

**Participating Addendum Number: SW101A**

for

**Fuel Card Services and Related Products**

**Administered by the Region 4 ESC - TX**

between

**Corpay, Inc. through its subsidiaries: Corpay Technologies Operating Company LLC and Comdata Inc.**

and

**State of Oklahoma by and through the Office of Management and Enterprise Services  
(OK SW Contract No. SW101A)**

This Participating Addendum is entered into by the State of Oklahoma by and through the Office of Management and Enterprise Services ("Participating Entity") and the following Supplier (each a "Party" and collectively the "Parties") for the purpose of participating in OMNIA Master Agreement Number R211101, executed by Supplier and the State of Region 4 ESC - TX ("Lead State") for Fuel Card Services and Related Products ("Master Agreement"):

**Supplier Name:** Corpay, Inc. through its subsidiaries: Corpay Technologies Operating Company LLC and Comdata Inc.

**Supplier Address:** 3280 Peachtree Road suite 2400, Atlanta, Georgia 30305

**PARTICIPATING ADDENDUM CONTACTS:**

Contractor's contact for this Participating Addendum is:

**Contact:** Mark Roberts  
**Title:** Director of Bids & Contracts in North America Fuel  
**Email:** markroberts@corpay.com  
**Phone Number:** (704) 674-6848

Participating Entity's contact for this Participating Addendum is:

**Contact:** Lesli Bajema  
**Title:** Director of Category Management  
**Email:** Lesli.Bajema@omes.ok.gov  
**Phone Number:** 405-521-6742

- I. **TERM.** This Participating Addendum is effective as of the date of the last signature below or, whichever is later, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- II. **PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Supplier will notify OMNIA to initiate outreach to the appropriate parties.
- III. **GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.
- IV. **SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Supplier and Participating Entity and Purchasing Entities.
  - a. **Products.** All products available through the Master Agreement may be offered and sold by Supplier to Purchasing Entities.
  - b. **Services.** All services available through the Master Agreement may be offered and sold by Supplier to Purchasing Entities.



- c. **Supplier Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Supplier's ("OMNIA") webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Supplier will ensure that the participation of Supplier's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum.

**Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.** The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to the Parties and shall have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.

- V. **ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number, a Statewide contract number on an Order.

Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to OMNIA and Participating Entity.

VI. **PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.**

- a. See Attachment A; Oklahoma Statewide contracting Terms.

- VII. **FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Supplier agrees to comply with the requirements set forth therein.

- VIII. **ATTACHMENTS.** This Participating Addendum includes the following attachments:

- a. Attachment A: Oklahoma Statewide contracting Terms

- IX. **NOTICE.** Any notice required herein shall be sent to the following:

For Supplier:

**Contact:** Mark Roberts  
**Title:** Director of Bids & Contracts in North America Fuel  
**Email:** [markroberts@corpay.com](mailto:markroberts@corpay.com)  
**Phone Number:** (704) 674-6848

For Participating Entity:

**Contact:** Lesli Bajema  
**Title:** Director of Category Management  
**Email:** [Lesli.Bajema@omes.ok.gov](mailto:Lesli.Bajema@omes.ok.gov)  
**Phone Number:** 405-521-6742



**SIGNATURE**

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

**SUPPLIER:**

**State of Oklahoma** by and through the **Office of Management and Enterprise Services:**

*Randy Morgan*

Randy Morgan (Aug 21, 2025 14:13:33 CDT)

**Signature:**

Randy Morgan

**Printed Name:**

Randy Morgan

**Title:**

Aug 21, 2025

**Date:**

*Amanda Otis*

Amanda Otis (Aug 21, 2025 14:36:24 CDT)

**Signature:**

Amanda Otis

**Printed Name:**

State Purchasing Director

**Title:**

Aug 21, 2025

**Date:**



# **Attachment A**

## **OKLAHOMA SPECIFIC TERMS AND CONDITIONS**

The terms and conditions of this Participating Addendum (“PA”) are agreed to only to the extent that the terms do not conflict with applicable Oklahoma law. In the event of conflict among the terms and conditions, the Participating Addendum shall take precedence.

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

**A. Acquisition**

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

**B. Agreement**

The term (“Agreement”) means the Region 4 Education Service Center (ESC) Master Agreement (Contract #R211101). Region 4 ESC being the Principal Procurement Agency which in partnership with OMNIA Partners Public Sector purchasing cooperative offers Contract #R211101 as a National Cooperative Contract.

**C. Contract Document**

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

**D. Contractor Confidential Information**

The term (“Contractor Confidential Information”) means certain confidential and proprietary information of the Contractor that is clearly marked as confidential and agreed by the State Purchasing Director or Purchasing Entity, as applicable, but does not include information excluded from confidentiality in provisions of the Agreement or the Oklahoma Open Records Act.

**E. Purchasing Entity**

The term (“Purchasing Entity”) shall include the State of Oklahoma (the “State”) and (a) any board, commission, committee, department or other instrumentality or entity



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

**F. Destination**

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

**G. Indemnified Parties**

The term (“Indemnified Parties”) means the State of Oklahoma and Purchasing Entities, and/or their officers, agents, employees, representatives, contractors, assignees and/or designees.

**H. Suspension**

The term (“Suspension”) means action taken by a suspending official under federal or state law or regulations to suspend any contractor and/or supplier from inclusion on the state approved contractor/supplier list, thereby rendering them ineligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.

**2. Transition of Oklahoma Local Government Fuelman Customers to this Agreement**

- A.** The State and Corpay, Inc. through its subsidiaries Corpay Technologies Operating Company, LLC and Comdata Inc. (collectively “Contractor”) agree that Oklahoma local government entities that use Contractor’s Fuelman Proprietary Public Sector fleet card may be covered by this Agreement.
- B.** Within 90 days of signing this Participating Addendum, Contractor will transition certain existing Oklahoma local government entity accounts that utilize the Fuelman Proprietary Public Sector fleet card to this Agreement.
- C.** Contractor may add new or additional local government entities to its Fuelman Proprietary Public Sector fleet card program under this Agreement.
- D.** The local government entities shall be offered pricing and terms and conditions for card use as defined in the underlying Master Agreement, Contract #R211101 offered through OMNIA Partners National Cooperative Contract, including any amendments approved by Region 4 ESC/OMNIA Partners.

### **3. Contract Management Fee and Usage Report**

- A.** Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Contractor has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Contractor acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Contractor's billing. The State reserves the right to change this fee upward or downward upon sixty (60) calendar days' written notice to Contractor without further requirement for an Amendment.
- B.** While Contractor is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Contractor. Contractor shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.
- C.** All Contract Usage Reports shall meet the following criteria:
- i. Electronic submission in Microsoft Excel format to [strategic.sourcing@omes.ok.gov](mailto:strategic.sourcing@omes.ok.gov);
  - ii. Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;
  - iii. Submission no later than forty-five (45) days following the end of each calendar quarter;
  - iv. Contract quarterly reporting periods shall be as follows:
    - a. January 01 through March 31;
    - b. April 01 through June 30;
    - c. July 01 through September 30; and
    - d. October 01 through December 31.
    - e. Reports must include the following information:
    - f. Procuring entity;



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

- D.** Payment of the contract management fee shall be delivered to the address below, or by setting up ACH. Payments must be received within forty-five (45) calendar days after the end of each quarterly reporting period.

Office of Management and Enterprise Services  
P.O. Box 278984  
Oklahoma City, Oklahoma 73124-8984

To ensure payment is properly accounted for, Contractor shall provide the following information with payment: (i) reference to the applicable Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s)

and the amount of the contract management fee being paid for each contract number.

#### **4. Pricing**

- A.** Pursuant to 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, Participating Entities under the Contract that are Oklahoma state agencies are exempt from the assessment of State sales, use, and excise taxes. Further, such Participating Entities and Participating Entities that are political subdivisions of the State of Oklahoma are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Participating Entities will provide Contractor with a tax exemption certificate upon request. Any taxes of any nature whatsoever payable by the Contractor shall not be reimbursed by the Participating Entity.
- i. For clarification, Contractor, more specifically Comdata Inc. (“Comdata”), agrees to provide billing exempt from federal excise taxes on fuel purchases to the extent Comdata is allowed to do so by the Internal Revenue Service (IRS) as a registered “Credit Card Issuer” that may file refund claims on the State’s behalf or on behalf of qualifying Non-State Agencies.



- ii. Exempting of applicable federal excise taxes for fuel are dependent on the information provided to us by the merchant location in the transaction (fuel type and quantity). If merchant does not transmit sufficient information for Comdata to be able to calculate the exempt tax, we reserve the right to bill the full amount of the charge.
  - iii. With regards to the Fuelman Proprietary Public Sector fleet card, Contractor, more specifically Corpay Technologies Operating Company, LLC (“Corpay”) shall provide tax exempt billing to Customer to the extent allowed by the Federal or State Government. Motor fuel taxes or environmental fees applicable to fuel purchases, for which Corpay may not file a tax refund claim to the taxing authority, shall not be billed with tax exempted. Customer shall provide a signed tax exemption certificate annually. Should the Purchasing Entity fail to deliver the Federal Excise Tax Exemption Certificate on or before the due date then:
    - 1. The Purchasing Entity shall be allotted a forty-five (45) day cure period in which reasonable efforts are made to provide the Federal Excise Tax Exemption Certificate to the pertinent authority; and
    - 2. Corpay shall not be held liable for any federal excise taxes that accumulate due to purchases made by a Purchasing Entity.
- B.** Pursuant to Okla. Stat. tit. 74, §85.40, Oklahoma Purchasing Entities that are State Agencies shall not pay Contractor any travel expenses in addition to the total price of the products and/or services purchased; therefore, Contractor shall not invoice State Agency Purchasing Entities for any travel expenses in addition to the total price of the products and/or services.
- C.** 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 Contractor shall be notified as soon as is reasonably practicable. The Contractor shall retrieve and replace the Acquisition at Contractor’s expense or, if unable to replace, shall issue a refund to Participating Entity. Refund under this section shall not be an exclusive remedy.

## **5. Invoices and Payment**

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



Contractor shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Agreement 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. This section shall not prohibit the payment of membership dues or payment for subscriptions to magazines, periodicals or books or for payment to Contractors providing subscription services under 74 O.S. 85.44B.

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. 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.
- C.** If an overpayment or underpayment has been made to Contractor any subsequent payments to Contractor under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Contractor.
- D.** If the Contractor accepts payment by purchase card, they shall do so according to Oklahoma law.

## **6. Termination for Funding Insufficiency**

- A.** With respect to all Oklahoma-based transactions and all Oklahoma-based Purchasing Entities, Participating State or a Purchasing Entity may terminate any Contract Document if funds sufficient to pay its obligations under the Participating Addendum are not appropriated by the applicable state legislature, federal government or other appropriate government entity or received from an intended third-party funding source. In the event of such insufficiency, Participating State or the Purchasing Entity shall provide ten (10) calendar days' written notice of intent to terminate. Any partial termination of the Agreement or of a Contract Document 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 Agreement or a Contract Document that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Contractor.
- B.** Upon receipt of notice of a termination, Contractor 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 Agreement or for any damages or other amounts caused by or associated with such termination. Any amount paid to Contractor in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.

- C. In the event of termination of an order as provided in the foregoing, Participating State or Purchasing Entity shall not be considered to be in default or breach under the Participating Addendum nor under the Master Agreement, nor shall it be liable for any further payments ordinarily due under, with respect to, related to, or arising out of such order, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

## **7. Termination for Convenience**

- A. Participating State or a Purchasing Entity may terminate a Contract Document, in whole or in part, for convenience if it is determined that termination is in the state's best interest. This includes any orders placed off the Contract. In the event of a termination for convenience, Contractor will be provided at least thirty (30) days' written notice of termination. Any partial termination of a Contract Document shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract Document that remain in effect.
- B. Upon receipt of notice of such termination, Contractor 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 Document 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 Contractor in the form of prepaid fees that are unused when the Contract Document or certain obligations are terminated shall be refunded. Termination of the Contract Document under this section, in whole or in part, shall not relieve the Contractor of liability for claims arising under the Contract Document.

## **8. Suspension of Contractor**

- A. Contractor may be subject to Suspension without advance notice and may additionally be suspended from activities under the Agreement if Contractor fails to comply with confidentiality, privacy, security, environmental or safety requirements



applicable to Contractor’s performance or obligations under the Agreement.

- B.** Upon receipt of a notice pursuant to this section, Contractor 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 Contractor, 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 Agreement 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 Contractor in the form of prepaid fees attributable to a period of suspension or suspended activity shall be refunded.
  
- C.** 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 Agreement 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.

**9. Certification Regarding State Employees Prohibition From Fulfilling Services**

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

**10. Notices**

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

**If sent to the State of Oklahoma:**

State Purchasing Director  
2401 N. Lincoln Blvd., Second Floor  
Oklahoma City, Oklahoma 73105

**If to Contractor:**

Director, Bids & Contracts  
U.S. Vehicle Payments  
543 Cox Road, Suite C-2  
Gastonia, NC 28054

**With a copy to:**

OMES Legal  
2401 N. Lincoln Blvd.  
Oklahoma City, Oklahoma 73105

**With a copy to:**

Legal Department  
3280 Peachtree Road, Suite 2400  
Atlanta, GA 30305

**11. Choice of Law**



Any claim, dispute, or litigation relating to the execution, interpretation, performance, or enforcement of the Contract Documents shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles. The State expressly declines any terms that minimize its rights under Oklahoma Law, including but not limited to, statutes of limitations.

## **12. Choice of Venue**

Venue for any action, claim, dispute, or litigation relating in any way to the execution, interpretation, performance, or enforcement of the Agreement, or any of the Contract Documents, shall be in Oklahoma County, Oklahoma.

## **13. Conflict of Interest**

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

## **14. Force Majeure**

Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other casualty, act of God, strike or labor dispute, war or other violence provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. In the event that a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Purchasing Entity may terminate a Purchase Order if Contractor cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Purchasing Entity.

## **15. Invalid Term or Condition**

To the extent any term or condition in the Participating Addendum conflicts with an applicable Oklahoma and/or United States law or regulation, such Agreement term or condition is void and unenforceable. By executing any Contract Document, including via a hyperlink or uniform resource locator, which contains a conflicting term or condition,



Purchasing Entity makes no representation or warranty regarding the enforceability of such term or condition and Purchasing Entity does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the Contract term or condition.

## **16. Audits and Records Clause**

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

## **17. Compliance with Applicable Laws**

- A.** As long as Contractor has an obligation under the terms of the Contract and in connection with performance of its obligations, the Contractor shall comply with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended.
- B.** The Contractor shall maintain all applicable licenses and permits required in association with its obligations under the Agreement.
- C.** As applicable, Contractor agrees to comply with 63 O.S., Section 1-1523, which prohibits the use of any tobacco product or marijuana in any indoor workplace, meetings of a public body and vehicles of Purchasing Entities of the State.

## **18. Open Records Act**

Contractor acknowledges that Purchasing Entity are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 et seq. Contractor also acknowledges that such Purchasing Entity will comply with the Oklahoma Open Records Act and with all opinions of the Oklahoma Attorney General concerning this Act. Except for a provision of the Agreement specifically designated as confidential in a writing executed by both parties or a provision protected from disclosure in the Open Records Act, no Agreement provision is confidential information and, therefore, any provision is subject to disclosure under the Open Records Act.

Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 or 74 O.S., § 85.5(J)(9) in connection with a bid or similar offer that is requested to be held confidential by a Contractor. Notwithstanding the foregoing, Contractor 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 Agreement; (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 Agreement and without other obligations of confidentiality; (iii) is independently developed without the use of any of Contractor 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 Contractor Confidential Information, provided that the Participating Entity provides reasonable written notice, pursuant to Contract notice provisions, to the Contractor so that the Contractor may promptly seek a protective order or other appropriate remedy.

## **19. Confidentiality**

- A.** The Contractor shall maintain strict security of all State data and records entrusted to it or to which the Contractor gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as needed by Contractor for performance of its obligations under the Contract. The Contractor further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. If Contractor utilizes a subcontractor, Contractor shall obtain specific written assurance, and provide a copy to the State, that the subcontractor shall maintain this same level of security of all data and records entrusted to or accessed by the subcontractor and agree to the same obligations as Contractor, to the extent applicable. Such written assurance may be set forth in the required subcontractor agreement referenced herein.
- B.** No State data or records shall be provided, or the contents thereof, disclosed to a third party unless specifically authorized in advance to do so in writing by the State Purchasing Director, the individual with administrative control over a Participating Entity or in compliance with a valid court order. The Contractor shall immediately forward to the State and the State Purchasing Director any request by a third party for data or records in the possession of the Contractor or any subcontractor or to which the Contractor or subcontractor has access and Contractor shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

## **20. Assignment and Permitted Subcontractors**

- A.** Contractor's obligations under the Agreement may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Contractor assign its rights to payment, in whole or in part, under the Agreement, Contractor shall provide the State of Oklahoma with written notice of the assignment. Such written notice shall contain details sufficient for the Participating Entity to perform its payment obligations without any delay caused by the assignment.
- B.** If the Contractor is permitted to utilize subcontractors in support of the Agreement, the Contractor shall remain solely responsible for its obligations under the terms of the Agreement and for its actions and omissions and those of its agents, employees and subcontractors. Any proposed subcontractor shall be identified by entity name,



and by employee name if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. Prior to a subcontractor being utilized by the Contractor, the Contractor shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Contractor. Such approval is within the sole discretion of the State. As part of the approval request, the Contractor shall provide a copy of a written agreement executed by the Contractor and subcontractor setting forth that such subcontractor is bound by and agrees to perform, as applicable, the same covenants and be subject to the same conditions, and make identical certifications to the same facts and criteria, as the Contractor under the terms of all applicable Contract Documents. Contractor agrees that maintaining such agreement with any subcontractor and obtaining prior approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State of Oklahoma further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

- C.** All payments under the Agreement shall be made directly to the Contractor, except as provided in Section A above regarding the Contractor's assignment of payment. No payment shall be made to the Contractor for performance by unapproved or disapproved employees of the Contractor or a subcontractor.

## **21. Mutual Responsibilities of the Parties**

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

## **22. Indemnification**



**A. State Shall Not Indemnify**

The State of Oklahoma cannot lawfully agree to indemnify a private contractor pursuant to Oklahoma Constitution Article 10, Section 23 and Attorney General Opinion 2006-11. 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.

**B. Coordination of Defense**

IN CONNECTION WITH INDEMNIFICATION OF A PURCHASING ENTITY WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA. THE ATTORNEY GENERAL OF OKLAHOMA MAY, BUT HAS NO OBLIGATION TO, AUTHORIZE CONTRACTOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS; PROVIDED, HOWEVER, THAT, IN SUCH EVENT, CONTRACTOR SHALL NOT AGREE TO ANY SETTLEMENT OF CLAIMS AGAINST THE STATE OF OKLAHOMA WITHOUT FIRST OBTAINING A CONCURRENCE FROM THE ATTORNEY GENERAL OF OKLAHOMA. IF THE ATTORNEY GENERAL OF OKLAHOMA DOES NOT AUTHORIZE SOLE CONTROL OF THE DEFENSE AND SETTLEMENT NEGOTIATIONS FOR CONTRACTOR, CONTRACTOR SHALL BE GRANTED AUTHORIZATION TO EQUALLY PARTICIPATE IN ANY PROCEEDING RELATED TO THIS SECTION; PROVIDED, HOWEVER, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CONTRACTOR SHALL CONTINUE TO BE OBLIGATED TO INDEMNIFY THE PARTICIPATING ENTITY AND, TO THE EXTENT APPLICABLE, ANY AND ALL PURCHASING ENTITIES, IN ACCORDANCE WITH AND TO THE EXTENT CONTRACTOR PROVIDES SUCH INDEMNITY UNDER THIS MASTER AGREEMENT.

**23. Miscellaneous**

**A. 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.

**B. Section Headings**

The headings used in any Contract Document are intended for convenience only



and do not constitute terms of the contract.

### **C. Survival**

Rights and obligations under the Agreement which by their nature should survive including, but not limited to, payment obligations invoiced prior to expiration or termination; confidentiality obligations and indemnification remain in effect after expiration or termination of the contract.

### **D. Entire Agreement**

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

## **24. Gratuities**

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

## **25. Import/Export Controls**

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

## **26. Compliance and Electronic and Information Technology Accessibility**

Contractor shall comply with federal and State laws, rules and regulations related to information technology accessibility, as applicable, including but not limited to Oklahoma Information Technology Accessibility Standards (“Standards”) set forth at <https://oklahoma.gov/omes/divisions/information-services/about-information-services/policy-and-standards/information-and-communication-technology-accessibility-standards.html> and shall provide a Voluntary Product Accessibility Template (“VPAT”) describing such compliance, which may be provided via a URL linking to the VPAT. If Products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Contractor. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, Purchase Order or amendment. Accordingly, in each statement of work or similar document issued pursuant to the Agreement,

Contractor shall describe such compliance and identify, if and as applicable, (i) which exception to the Standards applies or (ii) a description of the tasks and estimated cost to make the proposed products and/or services compliant with applicable Standards.

## **27. Scope and Contract Renewal**

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

## **28. Modification of Addendum Terms and Contract Documents**

- A.** This Participating Addendum may only be modified, amended, or expanded by an amendment. Any change to the Contract Documents, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Contractor, is a material breach of the Agreement. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Agreement modification, shall be void and without effect and the Contractor shall not be entitled to any claim under the Agreement based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Agreement.
- B.** Any additional terms on an ordering document provided by Contractor are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Contractor or by a Participating Entity other than OMES in connection with an Acquisition.
- C.** 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 Agreement or expand the State's or Participating Entity's liability or reduce the rights of Participating Entity or the State.