Contract does not create an employment relationship. The Supplier is in all respects an Independent Contractor and is neither an agent nor an employee of the OSDH. Neither the Supplier nor any of its officers, employees, agents, or members shall have authority to bind the OSDH nor are they entitled to any of the benefits or worker's compensation provided by the OSDH to its employees. In the event the independent contractor relationship ends in any way, this contract shall automatically terminate without notice. The Supplier shall notify the OSDH Contract Monitor of the change in relationship.

**d. 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.

**e. 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 OSDH all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of OSDH or any OSDH is mentioned or language used from which, in OSDH'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 OSDH.

**f. Open Records Act**

Supplier acknowledges that all State agencies and certain other state entities 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.

**g. Failure to Enforce**

Failure by OSDH 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 OSDH 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.

**h. Mutual Responsibilities**

- i. 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.
- ii. The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- iii. The OSDH and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- iv. The OSDH 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.
- v. 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.

**i. 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.

**j. 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.

**k. Section Headings**

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

**l. 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.

**m. 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.

**n. 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.

**o. 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.

**p. 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.

**26. Limited English Proficiency**

Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program needs service or information in a language other than English in order to effectively be informed of or participate in the program, the Supplier shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide the information in appropriate languages to such persons.

An inability by the Supplier to provide the information in the appropriate language to a significant number or proportion of the population eligible to be served or likely to be directly affected by the program may result in termination of the contract.

**27. Charitable Choice Providers**

Providers who are members of the faith community are eligible to compete for contracts with the State of Oklahoma on the same basis as any other provider. Such providers shall not be required to alter their forms of internal governance, their religious character or remove religious art, icons, scripture, or other symbols. Such providers may not, however, discriminate against clients on the basis of their religion, religious beliefs, or clients' refusal to participate in religious practices (45 CFR Part 87.1c). Organizations that receive direct financial assistance from the OSDH under any OSDH program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the OSDH. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the

OSDH, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

## **ATTACHMENT D**

Intentionally left blank.

**ATTACHMENT E1: PRICING AND SPECIFICATIONS**

Item #	Quantity	Item Description	Price Per Unit	Total Price
1	4800	Mardi Gras™ Hex Pen – Double injected rubber grip features hexagons; Glossy black & silver trim contrasts with bright white barrel; ultrasmooth writing cartridge <ul style="list-style-type: none"> <li>• 1,600 Pen with BLACK ink + each of the following Hexagon colors: RED, BLUE, ORANGE</li> <li>• Printing: SoonerStart Color Logo and Program name</li> </ul>	\$0.225	\$1080.00
2	3200	Mardi Gras™ Hex Pen – Double injected rubber grip features hexagons; Glossy black & silver trim contrasts with bright white barrel; ultrasmooth writing cartridge <ul style="list-style-type: none"> <li>• 1,600 Pen with BLUE ink + each of the following Hexagon colors: DARK GREEN, LIGHT GREEN</li> <li>• Printing: SoonerStart Color Logo and Program name</li> </ul>	\$0.225	\$720.00
3	7600	Full Color Digi-Printed Crayons in individual boxes (4 Pack) - Print on one side full color logo and black program name. Different colors of boxes are acceptable. Prop 65. 1.25" W x 3.5" H <ul style="list-style-type: none"> <li>• Printing: SoonerStart Color Logo and Program name</li> </ul>	\$0.189	\$1436.40
4	6200	Clipper Hand Sanitizer – Blue top and white sticker; Clipper 0.34 oz. Hand Sanitizer in a pump spray. The carabiner pen clip lid should be able to attach to a purse or other personal item. <b>Must be FDA approved</b> Prop 65. 5.75" H x 0.625" Diameter <ul style="list-style-type: none"> <li>• Printing: SoonerStart Color Logo and Program name</li> </ul>	\$0.405	\$2511.00
5	5200	Pink Gel Beads Hot/Cold Pack (Heart Shape); non-toxic, pliable blend of water and glycerin. Complies with CPSIA, Prop 65. 4.5" L x 4.5" H <ul style="list-style-type: none"> <li>• Printing: SoonerStart White Logo and Program name</li> </ul>	\$0.45	\$2340.00
6	12400	Round Safety Plugs; Electrical outlet safety plug; poly material. Complies with Prop 65. 1.25" Diameter x 0.75" D <ul style="list-style-type: none"> <li>• Printing: SoonerStart Full Color Round Logo</li> </ul>	\$0.099	\$1227.60
7	4500	Blue Brain Stress Relievers; Prop 65. 5.4" L x 5.4" L x 5" Diameter <ul style="list-style-type: none"> <li>• Printing: White Child Guidance logo</li> </ul>	\$0.567	\$2551.50
8	5200	Blue Gel Tekbeads/Gel Beads Hot/Cold Pack (Round Shape); non-toxic, pliable blend of water and glycerin. Complies with FDA, Prop 65. 4" Diameter <ul style="list-style-type: none"> <li>• Printing: White Child Guidance logo</li> </ul>	\$0.414	\$2152.80
9	8100	Bendeez Sticks with various colors; Elongated bendable stick that are made of flexible plastic with a soft texture allowing the item to bend into various shapes. Half round shape to allow items not to roll off table (i.e. conference booth). 15" L x 3/8" W <ul style="list-style-type: none"> <li>• Colors desired: Blue, Green, Orange, Pink, Purple. Rainbow and White Marbled will accept others if available</li> <li>• Printing: Black font with Child Guidance elongated logo, phone number and website</li> </ul>	\$0.441	\$3572.10
10	6200	Silver Element Stylus Pen; Pen should have silver body with blue rubber gripper, blue stylus, and blue clip. Prop 65. 5 1/2" L x 1/2" Diameter <ul style="list-style-type: none"> <li>• Printing: Blue Child Guidance logo</li> </ul>	\$0.279	\$1729.80
11	3300	Clip-It 1oz Moisture Bead Hand Sanitizer; 62% ethyl alcohol, antibacterial gel, citrus scented moisturizing beads with aloe and vitamin E, that features a carabiner clip. FDA approved. Complies with FDA, Prop 65. 4" L x 1.375" W x 1" H <ul style="list-style-type: none"> <li>• Printing: Blue/Green Child Guidance logo on a white sticker</li> </ul>	\$0.369	\$1217.70
12	6200	3x3 White square sticky note with program label on each page <ul style="list-style-type: none"> <li>• Printing: Blue/Green Child Guidance logo on each page</li> </ul>	\$0.225	\$1395.00
13	7600	Band-Aid magnets with tan color and black font; approximately 0.020 mil thick that is imprinted with program name, logo and special message. Complies with Prop 65. 1.25" W x 4" H <ul style="list-style-type: none"> <li>• Printing Black font with Oklahoma Warmline logo, phone number and phrase</li> </ul>	\$0.153	\$1162.80

**EXHIBIT 2 – PRICING AND SPECIFICATIONS**

14	3800	Yellow Gel Beads Hot/Cold Pack (Star Shape); non-toxic, pearl beads with pliable blend of water and glycerin. Complies with CPSIA, FDA, Prop 65. 4.25" L x 4.25" W x 0.5" H <ul style="list-style-type: none"> <li>• Printing: Black font with Oklahoma Warmline logo</li> </ul>	\$0.45	\$1710.00
15	6200	Round 1.5 – 2-inch white sticker/label on roll; material to be made from a durable material that resists water, heat, scratching and sunlight if possible. <ul style="list-style-type: none"> <li>• Printing: Child Guidance Full Color Round Logo</li> </ul>	\$0.099	\$613.80
16	6200	Round 1.5 – 2-inch white sticker/label on roll; material to be made from a durable material that resists water, heat, scratching and sunlight if possible. <ul style="list-style-type: none"> <li>• Printing: SoonerStart Full Color Round Logo 1.5 – 2 inches</li> </ul>	\$0.099	\$613.80
17	5200	Round 1.5 – 2-inch white sticker/label on roll; material to be made from a durable material that resists water, heat, scratching and sunlight if possible. <ul style="list-style-type: none"> <li>• Printing: Oklahoma Warmline Full Color Round Logo</li> </ul>	\$0.099	\$514.80
18	1	Set-up Fees		\$1.00
19	1	Shipping Fees		\$1.00
20		<b>Total Cost:</b>		\$26,551.10

**EXHIBIT 1: RESPONSE TO Executive Summary and Company Information**

Offeror must provide complete and succinct responses to each item below. **Insert your responses into this worksheet directly into the yellow boxes** If your response does not fit into the boxes below a clearly labeled response (Example: 7.2.etc). will be considered. Offeror should provide all information necessary to demonstrate Offeror's ability to meet the requirements of this RFP and the RFP's Scope of Work. Responses to the below questions in this Attachment are mandatory and will be evaluated. Failure to respond to any question may result in your proposal being deemed nonresponsive.

**Any bidder responses left blank to any of the below requirements will not proceed further in the evaluation phase.**

<b>Executive Summary and Company Information</b>		
<b>Bidders Instructions</b>		<b>Record Responses Below</b>
7.2	<b>Bidder marketing information, general company information and other similar resources the Bidder wishes to provide</b>	custom promotional product company with 35 years of experience serving over 350 U.S. government agencies.
7.2.a	<b>Provide the length of time the Bidder has been in business</b>	8 years
7.2.b	<b>Insert a brief description of the company</b>	Nitsom is a Canada-based supplier and manufacturer specializing in custom printed and promotional items for public sector clients.
7.2.c	<b>Indicate Company size and organization structure (an Organizational chart is recommended)</b>	We are a small sized organization with 3 staff
7.2.d	<b>The number of years the Bidder has been providing products and/or services of the type requested, (must be at least 36months)</b>	We have been supplying U.S. government and school systems for over 20 years with pens, badges, bags, labels, apparel, and other promotional items.
7.2.e	<b>Describe the core competency of the company</b>	Our core competency is providing high-quality, creative, and custom-branded products with the ability to fulfill and distribute to multiple locations quickly
7.2.f	<b>Estimated Number of clients</b>	We currently serve approximately 350 active clients, including state agencies, municipalities, and public school districts.
7.2.g	<b>Average client size (i.e., employee count)</b>	Average client size: 100–1,000 employees

## **Exhibit 2: Response to Specifications / Scope of Work**

Solicitation No. EV00000690

Nitsom Promotional Manufacturing Corp.

Nitsom Promotional Manufacturing Corp. has reviewed all specifications and requirements described in Exhibit 2 - Pricing and Specifications.

We confirm our understanding and ability to supply all 17 listed promotional items in full compliance with the stated descriptions, quantities, materials, safety standards (including Prop 65, CPSIA, FDA where applicable), and required imprinting/logo placement shown in Exhibit 3.

We further confirm the ability to meet delivery requirements and provide all items on or before June 30, 2025.

All items will be produced according to the quality standards outlined and delivered to the designated OSDH address, with no exceptions.



**Date of Issuance:** 4/21/2025 **Solicitation/Event No.** EV00000690  
**Requisition No.** 3400027298 **Amendment No.** 1

Hour and date specified for receipt of offers is changed:  No  Yes, to: 5/5/2025 3:00 PM CST

Pursuant to OAC 260:115-7-30(d), this document shall serve as official notice of amendment to the solicitation identified above. Such notice is being provided to all suppliers to which the original solicitation was sent.

Suppliers submitting bids or quotations shall acknowledge receipt of this solicitation amendment prior to the hour and date specified in the solicitation as follows:

- (1) Sign and return a copy of this amendment with the solicitation response being submitted; or,
- (2) If the supplier has already submitted a response, this acknowledgement must be signed and returned prior to the solicitation deadline. All amendment acknowledgements submitted separately shall have the solicitation number and bid opening date printed clearly in the subject line of the email.

**RETURN TO:** [Supplier Portal \(oklahoma.gov\)](http://Supplier Portal (oklahoma.gov))

Billy Bray  
Contracting Officer  
405-522-6267  
Phone Number  
billy.bray@omes.ok.gov  
E-Mail Address

**Description of Amendment:**

a. This is to incorporate the following:

On behalf of the State of Oklahoma, the Office of Management and Enterprise Services (OMES) gives notice:  
 The bid response for EV00000690 will be extended to 5/5/2025 at 3:00 PM CST.

b. All other terms and conditions remain unchanged.

<u>Nitsom Promotional Manufacturing Corp</u>	<u>May 29th 2025</u>
Supplier Company Name ( <b>PRINT</b> )	Date
<u>Terrence Hu</u>	<u></u>
Authorized Representative Name ( <b>PRINT</b> )	Authorized Representative Signature
<u>President</u>	
Title	



**Date of Issuance:** 4/21/2025  
**Requisition No.** 3400027298

**Solicitation No.** EV00000690  
**Amendment No.** 2

Hour and date specified for receipt of offers is changed:  No  Yes, to: \_\_\_\_\_ CST

Pursuant to OAC 260:115-7-30(d), this document shall serve as official notice of amendment to the solicitation identified above. Such notice is being provided to all suppliers to which the original solicitation was sent. Suppliers submitting bids or quotations shall acknowledge receipt of this solicitation amendment prior to the hour and date specified in the solicitation as follows:

- (1) Sign and return a copy of this amendment with the solicitation response being submitted; or,
- (2) If the supplier has already submitted a response, this acknowledgement must be signed and returned prior to the solicitation deadline. All amendment acknowledgements submitted separately shall have the solicitation number and bid opening date printed clearly in the subject line of the email.

**RETURN TO:** [Supplier Portal \(oklahoma.gov\)](http://oklahoma.gov)

Billy Bray  
Contracting Officer

405-522-6267  
Phone Number

billy.bray@omes.ok.gov  
E-Mail Address

**Description of Amendment:**

a. This is to incorporate the following:

**On behalf of the State of Oklahoma, the Office of Management and Enterprise Services (OMES) gives notice of the following questions concerning this solicitation, received during the Q&A period, which closed on 4/18/2025. All questions and procurement/agency responses are detailed below:**

**Q1. I need minimum order quantity per order as this is annual contract**  
**-This is not an annual contract. This is a one-time purchase for promotional items. Please see Exhibit #2 for the quantities listed for each item.**

**Q2. Do you require all the listed promo items together**  
**-Yes, this is an all or none bid. Please see Attachment A, Section 2.1.**

**Q3. Need previous bid tabulation if available**  
**-A previous bid tabulation is not applicable to this bid. These are new items that have not been previously bid together before.**

**Q4. What is the expected delivery date for these items**

-On or before 06/30/2025. Please see expiration date on Attachment A, Section 1.

**Q5. Can you please confirm the delivery timeline ? Will this be a single shipment or will be shipped to different locations?**

-On or before 06/30/2025, please see Attachment A, Section 1. Shipping the items to OSDH as they are completed is acceptable as long as they are all shipped to the address listed on Attachment A, Section 3.1.

**Q6. Can we offer substitute item**

-Alternative Items will be acceptable if they meet or exceed the quality and specifications that are listed for each item. Some items specify that alternative colors will be acceptable. Please see Exhibit 2 for Item descriptions, specifications, and quality requirements.

b. All other terms and conditions remain unchanged.

Nitsom Promotional Manufacturing Corp

May 29th 2025

Supplier Company Name (**PRINT**)

Date

Terrence Hu



Authorized Representative Name (**PRINT**) Title

Authorized Representative Signature