



**SMALL PACKAGE DELIVERY
SERVICES 2016-2021**

Lead by the State of Utah

THIS PARTICIPATING ADDENDUM (this “Addendum”) is entered into effective as of the date of the last signature (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 FEDEX (“Contractor” or “Vendor”). The Contract period of the Addendum shall be from January 10, 2017 to November 27, 2017 with four (4) one year options to renew upon mutual agreement but shall not exceed November 27, 2021. 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 Utah (“Lead State”), Contractor and those states entering into a Participating Addendum thereto (the “Master Agreement”).

WHEREAS, the Master Agreement is further identified as Contract No. MA454. 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 28 Cancellation.

WHEREAS, the Master Agreement contemplates that all authorized entities in any state are welcome to use the Master Agreement through NASPO ValuePoint Cooperative Procurement Program with such state’s chief procurement official 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;

WHEREAS, small package delivery and express delivery services are included in this contract portfolio;

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

Master Agreement Terms and Conditions:

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1. Scope: This addendum covers the *Small Package Delivery Services* led by the State of Utah for use by state agencies and other entities located in the State of Oklahoma authorized by that state's statutes to utilize state contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Oklahoma. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	David Guanella
Address:	3650 Hacks Cross Rd., Bldg. E 3 rd Floor, Memphis, TN 38125
Telephone:	469-939-0578
Fax:	901-471-5901
Email:	daguanella@fedex.com

Participating Entity

Name:	Theresa Johnson
Address:	5005 N. Lincoln Blvd., Suite 300, Oklahoma City, OK 73105
Telephone:	405-521-2289
Fax:	405-521-4475
Email:	theresa.johnson@omes.ok.gov

4. Participating Entity Modifications Or Additions To The Master Agreement.

These modifications or additions apply only to actions and relationships within the Participating Entity.



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The following changes are modifying or supplementing the Master Agreement terms and conditions.

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.

5. Type of Rate Selected: The State of Oklahoma has selected to contract the Multiple Non MBG Rate.



6. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this 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.



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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Oklahoma	Contractor: Federal Express Corporation, Inc. (aka. "FedEx")
Signature: 	Signature: 
Name: Ferris Barger	Name: David Guanella
Title: State Purchasing Director	Title: Worldwide Account Manager
Date: 12-4-2017	Date: January 3, 2017

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	(775) 720-3404
Email:	sberry@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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[Contract Title Small Package Delivery]
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(hereinafter "Contractor")

And

[State of Oklahoma/Office of Management and Enterprise Services]
(hereinafter "Participating State/Entity")

Exhibit No. 1- Oklahoma Specific Terms and Conditions

- I. Definitions: The parties agree that, when used in the Participating Addendum, 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. Contract Document

The term ("Contract Document") means this Participating Addendum, any statement of work order, or 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.

C. 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 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 multistate or multi-governmental contract.

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D. Destination

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

E. Indemnified Parties

The term ("indemnified Parties") means the State of Oklahoma any Oklahoma Purchasing Entity and/or their officers, agents, employees, representatives, contractors, assignees and/or designees.

II. Limitation of Authority

Contractor shall have no authority to act for or on behalf of Purchasing Entities or the State of Oklahoma, except as expressly provided for in this Participating 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 Purchasing Entities or the State of Oklahoma.

III. Administrative Fees and Contract Usage Report

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:

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- 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 May 15th
 - b. April 01 through June 30, due August 15th
 - c. July 01 through September 30, due November 15th
 - d. October 01 through December 31, due February 15th

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 net sales transacted by any Purchasing Entity under the Participating Addendum (the "Oklahoma Admin Fee"). The administrative fee is not to be considered an add-on fee to the Oklahoma-based Purchasing Entities, but is to be included within the cost and discount percentage provided under this Participating Addendum.

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 Fee shall not be reflected as a separate line item in 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 forty-five (45) calendar days from the completion of the applicable quarterly reporting period set forth above.

Contractor agrees to notify OMES-Central Purchasing Procurement via the email address set forth below 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

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following information: (i) the applicable state contract number, (ii) Oklahoma Admin Fee amount(s) paid, and (ii) the applicable quarterly reporting period.

Oklahoma Admin Fee shall be mailed to:
Office of Management and Enterprise Services
Attention: Accounts Receivable
5005 North Lincoln Boulevard, Suite 200
Oklahoma City, OK 73105

IV. Pricing

A. Pursuant to 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, Purchasing Entities under the Contract 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 Participating Addendum shall include and Contractor shall prepay all shipping, packaging, delivery and handling fees. All

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Product deliveries will be Free on Board Purchasing Entity's Destination. No additional fees shall be charged to the Purchasing Entity for standard shipping and handling. If the Purchasing Entity requests expedited or special delivery, Purchasing Entity may be responsible for any charges for expedited or special delivery.

V. Invoices and Payment

Payment terms will be Net 45.

VI. Termination for Non-appropriation

With respect to all Oklahoma-based transactions and all Oklahoma-based Purchasing Entities, 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.

VII. Termination for Cause

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Contractor may terminate the Contract in the event (A.) it has provided the State with written notice of material breach and (B.) the State fails to cure such material breach within thirty (30) days of receipt of written notice. The State may terminate the Contract in whole or in part in the event (A.) it has provided Contractor with written notice of material breach, and (B.) Contractor fails to cure such material breach within thirty (30) days of receipt of written notice. Similarly, a Purchasing Entity may terminate its obligations, in whole or in part, to Contractor if it has provided Contractor with written notice of material breach and Contractor fails to cure such material breach within thirty (30) days of receipt of written notice.

The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Contractor, only if Contractor's material breach is reasonably determined (A.) to be an impediment to the function of the State and detrimental to the State, (B.) when conditions preclude the thirty (30) day notice, or (C.) or when the State determines that an administrative error occurred prior to Contract performance.

If the Contract or certain obligations under the Contract are terminated, the Purchasing Entity shall be liable only for payment for Products or Services delivered and accepted prior to the date of such termination. Such termination shall be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. In no event shall a Purchasing Entity be liable to the Contractor for compensation for any Products neither requested nor accepted by the Purchasing Entity or for any Services neither requested by the Purchasing Entity nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate the Contract for cause relieve the Contractor of any liability to the State or a Purchasing Entity for claims arising under the Contract.

VIII. Maintenance of Insurance, Payment of Taxes, and Worker's Compensation

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A. As a condition of this Contract with the State, Contractor shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability 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 the Contract is a continuing obligation through the term of the Contract and each purchase order issued to Contractor in connection with the Contract. The minimum acceptable insurance limits of liability are as follows:

1. Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
2. 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;
3. 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;
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.

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B. Contractor shall be entirely responsible during the existence of the Contract 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 Contract. 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.

C. Contractor agrees to indemnify and hold harmless 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 its performance under the Contract. In connection with indemnification of 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 or 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.

VIV. Notices

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

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If sent to the State of Oklahoma:

Ferris J. Barger
State Purchasing Director
5005 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

With a copy to:

OMES-Central Purchasing Deputy General Counsel
5005 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

VII. Choice of Law

Any claim, dispute, or litigation relating to the execution, interpretation, performance, or enforcement of this Participating Addendum or any Contract Document shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles.

VII. Choice of Venue

Venue for any action, claim, dispute, or litigation relating in any way to the execution, interpretation, performance, or enforcement of this Participating Addendum, or any of the Contract Documents, shall be in Oklahoma County, Oklahoma. If a claim is brought in a federal forum, it must be brought and adjudicated solely and exclusively in the United States District Court for the Western District of Oklahoma. Further, notwithstanding any provision in the Master Agreement or this Participating 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.

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

X. 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 to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Purchasing Entity may terminate a purchase order if Contractor cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Purchasing Entity.

XI. Invalid Term or Condition

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To the extent of any term or condition in the Participating Addendum conflicts with an applicable Oklahoma and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, Purchasing Entity makes no representation or warranty regarding the enforceability of such term or condition and Purchasing Entity does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the Contract term or condition.

XII. 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 Contract except costs of Contractor that comprise pricing under the Contract, unless otherwise agreed.

B. The Contractor is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition. 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 (20) 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.

XIII. Compliance with Applicable Laws

A. As long as Contractor has an obligation under the terms of the Contract and in connection with performance of its obligations, the Contractor shall comply with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

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- i. Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. § 81.
- 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

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viii. Be registered as a business entity licensed to do business in the State, be registered as a supplier as required by OAC 260:115-3-3, 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 Contract.

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.

Employment Relationship

XIV. This Participating Addendum does not create an employment relationship. Individuals performing Services required by this Participating Addendum are not employees of the 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.

Publicity

XV. Contractor acknowledges and agrees that the existence of this Participating Addendum or any Acquisition thereunder is not in any way an endorsement by the Purchasing Entity, the products or 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

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Addendum wherein the name of the Purchasing Entity is mentioned or language used from which the connection of the 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.

Open Records Act

- XVI.** Contractor acknowledges that 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 pinions of the Oklahoma Attorney General concerning this Act. Except for a provision of the Contract specifically designated as confidential in writing executed by both parties or a provision protected from disclosure in the Open Records Act, no Contract provision is confidential information and, therefore, any provision is subject to disclosure under the Open Records Act.

Confidentiality

- XVII.** A. The Contractor shall maintain strict security of all State data and records entrusted to it or to which the Contractor gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as needed by Contractor for performance of its obligations under the Contract. The Contractor further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. If Contractor utilizes a subcontractor, Contractor shall obtain specific written assurance, and provide a copy to the State, that the subcontractor shall maintain this same level of security of all data and records entrusted to or accessed by the subcontractor and agree to the same obligations as

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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.

Assignment and Permitted Subcontractors

XVIII. A. Contractor's obligations under this Participating Addendum may not be assigned or transferred to any other person or entity without the prior written consent of the State which be withheld at the State's sole discretion. Should Contractor assign its rights to payment, in whole or in part, under this Participating 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 subcontracts in support of this Participating Addendum, the Contractor shall remain solely responsible for its obligations under the terms of this Participating 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 contractor being utilized by the Contractor, the Contractor shall obtain written approval of the State of such subcontractor and each employee, as applicable to a

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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 contractor is bound by and agrees to perform, as applicable, the same covenants and be subject to the same conditions, and make identical certifications to the same facts and criteria, as the Contractor under the terms of all applicable Contract Documents. Contractor agrees that maintaining such agreement with any subcontractor and obtaining prior approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State of Oklahoma further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

C. All payments under this Participating 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.

Mutual Responsibilities of the Parties

- XIX.** 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 Participating 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 Participating Addendum and all other rights and interests are expressly reserved.

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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 Participating Addendum.

E. Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by either Purchasing Entity, the State or the Contractor is required under this Participating Addendum, such action shall not be unreasonably delayed or withheld.

Indemnification

XX. A. Acts of 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 this Participating Addendum.

B. Coordination of Defense

IN CONNECTION WITH INDEMNIFICATION OF A PURCHASING ENTITY WHEN AN OKLAHOMA STATE AGENCY IS NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY SHALL BE COORDINATED BY THE ATTORNEY GENERAL OF OKLAHOMA. THE ATTORNEY GENERAL OF OKLAHOMA MAY, BUT HAS NO OBLIGATION TO, AUTHORIZE CONTRACTOR TO CONTROL THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS; PROVIDED, HOWEVER, THAT,

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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 TO THE EXTENT CONTRACTOR PROVIDES SUCH INDEMNITY UNDER THIS MASTER AGREEMENT.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters the Contractor certifies that the Contractor and its principals:

- XXI.** 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 the 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; 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;

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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 Contract had one or more public (federal, state or local) contracts terminated for cause or default.

If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

Miscellaneous

XXII. 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 this Participating Addendum or Contract Document are intended for convenience only and do not constitute terms of the contract.

C. Sovereign Immunity

Notwithstanding any provision of this Participating Addendum or a Contract Document, the State does not wave its sovereign immunity or immunity from suit.

D. Survival

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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 Contract shall survive expiration or termination of the contract. Additionally, rights and obligations under this Participating 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.