

PARTICIPATING ADDENDUM
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Laboratory Equipment and Supplies
Administered by the State of Idaho

MASTER AGREEMENT
Master Agreement No: MA16000234-2
VWR International LLC

And

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

(Oklahoma Contract No.: SW401)

THIS PARTICIPATING ADDENDUM (this “Addendum”) is entered into effective as of April 15, 2016 (the “Effective Date”), by and between the State of Oklahoma by and through the Office of Management and Enterprise Services (the “State of Oklahoma” or Participating State/Entity”) and VWR International, LLC (“Contractor” or “Vendor”). The State of Oklahoma and Contractor are sometimes collectively referred to herein as the “Parties.” Capitalized terms used but not defined herein have the meanings ascribed to such terms in that certain Master Agreement Award among the State of Idaho (“Lead State”), Contractor and those states entering into a Participating Addendum thereto (the “Master Agreement”).

WHEREAS, the Master Agreement is further identified as Master Agreement No. MA160000234-2. This Participating Addendum will be coterminous with the Master Agreement and any extensions of the Master Agreement, unless terminated pursuant to the terms of this Addendum and NASPO ValuePoint Master Agreement Terms and Conditions, Section 7 Cancellation and Section 10 Defaults and Remedies.

WHEREAS, the Master Agreement contemplates that all authorized entities in any state are welcome to use the Master Agreement through WSCA-NASPO Cooperative Procurement Program (WSCA-NASPO) with such state’s chief procurement official approval and provides that any such state reserves the right to add state-specific terms and conditions and modify the scope of the contract in such state’s Participating Addendum as allowed by the Master Agreement; and

WHEREAS, this Addendum is the State of Oklahoma’s Participating Addendum contemplated by the Master Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Scope: This Addendum allows for the purchase of the following Laboratory Equipment and Supplies from Master Agreement No. MA160000234-2 led by the State of Idaho for use by state agencies and other entities located in the Participating State as provided below.

The award to Contractor in Master Agreement No MA160000234-2 is for all awarded bands

Individual items costing in excess of \$75,000.00 After discount are excluded from this

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Master Agreement.

2. Participation: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **state/entity** contracts are subject to the prior approval of the respective state chief procurement official. Notwithstanding anything to the contrary in the Master Agreement, all issues of interpretation and eligibility for participation are solely within the authority of the state's chief procurement official.
3. Participating State's Modifications and Additions to the Master Agreement:

Contract Term

The initial contract term of this Participating Addendum shall April 15, 2016 through March 31, 2107. The contract shall have four (4) one-year options to renew.

The Oklahoma Specific Terms and Conditions set forth in Exhibit No. 1, attached hereto, are hereby incorporated in and made a part of this Addendum.

4. Primary Contacts: The primary contact individuals for the Participating Addendum are as follows (or their named successors):

Contractor

Name	Lewis McMillan
Address	100 Matsonford Road, Suite 200, Randor PA 19087-8660
Telephone	770-335-7925
Fax	484-881-5697
E-mail	Lewis_Mcmillan@vwr.com

Participating Entity

Name	Lisa Bradley
Address	5005 N. Lincoln Blvd. Ste. 300, Oklahoma City, OK 73105
Telephone	(405) 522-4480
Fax	N/A
E-mail	Lisa.Bradley@omes.ok.gov

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5. Partner Utilization: Each state represented by NASPO ValuePoint participating in the Master Agreement independently has the option of utilizing partners. Only partners approved by this Participating State/ Entity may be deployed. The Participating State will define the process to add and remove partners and may define the partner's role in this Participating Addendum. The Contractor's partners' participation will be in accordance with the terms and conditions set forth in the Master Agreement. Approved partners are only upon written approval from the State of Oklahoma.

6. Terms: The Participating State/Entity agrees to the terms and conditions of the Master Agreement only to the extent the terms and conditions are not in conflict with this Addendum, applicable law, or both.

7. Orders: Any order placed by a Participating State/ Entity or any Purchasing Entity for a product and/or service available through the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

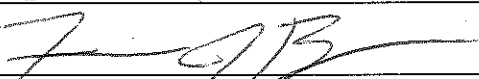
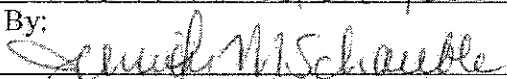
8. Counterparts: This Addendum may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Addendum. Delivery of an executed counterpart of this Addendum by electronic means, including, without limitation, by facsimile transaction or by electronic delivery in portable document format (".pdf") or tagged image file format (".tiff"), shall be equally effective as delivery of a manually executed counterpart thereof.

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IN WITNESS WHEREOF, the Parties have executed this Addendum through the duly authorized representative of each Party.

Participating State: Oklahoma	Contractor: VWR International, LLC
By: 	By: 
Name: Ferris J. Barger	Name: Jennifer Schauble
Title: State Purchasing Director	Title: Director, Contracts Management
Date: 5/12/16	Date: 4/13/16

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org to support documentation of participation and posting in appropriate
 data bases]

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Any and all licensing, maintenance, or order-specific agreements referenced within the terms and conditions of this Master Agreement are agreed to only to the extent that the terms do not conflict with the terms of the Participating Addendum, the Master Agreement, and to the extent the terms are not in conflict with applicable Oklahoma law. In the event of conflict among the terms and conditions, the Participating Addendum shall take precedence.

I. Definitions: The parties agree that, when used in the 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. Addendum

The term (“Addendum”) means a written restatement of or modification to a Contract Document executed by the Contractor and State.

C. Contract Document

The term (“Contract Document”) means the Master Agreement, this Addendum, 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 Addendum to any of the foregoing.

D. 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.

E. Destination

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

F. Indemnified Parties

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

II. Limitation of Authority

With respect to procurement transactions for Oklahoma-based Purchasing Entities, Contractor shall have no authority to act for or on behalf of such Purchasing Entities or the State of Oklahoma, except as expressly provided for in this Addendum; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Oklahoma-based Purchasing Entities or the State of Oklahoma.

III. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The Contractor certifies that the Contractor and its principals:

- A.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;
- B.** Have not within a three-year period preceding this Addendum 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; for violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements or receiving stolen property;
- C.** 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
- D.** Have not within a three-year period preceding this Addendum had one or more public (federal, state or local) contracts terminated for cause or default.

IV. Maintenance of Insurance, Payment of Taxes, and Worker’s Compensation

As a condition of this Addendum with the State, Contractor shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability

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limits set forth below. Such proof of coverage shall be provided to the State. Contractor may not commence performance hereunder until such proof has been provided. Additionally, Contractor shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Contractor's obligation to maintain insurance coverage under this Addendum is a continuing obligation through the term of this Addendum and each purchase order issued to Contractor in connection with the Master Agreement. The minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
- C.** Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence and in the aggregate, with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles;
- D.** 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
- E.** Additional coverage required by the State in writing in connection with a particular Acquisition.
- F.** Contractor shall be entirely responsible during the existence of the Participating Addendum for the liability and payment of taxes payable by or assessed to Contractor or its employees, agents and subcontractors of whatever kind, in connection with the Master Agreement. Contractor further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither a Purchasing Entity nor the State shall be liable to the Contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Purchasing Entity employee.
- G.** Contractor agrees to indemnify and hold harmless Oklahoma-based Purchasing Entities, the State, and its employees, agents, representatives, contractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs and expenses and attorneys' fees relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with

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its performance under the Master Agreement and this Addendum. In connection with indemnification of an Oklahoma-based Purchasing Entity, when a State agency is a named defendant in any lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General of Oklahoma may authorize the Contractor to control the defense and any related settlement negotiations; provided, however, Contractor shall not agree to any settlement of claims against the State without advance written concurrence from the State Attorney General. If the Attorney General of Oklahoma does not authorize sole control of the defense and settlement negotiations to Contractor, Contractor shall be granted authorization to equally participate in any proceeding related to this section but Contractor shall remain responsible to indemnify the State.

V. Administrative Fees

For Oklahoma-based Purchasing Entities, Contractor agrees to submit a Contract Usage Report to the State of Oklahoma on a quarterly basis. "Contract Usage Report" shall include the following: (i) the applicable state contract number; (ii) report amount(s); (iii) reporting period covered; and (iv) the applicable state agency name(s). Contract Usage Reports shall also include usage of the Participating Addendum by any other governmental entities (i.e. county, city, etc.). Continuous failure to submit Contract Usage Reports as required herein may result in termination of the Participating Addendum.

All Contract Usage Reports shall meet the following criteria:

- a) Must be submitted electronically in Microsoft Excel format.
- b) Reports shall be submitted quarterly regardless whether this Addendum has been used during the applicable quarterly reporting period.
- c) Quarterly reporting periods
 - a. January 01 through March 31, due April 30
 - b. April 01 through June 30, due July 31
 - c. July 01 through September 30, due October 31
 - d. October 01 through December 31, due January 31

All Contract Usage Reports shall be delivered to:

E-mail: strategic.sourcing@omes.ok.gov

For Oklahoma-based Purchasing Entities, the State of Oklahoma assesses an administrative fee in the sum of one percent (1%) on all sales transacted by any Purchasing Entity under the Participating Addendum (the "Oklahoma Admin Fee").

Contractor shall submit the Oklahoma Admin Fee on a quarterly basis. Failure to remit the Oklahoma Admin Fee quarterly may result in cancellation of the Participating Addendum. Oklahoma Admin Fees shall not be reflected as a separate line item in

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Contractor's billing to participating state agencies and authorized users.

Payment of the Oklahoma Admin Fee shall be made via company check payable to OMES within thirty (45) calendar days from the completion of the applicable quarterly reporting period set forth above.

Contractor agrees to notify OMES-Central Purchasing via the email address strategic.sourcing@omes.ok.gov and Lisa.Bradley@omes.ok.gov twenty-four (24) hours in advance of Contractor's submitting payment of the Oklahoma Admin Fee.

To ensure payment is properly accounted for, Contractor shall identify payment in the applicable Contract Usage Report as an "Administrative Fee" and shall include the following information: (i) the applicable state contract number, (ii) Oklahoma Admin Fee amount(s) paid, and (ii) the applicable quarterly reporting period.

Oklahoma Admin Fees shall be mailed to:
Office of Management and Enterprise Services
Attention: Accounts Receivable
5005 N. Lincoln Boulevard, Suite 300
Oklahoma City, OK 73105

VI. Pricing

- A.** Pursuant to 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, Purchasing Entities that are Oklahoma state agencies are exempt from the assessment of State sales, use, and excise taxes. Further, such Purchasing Entities and Purchasing 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. Purchasing 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 Purchasing Entity.
- B.** Pursuant to Okla. Stat. tit. 74, § 85.40, Oklahoma Purchasing Entities 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 Oklahoma-based Purchasing Entities for any travel expenses in addition to the total price of the products and/or services purchased hereunder..
- C.** The price to the Purchasing Entity under the Master Agreement shall include and Contractor shall prepay all shipping, packaging, delivery and handling fees. All Product deliveries will be Free on Board to Purchasing Entity's Destination. No additional fees shall be charged to the Purchasing Entity for standard shipping and handling. If the requests expedited or special delivery, Purchasing Entity may be responsible for any charges for expedited or special delivery.

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VII. 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.

VIII. Ordering

Any Products furnished under the Master Agreement and this Addendum shall be ordered by the issuance of written purchase orders or e-procurement of purchase orders. There is no limit on the number of purchase orders that may be issued. Delivery to multiple destinations may be required. All orders are governed by the terms and conditions of the Master Agreement and this Addendum. Any purchase order dated prior to the expiration of this Addendum shall be performed unless the Acquisition is terminated by the Purchasing Entity under the terms of the Master Agreement and this Addendum.

VIX. Termination for Non-appropriation

With respect to all Oklahoma-based transactions and all Oklahoma-based Purchasing Entities, Purchasing Entity or Participating State may terminate any order 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 shall provide ten (10) calendar days' written notice of intent to terminate. Notwithstanding the foregoing, if a Purchasing Entity issues an order and has accepted the products and/or services under such order, the Purchasing Entity shall be obligated to pay for such products and/or services. In the event of termination of an order as provided in the foregoing, Participating State 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.

X. Notices

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

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If sent to the State of Oklahoma:

Ferris J. Barger
State Purchasing Director
5005 North Lincoln Blvd; Suite 300
Oklahoma City, Oklahoma 73105

With a copy to:

OMES-Central Purchasing Deputy General Counsel
Lisa Bradley, SW Initiatives Contracting Officer

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XI. Choice of Law

Any claim, dispute, or litigation relating to the execution, interpretation, performance, or enforcement of this Addendum or any order made by an Oklahoma-based Purchasing Entity shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles.

XII. Choice of Venue

Venue for any action, claim, dispute, or litigation relating in any way to the execution, interpretation, performance, or enforcement of this Addendum or any order may by an Oklahoma-based Purchasing Entity, shall be in Oklahoma County, Oklahoma. If a claim is brought in a federal forum in the State of Oklahoma then it must be brought and adjudicated solely and exclusively with the United States District Court for the Western District of Oklahoma. Further, notwithstanding any provision in the Master Agreement or this Addendum, the State does not waive the doctrine of sovereign immunity and immunity from suit to the extent authorized by the Constitution and laws of the State of Oklahoma nor any other right or defense available to the State.

XIII. 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 Master Agreement or this Addendum, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State.

XIV. 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, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. 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

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default. However, a Purchasing Entity may terminate a purchase order if Contractor cannot cause delivery of Products in a timely manner to meet the business needs of the Purchasing Entity.

XV. Invalid Term or Condition

To the extent any term or condition in the Master Agreement or this Addendum conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, 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 term or condition.

XVI. Audits and Records Clause

- A.** 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. Contractor agrees any pertinent federal or State agency or governing entity of a Purchasing Entity shall have the right to examine and audit all records relevant to the execution and performance of the Master Agreement and this Addendum except costs of Contractor that comprise pricing under the Master Agreement, unless otherwise agreed.
- B.** The Contractor is required to retain records relative to the Master Agreement and this Addendum for the duration of the Master Agreement and for a period of seven (7) years following completion or termination of an Acquisition. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

XVII. Compliance with Applicable Laws

- A.** As long as Contractor has an obligation under the terms of the Master Agreement and this Addendum 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, including but not limited to the following:
 - i.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. § 81.

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- ii.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
 - iii.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
 - iv.** 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;
 - v.** Anti-Lobbying Law set forth at 31 U.S.C. § 1325 and as implemented at 45 C.F.R. part 93;
 - vi.** 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;
 - vii.** Be compliant with the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1312, and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. § 1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify; and
 - viii.** 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.
- B.** The Contractor shall maintain all applicable licenses and permits required in association with its obligations under the Master Agreement and this Addendum.
- C.** As applicable, Contractor agrees to comply with Governor’s Executive Order 2012- 01, effective August 06, 2012, which prohibits the use of any tobacco product on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.

XVIII. Employment Relationship

The Master Agreement and this Addendum does not create an employment relationship. Individuals performing services required by this Addendum are not employees of the

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Purchasing Entity. The Contractor's employees shall not be considered employees of the Purchasing Entity for any purpose, and accordingly shall not be eligible for rights or benefits accruing to such employees.

XIX. Publicity

Contractor acknowledges and agrees that the existence of the Master Agreement and this Addendum or any Acquisition thereunder is not in any way an endorsement by the Purchasing Entity, the Products or the services and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Participating Addendum wherein the name of the State of Oklahoma or a Purchasing Entity is mentioned or language used from which the connection of the State of Oklahoma or Purchasing Entity therewith may, in the State's judgment, be inferred or implied as an endorsement. Contractor 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 without obtaining the prior written approval of the State.

XX. Open Records Act

Contractor acknowledges that Oklahoma-based Purchasing Entities are subject to the Oklahoma Open Records Act. 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 Master Agreement or this Addendum specifically designated as confidential in a writing executed by both parties or a provision protected from disclosure in the Open Records Act, no provision is confidential information and, therefore, any provision is subject to disclosure under the Open Records Act.

XXI. 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

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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 Purchasing 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.

XXII. Assignment and Permitted Subcontractors

- A.** Contractor's obligations under the Master Agreement or this Addendum 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 Master Agreement or this Addendum, 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 Addendum, the Contractor shall remain solely responsible for its obligations under the terms of the Master Agreement or this Addendum 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

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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 Master Agreement or this Addendum 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.

XXIII. Failure to Enforce

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

XXIV. 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. This Addendum is a non-exclusive contract, and each party is free to enter into similar agreements with others.
- C. The Purchasing Entity and Contractor each grant the other only the licenses and rights specified in this Addendum 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 Contract may be transitioned after termination or expiration of this Addendum.
- E. Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by Purchasing Entity, the State or the Contractor is required under this Addendum, such action shall not be unreasonably delayed or withheld.

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XXV. Patents and Copyrights

Without exception, a Product price shall include all royalties or costs owed by the Contractor to any third party arising from the use of a patent, intellectual property or copyright. Should any third party threaten or make a claim that any portion of a Product provided by Contractor under the Master Agreement or this Addendum infringes that party's patent or copyright, Contractor shall enable Purchasing Entities to legally continue to use, or modify for use, the portion of the Product at issue or replace such potentially infringing Product with at least a functional non-infringing equivalent. Contractor's duty under this section shall extend to include other Products rendered materially unusable as intended due to replacement or modification of the Products.

XXVI. Indemnification

A. Acts or Omissions

Contractor shall indemnify and hold harmless the Indemnified Parties, as applicable, from any and all liability, including costs, expenses and attorney fees, for actions, claims, demands and suits arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct of the Contractor or its agents, employees, or subcontractors in the execution or performance of the Addendum.

B. Infringement

Contractor shall indemnify and hold harmless the Indemnified Parties, as applicable from any and all liability, including costs, expenses and attorney fees, for actions, claims, demands and suits arising out of , or resulting from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with Products or services provided under the Master Agreement and this Addendum. The parties agree to furnish timely written notice to each other of any such claim.

C. 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

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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.

XXVII. 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. Sovereign Immunity

Notwithstanding any provision of any Contract Document, the State does not waive its sovereign immunity or immunity from suit.

D. Survival

As applicable, performance under all license, subscription, service agreements and other similar Contract Documents entered into between Contractor and any Purchasing Entity under the terms of the Master Agreement and this Addendum shall survive expiration or termination of the contract. Additionally, rights and

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obligations under the Master Agreement and this Addendum 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.

E. Entire Agreement

The Contract Documents taken together as a whole constitute the entire agreement between a Purchasing 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.