PARTICIPATING ADDENDUM BETWEEN THE STATE OF OKLAHOMA AND WORKDAY, INC ("SW1022W") TO THE NASPO MASTER AGREEMENT NO. AR2507

NASPO ValuePoint
PARTICIPATING ADDENDUM

CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

Master Agreement #: AR2507

Contractor: **WORKDAY, INC.**

Participating Entity: **STATE OF OKLAHOMA**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. Scope: This Participating Addendum ("Addendum") is entered into and effective July 24, 2020 (the "Effective Date"), by and between the State of Oklahoma, by and though the Office of Management and Enterprise Services (the "State" or "Participating Entity") and Workday, Inc. ("Contractor") and covers ***Cloud Solutions*** led by the State of Utah for use by state agencies, interlocal entities, and affiliates authorized by the State to utilize State contracts with the prior approval of the State's Chief Procurement Official.

   This Addendum consists of the following documents, which are incorporated herein as part of this Addendum:

   a) Exhibit No. 1 - The State of Oklahoma Specific Terms and Conditions;

   Nothing in this Addendum limits the Contractor's obligations under the Master Agreement unless otherwise noted herein.

2. Participation: This NASPO ValuePoint Master Agreement may be used by all state entities, interlocal entities, or affiliates authorized to use statewide contracts in the State of Oklahoma *("Authorized Purchaser")*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. As of the execution date of this Addendum, the Office of Management and Enterprise Services is the only Authorized Purchaser under this Addendum.

3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.

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

Contractor

Name:	
Address:	6230 Stoneridge Mall Road Pleasanton, CA 94588
Telephone:	
Fax:	
Email:	

Participating Entity

Name:	IT Statewide Initiatives Lead
Address:	2401 N. Lincoln Blvd. Oklahoma City, OK 73105
Telephone:	(405) 521-4772
Fax:	N/A
Email:	purchasing@omes.ok.gov

5. Participating Entity Modifications Or Additions To The Master Agreement

These modifications or additions apply only to actions and relationships within the Participating Entity.
Participating Entity must check one of the boxes below.

[__] No changes to the terms and conditions of the Master Agreement are required.

[XX] The following changes are modifying or supplementing the Master Agreement terms and conditions. Please see attached Exhibits.

6. Subcontractors: All contactors, dealers, and resellers authorized in the State of *Oklahoma*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. Order: Any order placed by an Authorized Purchaser for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

8. Participating Addendum Integration: This Addendum (including Exhibit 1 attached hereto) and the Master Agreement set forth the entire agreement between Contractor and Participating Entity with respect to the subject matter. There are no understandings, agreements, or representations, oral or written, not specified herein. Any attempt to amend this Addendum is null and void and hereby rejected, unless agreed to in writing by Participating Entity and Contractor. Notwithstanding the foregoing, an Authorized Purchaser

and Contractor may agree to terms in addition to, or in modification of, the terms of this Addendum. Any such additional or modified terms will apply only to the specific acquisition of Workday products and services by that Authorized Purchaser.

9. Termination: Either the Participating Entity or Contractor may terminate this Addendum in accordance with Section 7 of the NASPO Value Point Master Agreement. Upon the effective date of termination, no future Orders shall be executed hereunder. Such termination shall have no impact on the payment obligations of the Participating Entity or any Authorized Purchaser for services already rendered by Contractor prior to the notice of termination, nor shall it have any effect on existing Orders or statements of work executed prior to the effective date of termination, or such other continuing rights and obligations as set forth in the Master Agreement, this Addendum and any exhibits attached hereto.

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

Participating Entity: State of Oklahoma by and through the Office of Management and Enterprise Services	Contractor: Workday, Inc.
Signature: D. Jerry Moore	Signature: Michael Magaro Michael Magaro (Jul 31, 2020 17:14 PDT)
Name: D. Jerry Moore	Name: Michael Magaro
Title: Chief Information Officer	Title: Senior Vice President, Business Finance
Date: Aug 1, 2020	Date: Jul 31, 2020

[Additional signatures may be added if required by the Participating Entity]

Approved as to Legal Form by:

Rick Oleka (Jul 31, 2020 16:08 EDT)

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

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

State of Oklahoma Specific Terms and Conditions (Exhibit 1)

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 Software-as-a-Service (“Service”), training, services, and other professional services offered by Workday under the Agreement and purchased by an Authorized Purchaser pursuant to the Oklahoma Central Purchasing Act.

   B. Contract Document

   The term “Contract Document” means the Addendum and any exhibits attached thereto as well as any separate agreements executed between the Contractor and an Authorized Purchaser under this Addendum, including all orders, statements of work related thereto and any addendum to any of the foregoing.

   C. Reserved

   D. Reserved

   E. Reserved

2. **Limitation of Authority**

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

3. **Administrative Fees**

   For Oklahoma-based Authorized Purchasers, 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 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 this 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 the 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 Contact Usage Reports shall be delivered to:
E-mail: strategic.sourcing@omes.ok.gov

For Oklahoma-based Authorized Purchasers, the State of Oklahoma assesses an administrative fee in the sum of one percent (1%) on all net sales transacted by any Authorized Purchasers under this 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 this Addendum. Oklahoma Admin Fees shall not be reflected as a separate line item in Contractor’s billing to Authorized Purchasers.

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

Contractor agrees to notify OMES-ISD Procurement via the email address set forth below twenty-four (24) hours in advance of Contractor’s submitting payment of the Oklahoma Admin Fee.

To ensure payment is properly accounted for, Contractor shall identify payment in the applicable Contract Usage Report as an “Administrative Fee" and shall include the 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, Authorized Purchasers under the Contract that are Oklahoma state agencies are exempt from the assessment of State sales, use, and excise taxes. Further, such Authorized

Purchasers and Authorized Purchasers that are political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Authorized Purchasers will provide Contractor with a tax exemption certificate upon request. Any taxes of any nature whatsoever payable by the Contractor shall not be reimbursed by the Authorized Purchaser.

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..

5. Invoices and Payment

All fees due hereunder (except fees subject to good faith dispute) shall be due and payable within forty-five (45) days of invoice date.

6. Termination for Non-appropriation

With respect to all Oklahoma-based transactions and all Oklahoma-based Authorized Purchasers, Authorized Purchaser may terminate the impacted portion of an Order if funds sufficient to pay its obligations are not appropriated by the applicable state legislature, federal government or other appropriate government entity or received from an intended third party funding source, provided, however, that Authorized Purchaser will seek such funding in good faith. Authorized Purchaser shall have discretion as to which portion of the Order to terminate; provided however, that Authorized Purchaser acknowledges that certain Orders carry minimum requirements. To the extent that such partial termination results in certain Orders not meeting the minimum requirements necessary for Workday to continue the provision of the Order, Contractor reserves the right to require a full termination. In the event of such insufficiency, Authorized Purchaser shall provide fifteen (15) calendar days' written notice of termination date. Notwithstanding the foregoing, if an Authorized Purchaser signs an Order and has received products and/or services under such Order, that Authorized Purchaser shall be obligated to pay for such products and/or services. Authorized Purchaser shall not execute any Order unless it has been appropriated sufficient funds to satisfy the payment obligations under the Order for the remainder of the fiscal period during which the Order is executed. A termination of an Order according to this section shall not create any liability for further payments ordinarily due under the Order or for any damages or other amounts caused by or associated with such termination. Any amount paid to Contractor in the form of prepaid fees that are unused when the Contractor's certain obligations are terminated shall be refunded.

7. Notices

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

If sent to the State of Oklahoma:
D. Jerry Moore
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

Venue for any action, claim, dispute, or litigation relating in any way to the execution, interpretation, performance, or enforcement of the Contract Documents, shall be in the state and federal courts of competent jurisdiction residing within the State of Oklahoma. Further, notwithstanding any provision in the Contract Documents, 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

Contractor uses commercially reasonable efforts to ensure that Contractor, Contractor's employees, and any of Contractor's subcontractors who may perform any part of the service under Contract Documents on behalf of Contractor, shall adhere to and comply with Contractor's code of conduct, as the same may be updated or modified by Contractor from time to time ("Code of Conduct"), provided that the Code of Conduct in effect as of the effective date of the Addendum will not be materially diminished while the Addendum is still in effect.

11. Force Majeure

In addition to the obligations in Section 10.5 of Attachment B to the NASPO Master Agreement (Force Majeure), the parties agree that in the event a force majeure event affecting Contractor continues for at least thirty (30) days ("Force Majeure Period"), Authorized Purchaser shall have the right to terminate an Order by providing written notice to Contractor within thirty (30) days after completion of such thirty (30) day Force

Majeure Period and Contractor's sole liability shall be to refund to Authorized Purchaser all prepaid, unearned amounts for the service for the period beginning upon receipt of such written notice to the end of the term as defined in the Order.

12. Invalid Term or Condition

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

13. Audits and Records Clause

A. During the term of the Authorized Purchaser's agreement but not more frequently than once per year, Contractor shall make available to Authorized Purchaser or its chosen independent third party auditor, for examination only those financial books, records, and files of Contractor that are necessary for Authorized Purchaser to verify Contractor's charges for the products and/ or services provided under any orders issued thereunder. Contractor shall maintain complete and accurate records as is reasonably necessary to substantiate such charges. Authorized Purchaser shall provide Contractor with reasonable notice prior to conducting such financial audit and the parties shall mutually agree upon the timing of such financial audit which shall be conducted in a manner that is not disruptive to Contractor's business operations. Authorized Purchaser will pay for all costs related to such audits. Such right shall not extend to or require on-site audits of Contractor's operations or third party hosting facilities, disclosure of any confidential information of any other Contractor customer, or Contractor's payroll records or other financial records not related to product and/or service fees invoiced to Authorized Purchaser.

B. Contractor shall maintain complete and accurate records related to Contractor's performance of its obligations under the Authorized Purchaser's agreement, including payments made by Authorized Purchaser to Contractor under the relevant agreement, as required by applicable law.

C. The Vendor is required to retain records relative to the pricing and invoicing under an Authorized Purchaser's agreement for the duration of the agreement and for a period of seven (7) years following expiration or termination of the agreement. If a claim, audit, litigation or other related 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

Contractor shall comply with all laws applicable to it, including those related to data privacy, international communications and the transmission of technical or personal data.

15. Immigration

Contractor agrees that it participates, and will continue to participate during the term of the Addendum, in the federal E-Verify program (or similar verification program), the electronic verification of the work authorization programs authorized by the Illegal Immigrations Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a.

16. Reserved

17. Reserved

18. Open Records Act

Contractor acknowledges that Authorized Purchasers are subject to the Oklahoma Open Records Act. Contractor also acknowledges that such Authorized Purchaser will comply with the Oklahoma Open Records Act. Except for a provision of the agreement specifically designated as confidential in a writing executed by both parties or a provision protected from disclosure in the Open Records Act, no agreement provision is confidential information and, therefore, any provision is subject to disclosure under the Open Records Act.

19. Confidentiality

A. Reserved

B. In addition to the obligations set forth in Section 8(c) (Compelled Disclosure) of the NASPO Master Agreement the following shall also apply. In the event of any request by a government agency or law enforcement authority for access to an Authorized Purchaser's Customer Data (as that term is defined in Attachment B to the NASPO Master Agreement), Contractor will seek to redirect the inquiry to Authorized Purchaser. In all such cases, Contractor will take all reasonable measures to protect the Authorized Purchaser's Customer Data and, to the extent legally permitted, notify Authorized Purchaser of such request.

20. Permitted Subcontractors

A. Contractor shall not subcontract any professional services or otherwise use any entities to perform professional services set forth on an Authorized Purchaser's Statement of Work ("SOW") that are not listed on Workday's Community website without first providing notice to Authorized Purchaser. If a subcontractor is provided access to or use of Authorized Purchaser's Confidential Information (as that term is defined in Attachment B to the NASPO Master Agreement), Contractor's agreement with such subcontractor will include provisions equivalent in all material respects to those in this Addendum with respect to the protection of Authorized Purchaser's Confidential Information. Contractor agrees that maintaining such agreement with any subcontractor shall be a continuing obligation. Contractor shall be responsible for the acts or omissions of its subcontractors performing under the Authorized Purchaser's SOW to the same extent as if the acts or omissions were performed (or not performed) by Contractor.

B. All payments under the Addendum shall be made directly to the Contractor.

21. Failure to Enforce

Failure by the State or an Authorized Purchaser, 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 an Authorized Purchaser to enforce any 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.

22. Mutual Responsibilities of the Parties

A. Reserved

B. The Addendum is a non-exclusive contract, and each party is free to enter into similar agreements with others.

C. The Authorized Purchaser and Contractor each grant the other only the licenses and rights specified in the Addendum and all other rights and interests are expressly reserved.

D. Reserved

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

23. Indemnification

A. Reserved

B. For the avoidance of doubt, Contractor's indemnification obligations under Section 13(b) (Indemnification - Intellectual Property) of the NASPO Master Agreement, conditioned by Section 13(c) of the NASPO Master Agreement, shall extend to the Participating Entity and any Authorized Purchaser.

C. Coordination of Defense

Notwithstanding Section 13(c) of the NASPO Master Agreement, in the event that an Oklahoma executive branch agency is named a defendant in any lawsuit, Contractor may not agree to any settlement without first obtaining the concurrence from the Oklahoma Office of the Attorney General, which shall be timely given and not be unreasonably withheld. In the event the Office of the Attorney General does not concur with Contractor's proposed settlement and the settlement unconditionally would have released the relevant party of all liability, then Contractor shall have no further obligation to defend and indemnify the relevant party, but at Contractor's sole election, Contractor may choose to continue to defend the relevant party at the relevant party's expense. Furthermore, the parties recognize that there may be occasions where Contractor may receive infringement claims involving the Workday service that do not name Oklahoma executive branch agency's as defendants. In such situation, the Oklahoma Office of the Attorney General will not be involved.

24. 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. Reserved

E. Reserved

F. Reserved

G. Offshore Services

Contractor warrants that: (i) neither Contractor nor its personnel are located in, under control of, or a national or resident of any of the countries to which the U.S. has embargoed goods: and (ii) except as otherwise provided under the Universal Data Processing Exhibit, no functions, activities or Workday services will be performed by Contractor's personnel, or any third party or entity, from an offshore location, and no offshore person will be allowed to or have the ability to view, access, store, create or receive any Personal Data (as that term is defined in the Universal Data Processing Exhibit) of an Authorized Purchaser. For purposes of this Section, the term "offshore" means the CMS definition of offshore as applied to Workday services to be performed outside of the United States.

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