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| State Seal.full color.jpg | State of Oklahoma  Office of Management and Enterprise Services | Information Technology  Staff Augmentation Services Agreement |

XXX

for

XXX

This Contract is made by and between the State of Oklahoma Office of Management and Enterprise Services, Information Services Division on behalf of the state of Oklahoma, located at 3115 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, and XXX with its principal place of business located at: XXX

NOW THEREFORE, in consideration of the terms, and conditions of this Contract, the parties agree as follows:

Table of contents

[A. Contract 3](#_Toc370289845)

[A.1. Entire Agreement 3](#_Toc370289846)

[A.2. Products (use to define products and services offered) 3](#_Toc370289847)

[A.3. Pricing (Modify as needed) 3](#_Toc370289848)

[B. GENERAL PROVISIONS 4](#_Toc370289849)

[B.1. Definitions (add as needed) 4](#_Toc370289850)

[B.2. Governing Agreement and Order of Precedence 4](#_Toc370289851)

[B.3. Term and Annual Contract Review 5](#_Toc370289852)

[B.4. Certification Regarding Debarment, Suspension, and Other Responsibility Matters 5](#_Toc370289853)

[B.5. Contract Restatement or Modification 6](#_Toc370289854)

[B.6. Delivery, Inspection and Acceptance 6](#_Toc370289855)

[B.7. Invoicing and Payment 6](#_Toc370289856)

[B.8. Audit and Records Clause 6](#_Toc370289857)

[B.9. Oklahoma Open Records Act 7](#_Toc370289858)

[B.10. Non-Appropriation Clause 7](#_Toc370289859)

[B.11. Choice of Law and Venue 7](#_Toc370289860)

[B.12. Termination for Cause 7](#_Toc370289861)

[B.13. Termination for Convenience 8](#_Toc370289862)

[B.14. Gratuities 8](#_Toc370289863)

[B.15. Insurance 8](#_Toc370289864)

[B.16. Employment Relationship 9](#_Toc370289865)

[B.17. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007 9](#_Toc370289866)

[B.18. Compliance with Applicable Laws 9](#_Toc370289867)

[B.19. Mutual Responsibilities 10](#_Toc370289868)

[B.20. Background Checks and Verifications 10](#_Toc370289869)

[B.21. Confidentiality 10](#_Toc370289870)

[B.22. Unauthorized Obligations 11](#_Toc370289871)

[B.23. Electronic and Information Technology Accessibility 11](#_Toc370289872)

[B.24. Patents and Copyrights 11](#_Toc370289873)

[B.25. Assignment 12](#_Toc370289874)

[B.26. Severability 12](#_Toc370289875)

[B.27. Paragraph Headings 12](#_Toc370289876)

[B.28. Failure to Enforce 12](#_Toc370289877)

[B.29. Conflict of Interest 12](#_Toc370289878)

[B.30. Limitation of Liability 13](#_Toc370289879)

[B.31. Offshore Services 13](#_Toc370289880)

[B.32. Ownership Rights 13](#_Toc370289881)

[B.33. Source Code Escrow 14](#_Toc370289882)

[B.34. Media Ownership (Disk Drive and/or Memory Chip Ownership) 14](#_Toc370289883)

[B.35. High Technology System Performance and Upgrades 15](#_Toc370289884)

[B.36. Publicity 15](#_Toc370289885)

[B.37. COTS Software 15](#_Toc370289886)

[B.38. Obligations of Permitted Subcontractor 15](#_Toc370289887)

[B.39. Ordering 16](#_Toc370289888)

[B.40. Administrative Fee 16](#_Toc370289889)

[B.41. Contract Usage Reporting Requirements 17](#_Toc370289890)

[B.42. Web Site Requirements (modify to suit or delete if not needed) 17](#_Toc370289891)

[B.43. Notices 18](#_Toc370289892)

[B.44. Authorized Users 18](#_Toc370289893)

[B.45. Surviving Provisions 18](#_Toc370289894)

[C. Signature Block 19](#_Toc370289895)

# Contract

## Entire Agreement

The documents comprising this Contract (hereinafter defined) provide the governing terms and conditions for the entire agreement between the State of Oklahoma (the “State”) and [Vendors Name] (the “Vendor”) and shall also govern purchases by an Interlocal Entity (hereinafter defined) utilizing this Contract; provided, however, the General Provisions set forth in Part B of this Contract and provisions of any other Contract Document (hereinafter defined) may be added or changed by an Amendment (hereinafter defined) between Vendor and any Interlocal Entity. Any such Amendment shall be a Contract Document as between the Vendor and such Interlocal Entity but shall not be a Contract Document as between Vendor and the State or any other Interlocal Entity. Accordingly, all terms herein shall remain in full force and effect between the State and Vendor. This Contract is effective as of the last date executed by a party hereto.

## Products (use to define products and services offered)

### The following product lines and areas of product lines, including support, maintenance, and training services are available for purchase from Vendor (“Products”):

[Insert product lines and areas of product lines, as applicable.]

### The State reserves the right to modify the terms of this Contract at any time to enable “emerging technology”, not otherwise identified herein, to be provided as a result of repeated requests by State Entities and if the State believes such modification is in the best interest of the State with respect to its information technology initiatives.

## Pricing (Modify as needed)

The price of Products, including pricing categories and applicable discounts, is set forth at Attachments [A or A1 – A4, etc.] (“Attachment A”), attached hereto and made a part hereof. The information contained in Attachment A may be updated from time to time with the exception that updated information shall not directly or indirectly reflect an annual price increase in excess of [\_\_\_ percent (\_\_\_%)] of the Products prices initially set forth at Attachment A unless agreed to in an Amendment of this Contract.

### The State reserves the right to modify the terms of this Contract at any time to enable “emerging technology”, not otherwise identified herein, to be provided as a result of repeated requests by State Entities and if the State believes such modification is in the best interest of the State with respect to its information technology initiatives.

# GENERAL PROVISIONS

## Definitions (add as needed)

As used in this Contract, the following terms shall have the following meaning:

### **“Acquisition”** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, or rental pursuant to applicable state law.

### **“Amendment”** means a written restatement of or modification to a Contract Document executed by both parties.

### **“COTS”** means software that is commercial off the shelf.

### **“Contract”** means this document, as may be amended from time to time, which together with other Contract Documents, evidences the final agreement between the parties with respect to this statewide contract for the Products.

### **“Contract Document”** means, when executed by all applicable parties, this Contract, Attachments to this Contract, any statement of work, work order, rider or similar document related hereto, any purchase order related hereto, other statutorily required or mutually agreed documents related hereto, and any Amendment to any of the foregoing.

### **“Interlocal Entity”** means, with respect to any state other than Oklahoma, any authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of such state government, any political subdivision of such state, and any organization related to any of the foregoing.

### **“State Entity”** means any authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of the State government, any political subdivision of the State, and any organization related to any of the foregoing.

### **“Utilities”** means Vendor’s reusable or pre-existing proprietary intellectual property that forms the basis for a customized or developed software deliverable for the State and which is specifically identified as such by the Vendor in writing prior to execution of this Contract.

## Governing Agreement and Order of Precedence

### This Contract is a non-mandatory statewide contract for indefinite delivery and an indefinite quantity of the Products.

### Unless specifically agreed otherwise in writing by authorized representatives of applicable parties, to the extent that a provision in any other agreement, or document related thereto, between the State and Vendor is inconsistent with any provision set forth herein, a provision in this Contract prevails over the inconsistent provision of such other agreement or document. The order of precedence of Contract Documents are any Amendment to a Contract Document to the extent such terms are added to, or specifically inconsistent with, the Contract Document being amended; this Contract; Attachments to this Contract; any statement of work, work order rider or similar document, as applicable; a properly issued purchase order related hereto; and any other statutorily required or mutually agreed Contract Documents related hereto. Vendor agrees to execute, upon request, such other documents as may be required to effectuate the intent of this Contract.

## Term and Annual Contract Review

The Vendor shall not commence work, commit funds, incur costs, or in any way act to obligate the State until notified in writing of the approval of this Contract. The initial term of this Contract is one (1) year and this Contract may be renewed annually, [up to four (4) renewals], upon mutual written consent of the State and Vendor. Prior to each renewal, the State shall subjectively consider the value of this Contract to the State, the Vendor’s performance hereunder and shall review certain other factors, including but not limited to the a) terms and conditions of Contract Documents to determine validity with then current State and other applicable statutes and rules; b) then current Products pricing and price discounts offered by Vendor; and c) then current Products and support offered by Vendor.

If the State determines changes to a Contract Document are required as a condition precedent to renewal, the State and Vendor will cooperate in good faith to evidence such required changes in an Amendment.

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

### The Vendor certifies that the Vendor and their principals or participants:

#### Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;

#### Have not within a three-year period preceding this Contract 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 for violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

#### Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the foregoing offenses enumerated in this certification; and

#### Have not within a three-year period preceding this Contract had one or more public (federal, state or local) contracts terminated for cause or default.

### Where the Vendor is unable to certify to any of the statements in the certification above, Vendor shall attach an explanation to this Contract.

## Contract Restatement or Modification

### Any restatement, change or modification of a Contract Document shall be evidenced by an Amendment and no oral statement of any person shall modify or otherwise affect the terms, conditions, obligations or specifications of a Contract Document. The Vendor is responsible to ascertain the authority of any person who executes an Amendment or other Contract Document on behalf of the State or an Interlocal Entity, as applicable.

### Any unilateral change to a Contract Document by the Vendor is a breach of this Contract and the Vendor shall not be entitled to any claim or remedy under the terms of any Contract Document based on such change.

## Delivery, Inspection and Acceptance

### All deliveries shall be F.O.B. Destination. The Vendor shall prepay all packaging, handling, shipping and delivery charges and prices quoted shall include all such charges. Any Products delivered pursuant to this Contract shall be subject to final inspection and acceptance by the procuring entity at Destination and the procuring entity has no responsibility for the delivered Products prior to acceptance. Title and risk of loss or damage to all items shall be the responsibility of the Vendor until accepted. The Vendor shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance. “Destination” shall mean delivered to the receiving dock or other point specified in the applicable purchase order.

### Vendor shall be required to deliver Products as offered on or before the required date. Deviations, substitutions, or changes in the Products shall not be made unless expressly authorized in writing by the State or Interlocal Entity, as applicable.

## Invoicing and Payment

### Upon submission of an accurate and proper invoice, the invoice shall be paid in arrears after products have been delivered or services provided and in accordance with applicable law. Invoices shall contain the purchase order number, a description of the products delivered or services provided, and the dates of such delivery or provision of services.

### State Acquisitions are exempt from sales taxes and federal excise taxes.

## Audit and Records Clause

### As used in this clause, “records” includes books, documents, 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. In accepting any contract with the State, the Vendor agrees any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Contract.

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

## Oklahoma Open Records Act

This Contract is subject to public disclosure in accordance with the Open Records Act and will not be considered confidential except as determined by the Oklahoma Chief Information Officer in his sole discretion.

## Non-Appropriation Clause

The terms of this Contract and any purchase order issued for multiple years under this Contract are contingent upon sufficient appropriations being made by the applicable state legislature, federal government or other appropriate government entity. Notwithstanding any language to the contrary in this Contract, or any other Contract Document, any State Entity or Interlocal Entity may terminate its obligations under this Contract if sufficient appropriations are not made by the Oklahoma Legislature, federal government or other appropriate governing entity to pay amounts due for multiple year agreements. The decision as to whether sufficient appropriations are available shall be accepted by, and be final and binding on, the Vendor.

## Choice of Law and Venue

### Any claims, disputes or litigation relating to the Contract Documents, singularly or in the aggregate, or the execution, interpretation, performance, or enforcement thereof shall be governed by the laws of the State of Oklahoma, or in the case of an Interlocal Entity, in the state in which the Interlocal Entity is located, without regard to application of choice of law principles.

### Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents shall be in Oklahoma County, Oklahoma, or in the case of an Interlocal Entity, as agreed to between such Interlocal Entity and Vendor or as otherwise provided by applicable law.

## Termination for Cause

### The Vendor may terminate this Contract in whole or in part for default with both a thirty (30) day written request and upon written approval from the State. The State may terminate this Contract in whole or in part for default or any other just cause upon a thirty (30) day written notification to the Vendor.

### The State may terminate this Contract immediately, in whole or in part, without a thirty (30) day written notice to the Vendor, when violations are found to be an impediment to the function of the State and detrimental to the cause of a procuring State Entity, when conditions preclude the thirty (30) day notice, or when the State determines that an administrative error occurred prior to Contract performance. Similarly, an Interlocal Entity may terminate its obligations to Vendor immediately upon any of the foregoing conditions in this subsection.

### If this Contract or certain obligations hereunder are terminated, the State, State Entity or Interlocal Entity, as applicable, shall be liable only for payment for Products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

## Termination for Convenience

### The State may terminate this Contract, in whole or in part, for convenience if the State Chief Information Officer determines that termination is in the State’s best interest. The State shall terminate this Contract by delivering to the Vendor a notice of termination for convenience specifying the terms and effective date of termination. The Contract termination date shall be a minimum of sixty (60) days from the date the notice of termination is issued by the State. Similarly, an Interlocal Entity may terminate its obligations to Vendor upon a determination by the proper authority for such Interlocal Entity that termination is in the Interlocal Entity’s best interest and notice of termination by such Interlocal Entity shall be provided in accordance with the foregoing requirements set forth in this subsection.

### If this Contract or certain obligations hereunder are terminated pursuant to this section, the State, State Entity, or Interlocal Entity, as applicable, shall be liable only for Products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

## Gratuities

The rights of Vendor under the terms of this Contract may be immediately terminated , in whole or in part, by written notice if it is determined that the Vendor, its employee, agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to any State or Interlocal Entity employee directly involved in this Contract. In addition, a Vendor determined to be guilty of such a violation may be suspended or debarred.

## Insurance

The Vendor shall maintain and promptly provide proof to the State of the following insurance coverage, and any renewals, additions or changes thereto, as long as the Vendor has any obligation under a Contract Document:

1. Worker’s Compensation and Employer’s Liability Insurance in accordance with applicable law;
2. Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than $1,000,000 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage;
3. Automobile Liability Insurance with limits of liability of not less than $1,000,000 per occurrence combined single limit including bodily injury and property damage and with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles;
4. Professional Errors and Omissions Insurance which shall include Consultant’s Computer Errors and Omissions Coverage with limits not less than $1,000,000 per claim and in the aggregate; and
5. Additional coverage required by the State in writing in connection with a particular Acquisition.

## Employment Relationship

This Contract does not create an employment relationship between the parties. Individuals performing services required by this Contract are not employees of the State, a State Entity or an Interlocal Entity and, accordingly, shall not be eligible for rights or benefits accruing to such employees including but not limited to health insurance benefits, workers' compensation insurance, paid vacation or other leave, or any other employee benefit.

## Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007

The Vendor certifies that it is registered and participates in the Status Verification System, available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify), as required under applicable State law and is in compliance with applicable federal immigration laws and regulations. Vendor agrees that compliance with the certification set forth in this section shall be a continuing obligation.

## Compliance with Applicable Laws

### In connection with its performance of obligations under the terms of this Contract, the Vendor shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, including but not limited to the following:

1. Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;
2. Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;
3. Prospective participant requirements set forth at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
4. 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;
5. Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;
6. Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Circular A-133 with approval and work paper examination rights of the applicable procuring entity; and
7. 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.

### The Vendor shall maintain all applicable licenses and permits required in association with its obligations hereunder.

### The Vendor shall inform its employees or agents who perform services for the State under this Contract of the Vendor’s obligations hereunder and shall require its employees or agents to comply accordingly. At the request of the State, Vendor shall promptly provide adequate evidence that such persons are its employees or agents and have been informed of their obligations hereunder.

## Mutual Responsibilities

The State and Vendor agree that under this Contract:

### Neither party grants the other the right to use any trademarks, trade names, or other designations in any promotion or publication without express written consent by the other party.

### This is a non-exclusive Contract and each party is free to enter into similar agreements with others.

### Each party grants the other only the licenses and rights specified in the Contract Documents.

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

## Background Checks and Verifications

At the sole discretion of the State, State Entity or Interlocal Entity, as applicable, employees of the Vendor and any subcontractor of the Vendor may be subject to background checks. If background check information is requested, the Vendor must submit, or cause to be submitted, the required information in a timely manner and the Vendor’s access to facilities, data and information may be withheld prior to completion of background verification acceptable to such State, State Entity or Interlocal Entity.

## Confidentiality

### The Vendor shall maintain strict security of all State data and records entrusted to it or to which the Vendor gains access, in accordance with and subject to applicable federal and state laws, rules, regulations and policies and shall use any such data or records only as needed by Vendor for performance of its obligations hereunder. The Vendor further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or state laws, rules and regulations. If Vendor utilizes a permitted subcontractor, Vendor 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 Vendor, to the extent applicable. Such written assurance may be set forth in the required subcontractor agreement referenced in section B.38 herein.

### No State data or records shall be provided or the contents thereof disclosed to a third party unless specifically authorized to do so in writing by the State Chief Information Officer, the Director of a procuring State Entity or in compliance with a valid court order. The Vendor shall immediately forward to the State and the State Chief Information Officer any request by a third party for data or records in the possession of the Vendor or any subcontractor or to which the Vendor or subcontractor has access and Vendor shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

## Unauthorized Obligations

At no time during the performance of this Contract shall the Vendor have the authority to obligate any other party hereto for payment of any goods or services over and above those set forth in this Contract. If the need arises for goods or services over and above the Products, Vendor shall cease the project and contact the appropriate procuring entity for written approval prior to proceeding.

## Electronic and Information Technology Accessibility

Vendor 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 <http://www.ok.gov/cio/documents/isd_itas.>pdf and Vendor shall provide a Voluntary Product Accessibility Template (“VPAT”) describing such compliance, which may be provided via a URL linking to the VPAT. If the Products will require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Vendor. Such requirements may be stated in appropriate documents including but not limited to state bids, request for proposals, statements of work, riders, agreements, purchase orders and Amendments. Accordingly, in each statement of work or similar document issued pursuant to this Contract, Vendor shall describe such compliance and identify, if and as applicable, (i) which exception to the Standards applies or (ii) a description of the tasks and estimated cost to make the proposed products and/or services compliant with applicable Standards.

All representations contained in the VPAT provided will be relied upon by the State for accessibility compliance purposes.

## Patents and Copyrights

### Without exception, the Products prices shall include all royalties or costs owed by the Vendor to any third party arising from the use of a patent or copyright.

### If a third party claims that any portion of the Products provided by Vendor under the terms of this Contract infringes that party’s patent or copyright, the Vendor shall defend the State against the claim at the Vendor’s expense and pay all related costs, damages, and attorneys’ fees incurred by, or assessed to, the State, provided the State (i) promptly notifies the Vendor in writing of the claim and (ii) to the extent authorized by the Attorney General of the State, allows the Vendor to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Vendor, Vendor shall be granted authorization to equally participate in any proceeding related to this section but Vendor shall remain responsible to indemnify the State for all associated costs, damages and fees incurred by or assessed to the State.

### If such a claim is made or appears likely to be made, the Vendor shall enable the State to legally continue to use, or modify for use, the portion of Products at issue or replace such potential infringing Products with at least a functional non-infringing equivalent. If the Vendor determines that none of these alternatives is reasonably available, the State shall return such portion of the Products at issue to the Vendor, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund, if applicable, of other Products which are rendered materially unusable as intended due to removal of the portion of Products at issue.

### Vendor has no obligation regarding a claim based on any of the following: (i) modification of a product by any party other than Vendor, its employee, agent, representative, permitted subcontractor, or any State employee acting in conjunction with the Vendor; (ii) a program’s use in other than its specified operating environment; (iii) the combination, operation, or use of a product with other products not provided by Vendor as a system or (iv) infringement solely by a non-Vendor product that has not been provided to the State by, through or on behalf of the Vendor as opposed to its combination with products Vendor provides to or develops for the State as a system.

## Assignment

Vendor’s obligations under a Contract Document may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld in its sole discretion. Ownership of Products purchased under the terms of this Contract and rights granted under the terms of this Contract may be assigned or transferred, at no additional cost, to other entities within the State.

## Severability

If any provision for this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. 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.

## Paragraph Headings

The headings used in this Contract are for convenience only and do not constitute part of this Contract.

## Failure to Enforce

Failure by the State, as applicable, at any time to enforce a provision of, or exercise a right under, any Contract Document 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 to enforce any provision of, or exercise any right under, a Contract Document at any time in accordance with its terms. Likewise, a waiver of a breach of any provision in a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in a Contract Document.

## Conflict of Interest

### Vendor must provide immediate disclosure of any contractual relationship or any other relevant contact with any State personnel or another State contractor or vendor involved in the development of a Vendor’s response to any solicitation resulting in this Contract. Any conflict of interest shall, at the sole discretion of the State, be grounds for termination of project involvement.

### In addition to any requirement of law or through a professional code of ethics or conduct, the Vendor and the Vendor’s employees performing services for the State are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Further, without prior written approval of the State, such employees shall not plan, prepare, or engage in any activity that conflicts or may conflict with the best interest of the State as long as the Vendor has an obligation under this Contract. 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.

## Limitation of Liability

To the extent any limitation of liability in any Contract Document is construed by a court of competent jurisdiction to be a limitation of liability in violation of applicable law, such limitation of liability shall be void.

## Offshore Services

No offshore services are provided for under this Contract. State data shall not be used or accessed internationally, for troubleshooting or any other use not specifically provided for herein without prior written permission, which may be withheld in the State’s sole discretion, from the appropriate authorized representative of the State.

## Ownership Rights

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

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

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

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

### If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Vendor.

## Source Code Escrow

If required under applicable Oklahoma law relating to customized computer software developed or modified exclusively for a state agency, the Vendor shall have a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Vendor shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, with the escrow agent including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

1. A bona fide material default of the obligations of the Vendor under the agreement with the agency;
2. An assignment by the Vendor for the benefit of its creditors;
3. A failure by the Vendor to pay, or an admission by the Vendor of its inability to pay, its debts as they mature;
4. The filing of a petition in bankruptcy by or against the Vendor when such petition is not dismissed within sixty (60) days of the filing date;
5. The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Vendor’s property;
6. The inability or unwillingness of the Vendor to provide the maintenance and support services in accordance with the agreement with the agency;
7. The ceasing of a Vendor of maintenance and support of the software; or
8. Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

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

### In accordance with the State of Oklahoma Information Security Policy, Procedures, Guidelines set forth online at <http://www.ok.gov/cio/documents/InfoSecPPG.pdf> (“Electronic Media Retention Requirements”), any disk drives and memory cards purchased with or included for use in leased or purchased equipment under this Contract remain the property of the State.

### Personal Identification Information may be retained within electronic media devices and components; therefore, the State shall not allow the release of electronic media either between State Entities or for the resale of refurbished equipment that has been in use by State Entities, by the Vendor to the general public or other entities. Electronic Media Retention Requirements shall also be applied to replacement devices and components, whether purchased or leased, the Vendor may supply during the downtime (repair) of equipment purchased or leased through this Contract. If a device has to be removed from a location for repairs, the State shall have sole discretion, prior to removal, to determine and enforce sufficient safeguards (such as a record of hard drive serial numbers) to protect Personal Identification Information that may be stored within the hard drive or memory of the device.

## High Technology System Performance and Upgrades

### If an Acquisition pursuant to this Contract includes a “high technology system” as defined under Oklahoma law, the Vendor shall provide documentation of the projected schedule of recommended or required system upgrades or improvements to such system for the three (3) year period following the target purchase date. If Vendor does not plan such system upgrades or improvements, the Vendor shall provide documentation that no system upgrades or improvements to the high technology system are planned for the three (3) year period following the target purchase date.

### Any Acquisition pursuant to this Contract of an upgrade or enhancement to a high technology system shall be conditioned upon the Acquisition being provided at no charge to the State; the Acquisition being provided to the State at no additional charge pursuant to a previous agreement with the Vendor; the Vendor providing documentation that any required or recommended upgrade will enhance or is necessary for performance of the applicable State agency duties and responsibilities; or the Vendor providing documentation that it will no longer supply maintenance assistance to the applicable State agency and the applicable State agency documenting that the functions performed by the high technology system are necessary for performance of the State agency duties and responsibilities.

## Publicity

The award of this Contract to Vendor is not in any way an endorsement by the State of Vendor or the Products and shall not be so construed by Vendor in any advertising or publicity materials. Vendor agrees to submit to the State all advertising, sales promotion, and other publicity matters relating to this Contract wherein the State’s name is mentioned or language used from which the connection of the State’s name therewith may, in the State’s judgment, be inferred or implied as an endorsement. Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Contract without obtaining the prior written approval of the State.

## COTS Software

In the event that Vendor specifies terms and conditions or clauses in an electronic license agreement notice that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail.

## Obligations of Permitted Subcontractor

### If the Vendor is permitted to utilize subcontractors in support of this Contract, the Vendor shall remain solely responsible for its obligations under the terms of this Contract 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 in the applicable proposal and shall include the nature of the services to be performed. Prior to a subcontractor being utilized by the Vendor in connection with provision of the Products, the Vendor shall obtain written approval of the State of such subcontractor and each employee of such subcontractor proposed for use by the Vendor. Such approval is within the sole discretion of the State. As part of the approval request, the Vendor shall provide a copy of a written agreement executed by the Vendor and subcontractor setting forth that such subcontractor is bound by and agrees to perform the same covenants and be subject to the same conditions, and make identical certifications to the same facts and criteria, as the Vendor under the terms of all applicable Contract Documents. Vendor agrees that maintaining such agreement with any subcontractor and obtaining prior approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

### All payments for Products shall be made directly to the Vendor. No payments shall be made to the Vendor for any services performed pursuant to this Contract by unapproved or disapproved employees of the Vendor or a subcontractor.

## Ordering

Any Product furnished under this Contract shall be ordered by the issuance of a written purchase order or by the use of a valid State purchase card. There is no limit on the number of purchase orders that may be issued or purchase card transactions and delivery to multiple destinations may be required, at no additional cost to the procuring entity. All such issued purchase orders and purchase card transactions are subject to the terms and conditions of this Contract and other Contract Documents. Any issued purchase order or purchase card transaction dated prior to expiration or termination of this Contract shall be performed.

## Administrative Fee

The Vendor agrees to pay an administrative fee in the sum of [1%] of the combined total quarterly expenditures, as evidenced by the aggregate amount of Acquisitions under this Contract. All Products prices shall be inclusive of the administrative fee. Notwithstanding anything to the contrary herein, the State reserves the right to increase or decrease the administrative fee as long as the Vendor has an obligation under this Contract without further requirement for an Amendment and shall provide written notice of such change to the Vendor. The administrative fee amount shall be noted on the quarterly “Contract Usage Report” and paid by the Vendor to the Oklahoma Office of Management and Enterprise Services within thirty (30) calendar days of the quarterly reporting period stated under the section below titled “Contract Usage Reporting Requirements”. The Vendor shall list this Contract number and identify the reporting year and quarter (for example, SW1010 4th Qtr 2014) on the check stub of each administrative fee paid hereunder.

The check shall be mailed to:

Oklahoma Office of Management and Enterprise Services

Accounts Receivable

5005 North Lincoln Blvd

Oklahoma City, Oklahoma 73105

## Contract Usage Reporting Requirements

### The Vendor shall submit to the Oklahoma Office of Management and Enterprise Services, Information Services Division, the following quarterly contract usage reporting of Acquisitions made under the terms of this Contract:

Contract Usage reports identifying, for the applicable quarter, each Acquisition and the appropriate procuring entity and corresponding dollar amounts of Products purchased by all entities under the terms of this Contract, plus grand totals including but not limited to State Entities and Interlocal Entities.

Item Detail Usage reports identifying, for the applicable quarter, the following information:

1. Procuring entity
2. Order date
3. Order #
4. Invoice #
5. Manufacturer #
6. Manufacturer
7. Description
8. Product Category
9. Standard Configuration #
10. Quantity
11. Unit List Price
12. Unit Contract Price
13. Extended Price
14. Other contract usage information requested by the State

### Reports shall be submitted quarterly regardless of quantity. All usage reports shall be delivered electronically to [strategic.sourcing@omes.ok.gov](mailto:strategic.sourcing@omes.ok.gov) within thirty (30) calendar days of the end of each of the following quarterly reporting periods: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

### Failure to provide usage reports required hereunder may result in a whole or partial cancellation or suspension of this Contract. The Vendor shall notify the contracting officer prior to any delay in providing any usage report.

## Notices

All notices, approvals or requests allowed or required by the terms of any Contract Document shall be in writing and deemed delivered upon receipt or upon refusal of the intended party to take or accept receipt of the notice. Such notices shall be sent to the respective party at the address set forth below, which may be updated in writing to the other party as necessary:

If sent to the State:

Oklahoma Office of Management and Enterprise Services

Information Services Division

Attention: James Reese, Chief Operations and Accountability Officer

3115 North Lincoln Boulevard

Oklahoma City, Oklahoma 73105

If sent to the Vendor:

[Vendor Name

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Vendor Mailing Address]

## Authorized Users

During the term of this Contract, any State Agency or Interlocal Entity may utilize this Contract; provided, however, the State bears no liability for the acts or omissions of an Interlocal Entity and privity of contract with respect to purchases and performance by such an Interlocal Entity exists solely between the Vendor and such Interlocal Entity. Except as expressly set forth herein, there are no third party beneficiaries of this Contract or any other Contract Document.

## Surviving Provisions

In addition to this provision, Sections A.1; B.8; B.11; B.21; B.24; B.25; B.26; B.27; B.28; B.29; B.30; B.32; B.33; B.34; B.36; B.37; B.38; and B.43 set forth herein survive termination or expiration of this Contract.

# Signature Block

IN WITNESS WHEREOF, each person executing this Contract below represents that he or she is authorized to enter into this Contract on behalf of such party and each party expressly agrees to the terms and conditions of this Contract.

VENDOR:

[Vendor’s Name]

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[Printed Name and Title] Date

STATE:

Office of Enterprise Management Services, Information Services Division,

on behalf of the State of Oklahoma

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James Reese, State of Oklahoma Chief Information Officer Date