

PARTICIPATING ADDENDUM
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Mailroom Equipment, Supplies and Maintenance
Administered by the State of Arizona

MASTER AGREEMENT

Master Agreement No: ADSP016-169901

Neopost USA Inc.

And

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

(Oklahoma Contract No.: SW1008N)

THIS PARTICIPATING ADDENDUM (this "Addendum") is entered into effective as of October 31, 2017 (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 Neopost USA Inc ("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 Arizona ("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. ADSP016-169901. 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.

WHEREAS, the Master Agreement contemplates that all authorized entities in any state are welcome to use the Master Agreement through NASPO ValuePoint's 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;

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: Any and all Products and Services led by the Lead State along with a multi-state sourcing team for use by state agencies and other entities located in the Participating State/Entity that are authorized by that state's statutes to utilize state /entity contracts, and which receive prior written approval of the state's chief procurement official.
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.

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3. Participating State's Modifications and Additions to the Master Agreement:

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.

The Master Lease Agreement set forth as Exhibit No. 2, attached hereto, is hereby incorporated in and made part of this Addendum.

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

Contractor

Name	Dave Nagel
Address	478 Wheelers Farms Road, Milford, CT 06461
Telephone	573-489-8860
Fax	
E-mail	d.nagel@neopost.com

Participating Entity

Name	IT Statewide Initiatives Lead
Address	5005 N. Lincoln Blvd. Ste. 200, Oklahoma City, OK 73105
Telephone	(405) 521-4772
Fax	N/A
E-mail	purchasing@omes.ok.gov

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.

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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.

All purchase orders issued by purchasing entities within the jurisdiction of this Addendum must include the following (1) Mandatory Language "PO is subject to Participating State Contract SW1008N" (2) Your Name, Address, Contact, Phone Number, and Signature.

8. Leasing: All leasing transactions in the State of Oklahoma will be governed by Exhibit 2 Master Lease Agreement attached and incorporated into this Participating Addendum.

9. 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.

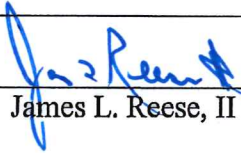
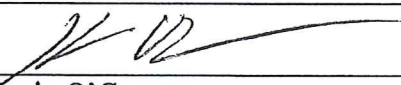
10. Software: Software subscription terms and Software license terms and conditions have not been negotiated by the State of Oklahoma. The Software subscription terms and Software license terms and conditions from Arizona's Master Agreement, shall not be applicable to any acquisitions off of this Participating Addendum until: **(1) For State Agencies**, Software subscription terms and Software license terms and conditions shall be mutually agreed upon in writing by the State of Oklahoma Office of Management and Enterprise Services and Neopost USA Inc. **(2) For non-State agencies** Software subscription terms and Software license terms and conditions shall be mutually agreed upon in writing by the purchasing entity's authorized individual and Neopost USA Inc.

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Neopost USA Inc.

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

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

Participating State:	Contractor: Neopost USA Inc.
By: 	By: 
Name: James L. Reese, II	Name: Kevin O'Connor
Title: Chief Information Officer	Title: VP Marketing
Date: 11-2-17	Date: 10/31/2017

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]

MASTER LEASE AGREEMENT
(Oklahoma)
Between State Of Oklahoma by and through OMES
And MailFinance Inc. ("Lessor")
Dated October 31, 2017

1. Scope.

This Master Lease Agreement (this "Agreement" or "MLA"), effective as of the Effective Date set forth above, is between the Lessor and Lessee named above. Capitalized terms have the meaning set forth in this Agreement.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the Equipment described on each Lease Schedule ("Schedule"), which is a separate agreement executed from time to time by Lessor and Lessee under the terms of this MLA. The terms and conditions contained herein shall apply to each Schedule that is properly executed in conjunction with this MLA by Lessee, which shall hold the same meaning as Purchasing Entity as defined under Oklahoma's Participating Addendum. The State has made an independent legal and management determination to enter into this MLA and each Schedule. The state of Oklahoma by and through the Office of Management and Enterprise Services ("OMES") has not offered or given any legal or management advice to the Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with the Lessor to satisfy individual procurements, such terms shall be developed by the Lessor and Lessee and stated within an amendment to the MLA or the Schedule. To the extent that any of the provisions of the MLA conflict with any of the terms contained in any Schedule, the terms of the Schedule shall control. It is expressly understood that the term "Equipment" shall refer to the Mailroom Equipment, Supplies, and Maintenance as allowed within the Oklahoma Participating Addendum, between Neopost USA, Inc and the State of Oklahoma by and through the Office of Management and Enterprise Services, effective October 31, 2017 and referencing Arizona State contract NO. ADSPO16-169901 (collectively known as the "Contract"), as described on a Schedule and any associated items therewith, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, all documentation (technical and/or user manuals), operating system and application software as needed.

Any reference to "MLA" shall mean this Agreement, including the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement by Lessee and Lessor.

As to conditions precedent to Lessor's obligation to purchase any Equipment, (i) Lessee shall accept the MLA terms and conditions as set forth herein and execute all applicable documents such as the MLA, the Schedule, the Acceptance Certificate, Opinion of Counsel (only required in connection with a Schedule in excess of \$500,000.00), and any other documentation as may be required by the Lessor that is not in conflict with this MLA, and (ii) there shall be no material adverse change in Lessee's financial condition except as provided for within Section 7 of this MLA.

2. Term of MLA.

The term of this MLA shall commence on the Effective Date above and shall continue until (i) the obligations of Lessee under every Schedule are fully discharged, (ii) the full and final expiration date of the Contract, or (iii) either the State of Oklahoma or Lessor exercises their termination rights as stated within 7.2 State of Arizona Uniform Terms and Conditions of the Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA, before all obligations of Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or Lessee hereunder shall survive said termination or expiration.

3. Term of Schedule.

The term for each Schedule, executed under this MLA, shall commence on the date of execution of an Acceptance Certificate by the Lessee or twenty (20) days after the delivery of the last piece of Equipment to the Lessee ("Commencement Date"), and unless earlier terminated as provided for in the MLA, shall continue for the number of whole months or other payment periods as set forth in the applicable Schedule Term, commencing on the first day of the month following the Commencement Date (or commencing on the Commencement Date if such date is the first day of the month). The Schedule Term may be earlier terminated upon: (i) the Non-appropriation of Funds pursuant to Section 7 of this MLA, (ii) an Event of Loss pursuant to Section 18 of this MLA, or (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 22 of this MLA.

4. Administration of MLA.

- (a) For requests involving the leasing of Equipment, Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within Section 4 of the Contract or the price as agreed upon by Lessee and Lessor. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee.
- (b) All leasing activities in conjunction to this MLA shall be treated as a "purchase sale" in regards to the requirements of the Lessor to report the sale and make payment of the DIR administrative fee or other applicable regulatory authority as defined within Section 5 of the Contract.
- (c) Upon agreement by Lessor and Lessee on pricing, availability and the like, Lessee may issue a purchase order to Lessor for the Equipment and reference said Contract number on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and applicable Schedule terms and conditions shall control in all respects.
- (d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

5. Rent Payments.

During the Schedule Term and any renewal terms, Lessee agrees to pay Lessor Rent Payments. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made.

Any amounts received by Lessor from the Lessee in excess of Rent Payments and any other sums required to be paid by the Lessee shall be applied to the next scheduled Rent Payment due under the applicable Schedule, or if prohibited by law, the Lessor shall return the excess funds directly to Lessee. All Rent Payments shall be paid to the Lessor at the address stated on the Schedule or any other such place as the Lessor or its assigns may hereafter direct to the Lessee. Lessee shall abide by Section 5 of Exhibit 1 to Oklahoma Participating Addendum in making payments to the Lessor. Any sum received by the Lessor later than allowed by applicable Oklahoma law will bear interest in accordance with such applicable law. To the extent allowed by applicable law, late charges, attorney's fees and other costs or expenses necessary to recover Rent Payments and any other amounts owed by Lessee hereunder are considered an integral part of this MLA.

Each Schedule is a net lease and except as specifically provided herein or in a Schedule, Lessee shall be responsible for all costs and expenses arising in connection with the Schedule or Equipment. Lessee acknowledges and agrees, except as specifically provided for in Section 7 of this MLA, that its obligation to pay Rent and other sums payable hereunder, and the rights of Lessor and Lessor's assignees, shall be absolute and unconditional in all events, and shall not be abated, reduced or subject to offset or diminished as a result of any event, including without limitation damage, destruction, defect, malfunction, loss of use, or obsolescence of the Equipment, or any other event, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims Lessee may have against Lessor, Lessor's assigns, the manufacturer, vendor, or maintainer of the Equipment, or any person for any reason whatsoever.

"Price" shall mean the actual purchase price of the Equipment. Rent Payments shall be adjusted proportionately downward if the actual price of the Equipment is less than the estimate (original proposal), and the Lessee herein authorizes Lessor to adjust the Rent Payments downward in the event of the decrease in the actual Equipment price. However, in the event that the Equipment price is more than the estimate (original proposal), the Lessor may not adjust the Rent Payment without prior written approval of the Lessee.

6. Liens and Taxes.

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom, Lessee shall

promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, personal property taxes and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

7. Appropriation of Funds.

- (a) This paragraph applies only to Lessees designated as state agencies or other governmental entities authorized by Oklahoma law to utilize contracts awarded by the State of Oklahoma.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated or received from an intended third party funding source to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of Lessee beyond the Fiscal Period first in effect at the Commencement of the Schedule Term, Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall provide Lessor written notice within a reasonable time after which the Lessee has knowledge of such insufficiency and confirm the Schedule will be so terminated prior to the end of its current Fiscal Period. All obligations of Lessee to pay Rent due after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in the Equipment will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee beyond the Fiscal Period for which sufficient funds have been appropriated to pay Rent hereunder.

8. Selection of Equipment.

The Equipment is the size, design, capacity and manufacture selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor. No representation by the manufacturer or a vendor shall in any way affect Lessee's duty to pay Rent and perform its other obligations hereunder. Each

Schedule is intended to be a "finance lease" as defined in Article 2A of the Uniform Commercial Code. Lessor has acquired or will acquire the Equipment in connection with this MLA. Lessor shall not be liable for damages for any reason, for any act or omission of the supplying manufacturer. Lessor hereby assigns, to the extent they are assignable, to the Lessee, without recourse to Lessor, any warranties provided to Lessor with respect to the Equipment during the Term of the applicable Schedule. Lessee acknowledges that neither its dissatisfaction with any unit of Equipment, nor the failure of any of the Equipment to remain in useful condition for the Schedule Term, nor the loss of possession or the right of possession of the Equipment or any part thereof by the Lessee, shall relieve Lessee from the obligations under this MLA or Schedule Term. Lessee shall have no right, title or interest in or to the Equipment except the right to use the same upon the terms and conditions herein contained. The Equipment shall remain the sole and exclusive personal property of the Lessor and not be deemed a fixture whether or not it becomes attached to any real property of the Lessee. Any labels supplied by Lessor to Lessee, describing the ownership of the Equipment, shall be affixed by Lessee upon a prominent place on each item of Equipment.

9. Inspection and Acceptance.

Promptly upon delivery of the Equipment, Lessee will inspect and test the Equipment, and not later than ten (10) business days following the Commencement Date, Lessee will execute and deliver either (i) an Acceptance Certificate, or (ii) written notification of any defects in the Equipment. If Lessee has not given notice within such time period, the Equipment shall be conclusively deemed accepted by the Lessee as of the tenth (10th) business day. Lessor, its assigns or their agents, shall be permitted free access at reasonable times authorized by the Lessee, the right to inspect the Equipment.

10. Installation and Delivery; Use of Equipment; Repair and Maintenance.

- (a) Except as provided otherwise in a Schedule, all transportation, delivery, and installation costs associated with the Equipment shall be borne by the Lessee. Lessor is not and shall not be liable for damages if for any reason the manufacturer of the Equipment delays the delivery or fails to fulfill the order by the Lessee's desired timeframe. Any delay in delivery by the manufacturer shall not affect the validity of any Schedule. Lessee shall provide a place of installation for the Equipment, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Equipment.

- (c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessor agrees that state agencies of Oklahoma may obtain internal maintenance services in lieu of a third party maintenance agreement, so long as any such maintenance service does not void the Equipment manufacturer's or supplier's warranty. Except as provided otherwise in a Schedule, Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. If Lessee desires to lease any such additions or attachments, Lessee hereby grants to Lessor the right of first refusal to provide such lease financing to Lessee for such items. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

11. Relocation of Equipment.

Lessee shall at all times keep the Equipment within its exclusive possession and control. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may move the Equipment to another location of Lessee within the continental United States, provided (i) Lessee is not in default on any Schedule, (ii) Lessee executes and causes to be filed at its expense such instruments as are necessary to preserve and protect the interests of Lessor and its assigns in the Equipment, (iii) Lessee pays all costs of, and provides adequate insurance during such movement, and (iv) Lessee pays all costs otherwise associated with such relocation. Notwithstanding the foregoing, Lessee may move the Equipment to another location within Oklahoma without notification to, or the consent of, Lessor. Provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Equipment at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Equipment, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Equipment.

12. Ownership.

The Equipment shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Equipment except a leasehold interest as provided for herein. Lessee agrees that the Equipment shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of the Lessor. Upon request, Lessee will enter into any and all agreements necessary to ensure that the Equipment remain the personal property of Lessor.

13. Purchase and Renewal Options; Location and Surrender of Equipment.

- (a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term Lessor shall notify Lessee of options for continued use of Equipment. Lessee shall have the option to: (i) renew the

Schedule as to all but not less than all of the Equipment, or (ii) purchase all but not less than all of the Equipment for cash or by the Lessor's acceptance of a purchase order from Lessee upon the last business day on or prior to the expiration of the Schedule Term thereof for a price equal to the amount set forth in the Schedule. If the Fair Market Value (FMV) Purchase Option was selected on the Schedule, the FMV shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee desires to exercise either option, it shall give Lessor irrevocable written notice of its intention to exercise such option at least sixty (60) days (and not more than 180 days) before the expiration of such Schedule Term. In the event that Lessee exercises the purchase option described herein, upon payment by Lessee to Lessor of the purchase price for the Equipment, together with all Rent Payments and any other amounts owing to Lessor hereunder, Lessor shall transfer to Lessee without any representation or warranty of any kind, express or implied, title to such Equipment. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF LESSEE FAILS TO NOTIFY LESSOR OF ITS INTENT WITH RESPECT TO THE EXERCISE OF THE OPTIONS DESCRIBED IN THIS SECTION 13 WITHIN THE TIME FRAMES CONTEMPLATED HEREIN, THE INITIAL SCHEDULE TERM SHALL BE TERMINATED ON THE DATE AS STATED IN THE SCHEDULE.

- (b) The Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent and in accordance with Section 11 of this MLA. Upon the expiration, early termination as provided herein, or upon final termination of the Schedule, upon at least ninety (90) days prior written notice to Lessor, Lessee at its cost and expense, except as provided otherwise in a Schedule, shall immediately disconnect, properly package for transportation and return all (not part) of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair and working order, with no defects which affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Except as provided otherwise in a Schedule, Lessee shall return the Equipment to Lessor at a location specified by Lessor, provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. If the Equipment is not in Return Condition, Lessee shall remain liable for all reasonable costs required to restore the Equipment to Return Condition. Except as provided otherwise in a Schedule, Lessee shall arrange and pay for the de-installation and packing of the Equipment and the de-installation shall be performed by manufacturer-certified technicians and the Lessor shall have the right to supervise and direct the preparation of the Equipment for return. IF, UPON TERMINATION OR EXPIRATION OF THE SCHEDULE FOR ANY REASON, LESSEE FAILS OR REFUSES FORTHWITH TO RETURN AND DELIVER THE EQUIPMENT TO LESSOR, LESSEE SHALL REMAIN LIABLE FOR ANY RENT PAYMENTS ACCRUED AND UNPAID WITH RESPECT TO ALL OF THE EQUIPMENT ON THE SCHEDULE AND SHALL PAY RENT UP TO THE DATE THAT THE EQUIPMENT IS RETURNED TO THE ADDRESS SPECIFIED BY LESSOR, TO THE EXTENT SUCH AMOUNTS ARE NOT PAID TO LESSOR AS INSURANCE PROCEEDS.

Notwithstanding the foregoing, Lessor shall have the right, with due process of law, to enter Lessee's premises or any other premises where the Equipment may be found and to take possession of and to remove the Equipment, at Lessee's sole cost and expense. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the constitution and laws of the State of Oklahoma, Lessee's obligation to return Equipment may, at Lessor's option, be specifically enforced by Lessor.

14. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Equipment provided that an Event of Default (as hereinafter defined in Section 22 of the MLA) has not occurred and remains uncured after any applicable cure period.

15. Warranties.

Lessor and Lessee acknowledge that manufacturer Equipment warranties, if any, inure to the benefit of the Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer of the Equipment and shall not pursue any such claim against Lessor. Except as provided under Section 7, Lessee shall continue to pay Lessor all amounts payable under any Schedule under any and all circumstances.

16. No Warranties.

LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER OR LICENSOR OF THE EQUIPMENT. LESSEE AGREES THAT LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, OR QUALITY OF THE EQUIPMENT OR ANY UNIT THEREOF. LESSEE SPECIFICALLY WAIVES ALL RIGHT TO MAKE CLAIM AGAINST LESSOR FOR BREACH OF ANY EQUIPMENT WARRANTY OF ANY KIND WHATSOEVER; AND WITH RESPECT TO LESSOR, LESSEE LEASES EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT LEASED HEREUNDER, OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIRS, SERVICE OR ADJUSTMENT THERETO OR ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEROF, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED WITHOUT IN ANY WAY IMPLYING THAT ANY SUCH WARRANTY EXISTS AND WITHOUT INCREASING ITS LIABILITY HEREUNDER, TO ASSIGN TO LESSEE UPON LESSEE'S REQUEST THEREFOR ANY WARRANTY OF A MANUFACTURER OR LICENSOR OR SELLER RELATING TO THE EQUIPMENT THAT MAY HAVE BEEN GIVEN TO LESSOR.

17. Indemnification.

- (a) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee shall indemnify, protect, save

and hold harmless Lessor, its agents, servants and successors from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses and attorney's fees, of whatsoever nature, arising out of the use, misuse, condition, repair, storage, return or operation (including, but not limited to, latent and other defects, whether or not discoverable by it) of any unit of Equipment, regardless of where, how and by whom operated, and arising out of negligence (excluding the gross negligence or willful misconduct of Lessor). Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee is liable for the expenses of the defense or the settlement of any suit or suits or other legal proceedings brought to enforce any such losses, damages, injuries, claims, demands, and expenses and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of the MLA or a Schedule whether by expiration of time, by operation of law or otherwise. With respect to Lessor, Lessee is an independent contractor, and nothing contained herein authorizes Lessee or any other person to operate the Equipment so as to impose or incur any liability or obligation for or on behalf of Lessor.

- (b) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee assumes all risks and liabilities with respect to any claim made by any third party that the lease arrangements herein are not authorized by law. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Oklahoma, Lessee agrees to indemnify, save and hold harmless Lessor from any and all such claims and all expenses incurred in connection with such claims or to defend against such claims, including without limitation any judgments by a court of competent jurisdiction or settlement or compromise with such claimant.
- (c) Lessor is the owner of the Equipment and has title to the Equipment. If any other person attempts to claim ownership of the Equipment by asserting that claim against Lessee or through Lessee, Lessee agrees, at its expense, to protect and defend Lessor's title to the Equipment to the extent permitted by applicable law. Lessee further agrees that it will at all times keep the Equipment free from any legal process, encumbrance or lien whatsoever, and Lessee shall give Lessor immediate notice if any legal process, encumbrance or lien is asserted or made against the Equipment. Lessee's obligations herein do not apply to any claim of ownership asserted against or through Lessor.

18. Risk of Loss.

Commencing upon delivery of the Equipment and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to any Equipment, whether partial or complete, from any cause whatsoever; provided, such loss or damage shall be covered by insurance Lessor includes in the Rent amount. In the event of loss, theft, destruction or damage of any kind to any item of Equipment, or if any Equipment is lost stolen, or taken by governmental action for a stated period extending beyond the Term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor. Lessee shall, at its option: (a) immediately place the affected Equipment in good condition and working order, (b) replace the affected Equipment with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value ("SLV" as hereafter defined) for such affected

Equipment, plus any other unpaid amounts then due under the Schedule to the extent such amounts are not paid to Lessor as insurance proceeds. If an Event of Loss occurs as to part of the Equipment for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of Equipment for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of the Lessee with respect to such Equipment (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

19. Insurance.

Lessor shall insure the Equipment. The cost to insure the Equipment shall be included in the Rent. With respect to insurance of the Equipment, (i) Lessor shall be responsible for its liability and shall not look to Lessee for recovery of any kind and (ii) Lessee shall be responsible for its liability as required under the Oklahoma Governmental Tort Claims Act and shall not look to Lessor for recovery of any kind.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel (only required in connection with a Schedule in excess of \$500,000.00) to the effect that, as of the time of execution of the MLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either an Oklahoma state agency or an Oklahoma Affiliate. "Affiliate" means any governmental entity specified as a political subdivision of the state of Oklahoma pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee department or other entity designated to act in behalf of the political subdivision; a state county or local governmental entity in its state of origin; and entities authorized to utilize contracts awarded by the state of Oklahoma via a multistate or multi-governmental contract. Lessee has made an independent legal and management determination to enter into this transaction;
- (b) This MLA and each Schedule executed by Lessee has been duly or will be, as applicable, authorized, executed and delivered by Lessee and constitutes or will constitute, as applicable, a valid, legal and binding agreement of Lessee, enforceable with respect to the obligations of Lessee herein or therein, as applicable, in accordance with its terms and reflects or will reflect, as applicable, the terms previously approved by OMES as part of the Contract;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee under this MLA or any Schedule, as applicable, between Lessor and Lessee;

- (d) The entering into and performance under this MLA or any Schedule between Lessor and Lessee will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Equipment leased under any Schedule between Lessor and Lessee pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MLA or any Schedule, as applicable, between Lessor and Lessee;
- (f) The use of the Equipment is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has or will have, as applicable, authority to enter into this MLA and any Schedule under this MLA, (ii) the person executing the MLA has been duly authorized to execute the MLA on Lessee's behalf, (iii) all information supplied to Lessor is true and correct to the best of its knowledge and belief, including all credit and financial information and (iv) subject to the provisions of Section 7 above, it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representations and Warranties of Lessor.

Lessor represents and warrants for the benefit of Lessee and its assigns as of the time of execution of the MLA and each Schedule between Lessor and Lessee:

- (a) Lessor is and shall remain an entity authorized and validly existing under the laws of its state of organization which is authorized to do business in Oklahoma, and is not in default as to taxes owed to the State of Oklahoma or any of its political subdivisions;
- (b) The MLA and each Schedule executed in conjunction to this MLA has been or will be, as applicable, duly authorized, executed and delivered by Lessor and constitutes or will constitute, as applicable, a valid, legal and binding agreement of Lessor, enforceable with respect to the obligations of Lessor herein or therein, as applicable, in accordance with its terms and reflects or will reflect, as applicable, the terms previously approved as part of the Contract;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA or any Schedule, as applicable;
- (d) The entering into and performance of the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor,

including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound;

- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MLA or any Schedule, as applicable; and
- (f) Lessor represents and warrants that the person executing the MLA has been duly authorized to execute the MLA on Lessor's behalf.

22. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable; (b) nonpayment or incomplete payment by Lessee of Rent or any other sum payable the latter of its due date or the date by which such sum is payable pursuant to applicable law; (c) failure by Lessee to perform or observe any other material term, covenant or condition of this MLA, the Schedule, or any applicable software license agreement, which is not cured within ten (10) business days after receipt of notice thereof from Lessor; (d) insolvency by Lessee; (e) Lessee's filing of any proceedings commencing bankruptcy or the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (f) subjection of a substantial part of Lessee's property or any part of the Equipment to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) any representation or warranty made by Lessee in this MLA, the Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Equipment being untrue when made. The parties agree to use ever increasing levels of executive escalation within their respective organizations to cure any breach based on (g) above prior to such event being declared an Event of Default.

23. Remedies.

- (a) Upon the occurrence of an uncured "Event of Default" and as long as such Event of Default is continuing, Lessor may, in its sole discretion, do any one or more of the following provided, however, that Lessor may not recover value in excess of amounts as allowed under the terms of the Schedule and by applicable law: (i) After giving fifteen (15) days prior written notice to Lessee of default, during which time Lessee shall have the opportunity to cure such default, terminate the Schedule under which Lessor claims default of Lessee; (ii) without Lessee waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Oklahoma, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule and/or recover damages; (iii) whether or not the Schedule is terminated, upon notice to Lessee and with due process of law, take possession of the Equipment wherever located, and for such purposes Lessee, to the extent authorized by Oklahoma law, hereby authorizes Lessor, its assigns or the agents of either to cause Lessee to return such Equipment to Lessor in accordance with the requirements of Section 13 of the MLA; (iv) by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and not as a

penalty, the sum of (a) the present value of the Rent owed from the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, to the extent the Lessor does not take possession, with due process of law, of the Equipment or the Equipment is not returned to Lessor, the present value of the estimated in-place fair market value of the Equipment as defined in Section 13 of MLA at the end of the Schedule Term as reasonably determined by Lessor, each discounted at the like-term Treasury Bill rate; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without Lessee and the state of Oklahoma waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Oklahoma, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 ½% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.

(b) Upon return or repossession, with due process of law, of the Equipment, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Equipment, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Equipment, Lessor shall credit the Net Proceeds (as defined below) to the unpaid Rent and reasonable damages incurred by Lessee. Proceeds upon sale of the Equipment shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Without Lessee waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Oklahoma, "Net Proceeds" shall be the proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Equipment, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be paid to Lessee.

(c) No termination, repossession with due process of law or other act by Lessor in the exercise of its rights and remedies upon an Event or Default shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.

24. Notices and Waivers.

All notices relating to this MLA shall be delivered to the Lessor as specified within Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of the Lessor or Lessee or shall be mailed certified or registered to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. Lessee and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as

originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes. This MLA and each corresponding Schedule agreed to in conjunction herewith are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Event of Default shall not be a waiver of any other or subsequent Event of Default. No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor or Lessee, as applicable. No failure to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

25. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MLA and/or any Schedule, but not Lessor's obligations; (ii) grant a security interest in the right, title and interest of Lessor in the MLA, any Schedule and/or any Equipment; and/or (iii) sell or transfer its title and interest as owner of the Equipment and/or as Lessor under any Schedule; and Lessee understands and agrees that Lessor's assigns may each do the same (hereunder collectively "Assignments"). If such assignment changes the party to whom Rent Payments are due herein, then Lessor shall provide Lessee notice of all such Assignments to the following addresses, and such Assignments shall be subject to Lessee rights under the MLA and corresponding Schedule(s):

(b)

If sent to the state of Oklahoma:

Chief Information Officer
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

With a copy to:

ISD Deputy General Counsel
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105.

Lessee hereby consents to such Assignments and agrees to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested and necessary pursuant to applicable Oklahoma law to effect such Assignment. Lessee acknowledges that the assigns do not assume Lessor's obligations hereunder and agrees to make all payments owed to the assigns without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which the Lessee(s) may possess against the Lessor or any other party for any other reason. Lessor shall remain liable for its performance under the MLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor, shall also include all such assigns, whether specific reference thereto is otherwise made herein.

- (c) **LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE OR OTHERWISE ENCUMBER, OR PERMIT A LIEN TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE, OR THE EQUIPMENT, OR REMOVE THE EQUIPMENT FROM ITS LOCATION REFERRED TO ON THE SCHEDULE, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT EXCEPT AS PROVIDED IN SECTION 11 OF THIS MLA. LESSOR MAY**

ASSIGN ITS INTEREST IN THIS LEASE AND SELL OR GRANT A SECURITY INTEREST IN ALL OR ANY PART OF THE EQUIPMENT WITHOUT LESSEE'S CONSENT. If LESSEE IS A STATE AGENCY, WITHOUT WAIVING THE DOCTRINE OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND ONLY AS MAY BE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF OKLAHOMA, LESSEE AGREES THAT IN ANY ACTION BROUGHT BY AN ASSIGNEE AGAINST LESSEE TO ENFORCE LESSOR'S RIGHTS HEREUNDER, LESSEE WILL NOT ASSERT AGAINST SUCH ASSIGNEE AND EXPRESSLY WAIVES AS AGAINST ANY ASSIGNEE, ANY BREACH OR DEFAULT ON THE PART OF LESSOR HEREUNDER OR ANY OTHER DEFENSE, CLAIM OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR EITHER HEREUNDER OR OTHERWISE. NO SUCH ASSIGNEE SHALL BE OBLIGATED TO PERFORM ANY OBLIGATION, TERM OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR HEREUNDER. Without the prior written consent of Lessor, the Lessee shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement; provided, however, where Lessee is a state agency, no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the contract to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information as required by and satisfactory to Lessor: (a) Certificate of Acceptance for accepted goods to be on lease with Lessor; (b) Opinion of Counsel (only required in connection with a Schedule in excess of \$500,000.00); (c) financial statements or other financial information in lieu thereof as agreed to by Lessor's credit department in its sole judgment; (d) Incumbency Certificate; and (e) other mutually agreed documents as reasonably required by Lessor.

28. Lessee's Waivers.

To the extent permitted by applicable law, Lessee hereby waives, with respect to Lessor, the following rights and remedies conferred upon Lessee by Article 2A of the UCC: to (i) cancel any Schedule under the MLA; (ii) repudiate any Schedule; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breach of warranty by the manufacturer; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under any Schedule; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for the Equipment due from Lessor; (x) recover any special, punitive, incidental or consequential damages, for any reason whatsoever. Lessee agrees that any delay or failure to enforce Lessor's rights under this MLA or a Schedule does not prevent Lessor from enforcing any rights at a later time. This waiver of UCC rights does not include Lessee's right to terminate a lease subject to a non-appropriation of funds, pursuant to Section 7 above.

29. Security Interest and UCC Filings.

To secure payments hereunder, Lessor reserves and Lessee hereby grants to Lessor a continuing security interest in the Equipment and any and all additions, replacements, substitutions, and repairs thereof. When

all of the Lessee's obligations under this MLA and respective Schedules have been fully paid and satisfied, Lessor's security interest shall terminate. Nothing contained herein shall in any way diminish Lessor's right, title, or interest in or to the Equipment. Lessor and Lessee agree that a reproduction of this MLA and/or any associated Schedule may be filed as a financing statement and shall be sufficient as a financing statement under the UCC. Lessee hereby appoints Lessor, its agents, successors or assigns its true and lawful attorney-in-fact for the limited purpose of executing and filing on behalf of Lessee any and all UCC Financing Statements which in Lessor's sole discretion are necessary or proper to secure Lessor's interest in the Equipment in all applicable jurisdictions. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, as Lessor deems necessary or advisable for the protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto.

30. Miscellaneous.

- (a) Jurisdiction. THE MLA AND EACH SCHEDULE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OKLAHOMA. In the event of a dispute between the parties, suit may be brought in Oklahoma County, Oklahoma or in the case of an Affiliate Lessee, in the federal or state courts where Lessee has its principal office or where the Equipment is located.
- (b) Counterpart. Only original counterpart No. 1 of each Schedule shall be deemed to be an "Original" for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts shall be deemed to be a "Copy". NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY "COPY" OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE "ORIGINAL" COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.
- (c) Intentionally left blank.
- (d) Severability. In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.
- (e) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in this MLA, including the Contract and in each Schedule to which Lessor and Lessee are signatory parties. Lessor and Lessee further acknowledge that this MLA, including the Contract, and each Schedule to which Lessor and Lessee are signatory parties contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee, order acknowledgement and other forms issued by Lessor, and the like. Lessee and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and the Contract and that both contain the entire agreement between them. The terms and conditions of this MLA may be amended only by written instrument

executed by Lessor and Lessee. The terms of a Schedule may only be amended in a writing signed by both Lessee and Lessor.

- (f) Headers. The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.
- (g) Language context. Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.
- (h) Lessor Certifications. Lessor certifies that:
 - (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this MLA and/or any Schedules executed hereunder;
 - (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Oklahoma and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;
 - (iii) neither it , nor anyone acting for it, has violated the antitrust laws of the United States or the State of Oklahoma, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
 - (iv) it has not received payment from the state of Oklahoma, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;
 - (v) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the MLA;
 - (vi) Neither it nor its affiliates are suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration;
 - (vii) Neither it nor its affiliates, as of the effective date of the MLA, are listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
 - (viii) to the extent applicable to the scope of this MLA, Lessor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;

(ix) That it will comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, including but not limited to being 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;

(x) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;

During the term of the MLA, Lessor shall, for itself and on behalf of its subcontractors, promptly disclose to the state of Oklahoma all changes that occur to the foregoing certifications, representations and warranties. Lessor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties

(i) Sovereign Immunity. Nothing herein shall be construed to waive the sovereign immunity of the state of Oklahoma.

31. Amendments.

The terms and conditions of this MLA may be amended only by written instrument executed by the Lessor and Lessee.

EXECUTED by the undersigned on the dates set forth below, to be effective as of the Effective Date.

State of Oklahoma by and through OMES

"Lessee"

BY: 

NAME: James L. Reese, II

TITLE: Chief Information Officer

MallFinance Inc.

"Lessor"

BY: 

NAME: Kevin O'Connor

TITLE: VP Marketing

Exhibit No. 1 Oklahoma Specific Terms and Conditions

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.

1. 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. Contract Document

The term (“Contract Document”) means this Agreement, any statement of work, work order, or other similar ordering document related hereto and executed by the Vendor 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 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.

D. Destination

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

E. Indemnified Parties

Exhibit No. 1 Oklahoma Specific Terms and Conditions

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

2. Limitation of Authority

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

3. 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 net 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 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

Exhibit No. 1 Oklahoma Specific Terms and Conditions

reporting period set forth above.

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 200
Oklahoma City, OK 73105

4. Pricing

- A.** Pursuant to 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, Customers under the Contract that are Oklahoma state agencies are exempt from the assessment of State sales, use, and excise taxes. Further, such Customers and Customers that are political subdivisions of the State of Oklahoma are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Customers will provide Vendor with a tax exemption certificate upon request. Any taxes of any nature whatsoever payable by the Vendor shall not be reimbursed by the Customer.
- 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 Customer under the Participating Addendum shall include and Vendor shall prepay all shipping, packaging, delivery and handling fees. All Product deliveries will be Free on Board Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

5. Invoices and Payment

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

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Oklahoma law.

6. **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.

7. **Notices**

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

If sent to the State of Oklahoma:

James L. Reese, II
Chief Information Officer
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

With a copy to:

OMES-IS Deputy General Counsel
3115 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

8. **Choice of Law**

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

9. **Choice of Venue**

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

10. Conflict of Interest

In addition to any requirement of law or through a professional code of ethics or conduct, the Vendor, 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 Vendor has an obligation under the Agreement, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State.

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

12. Invalid Term or Condition

To the extent any term or condition in the Participating Addendum conflicts with an applicable Oklahoma and/or United States law or regulation, such 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

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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.

13. 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. Vendor 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 Vendor that comprise pricing under the Contract, unless otherwise agreed.

- B.** The Vendor 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 (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.

14. Compliance with Applicable Laws

- A.** As long as Vendor has an obligation under the terms of the Contract and in connection with performance of its obligations, 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:
 - 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;

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- 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 Vendor shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- C.** As applicable, Vendor 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.

15. Employment Relationship

The Addendum does not create an employment relationship. Individuals performing Services required by the Addendum are not employees of the Purchasing Entity. The Vendor'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.

16. Publicity

Vendor acknowledges and agrees that the existence of the Contract 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 Vendor in any advertising or publicity materials.

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Vendor agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Participating 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. 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 without obtaining the prior written approval of the State.

17. Open Records Act

Vendor acknowledges that Purchasing Entity are subject to the Oklahoma Open Records Act. Vendor 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 Contract specifically designated as confidential in a 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.

18. Confidentiality

- A.** 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 and records only as needed by Vendor for performance of its obligations under the Contract. 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 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 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 Customer or in compliance with a valid court order. The Vendor 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 Vendor or any subcontractor or to which the Vendor or subcontractor has access and Vendor

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shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

19. Assignment and Permitted Subcontractors

- A. Vendor's obligations under the 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 Vendor assign its rights to payment, in whole or in part, under the Addendum, Vendor 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 Vendor is permitted to utilize subcontractors in support of the Addendum, the Vendor shall remain solely responsible for its obligations under the terms of the 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 Vendor, the Vendor 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 Vendor. Such approval is within the sole discretion of the State. Vendor shall maintain a written agreement with the 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 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 of Oklahoma further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

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

20. Failure to Enforce

Failure by the State or a Customer, as applicable, at any time to enforce a provision of, or exercise a right under, the 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 Customer to enforce any

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provision of, or exercise any right under, the 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.

21. Mutual Responsibilities of the Parties

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

22. Indemnification

A. Acts or Omissions

Vendor 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 Vendor or its agents, employees, or subcontractors in the execution or performance of the Addendum.

B. Coordination of Defense

IN CONNECTION WITH INDEMNIFICATION OF A PURCHASING ENTITY WHEN AN OKLAHOMA STATE AGENCY IS A NAMED DEFENDANT IN ANY LAWSUIT, THE DEFENSE OF THE OKLAHOMA STATE AGENCY

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

23. Miscellaneous

A. Severability

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect.

B. Section Headings

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

C. 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 Vendor and any Customer

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under the terms of the Contract shall survive expiration or termination of the contract. Additionally, rights and obligations under the 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 Customer and Vendor. 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.

B. Compliance and 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 shall provide a Voluntary Product Accessibility Template (“VPAT”) describing such compliance, which may be provided via a URL linking to the VPAT. If Products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Vendor. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum. Accordingly, in each statement of work or similar document issued pursuant to the Addendum, 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.

C. Offshore Services

Contractor shall not store, access, nor process outside of the United States of America any data belonging to any such Purchasing Entity without the prior written approval of the Participating State/Entity, which approval may be given or withheld at the sole and absolute discretion of the Participating State/Entity. Notwithstanding, this section shall not prohibit Contractor from providing Order related administration and/or support services available from its global locations outside of the United States.