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PARTICIPATING ADDENDUM
TEXAS COOPERATIVE PURCHASING PROGRAM
MASTER AGREEMENT # DIR-TSO-3998
ARKANSAS CONTRACT NUMBER: SP-18-0112/4600045457

This Participating Addendum ("PA") is entered into by and between the State of Arkansas, acting by and through the Office of State Procurement (hereinafter referred to interchangeably as "OSP", "the State" or "Participating State/Entity"), the State of Texas, acting by and through the Department of Information Resources (hereinafter referred to interchangeably as "DIR" or "Lead State"), and CIMA Solutions Group LTD. (hereinafter referred to as "Contractor"), (hereinafter referred to collectively as "the Parties" or individually as a "Party). Participating State and Contractor, solely for transactions between those two parties, hereby agree to modify the terms and conditions of the master agreement and all amendments and appendices thereto, contract number DIR-TSO-3998 ("Master Agreement") as follows. Neither DIR's relationship and terms with Contractor under the Master Agreement nor DIR's relationship and terms with Participating State under the Interlocal Agreement described below are in any way modified by this Addendum: DIR signs this Addendum solely to evidence its permission for Participating State and Contractor to make the modifications detailed herein between those two parties.

1. **Scope:** By DIR Interlocal Agreement # DIR-SDD-IC352, the State of Arkansas is eligible to procure services available under the IBM Branded Products, Related Services, and Cloud Services Contract for use by agencies and other entities located in the State of Arkansas as authorized by Arkansas law to utilize cooperative contracts. Contractor may incorporate changes to their services offering; however, any changes must be within the scope of services awarded. Contractor may not add services which were not included in the Contractor's response to the solicitation.

2. **Participation:**
   All eligible purchasers ("Purchasing Entity" or "Participating Entity") within the State of Arkansas, including State agencies, K-12 educational institutions, and local public procurement units (cities, counties, municipalities), are authorized to purchase products and services under the terms and conditions of this Agreement.

3. **Access to Cloud Solutions Services Requires State CIO Approval:** Unless otherwise stipulated in this Participating Addendum, specific services accessed through the Texas DIR Master Agreement for IBM Branded Product, Related Services, and 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. **Approved State Agencies:** Arkansas Department of Information Systems.

5. **Order of Precedence:**
   A. Arkansas's Participating Addendum; Arkansas's Participating Addendum **shall not** diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the Terms of the Lead State's Master Agreement.

   B. Lead State's Master Agreement (includes negotiated Terms & Conditions) and

   C. Contractor's response to the solicitation.

   These documents **shall** be read to be consistent and complementary. Any conflict among these documents **shall** be resolved by giving priority to these documents in the order listed above, including but not limited to conflicting order of precedence provisions. Contractor terms and conditions that apply to the Master Agreement are only those that are expressly accepted by the Lead State and **must** be in writing and attached to the Master Agreement as an Exhibit, Attachment, Appendix, or Amendment.

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Notwithstanding the foregoing, ordering documents (purchase orders) may contain transaction-specific terms and each ordering document that is accepted by the Contractor shall become a part of this PA as to the products and services listed on the ordering document only. No other terms and conditions **shall** apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or references on the Contractor's website, in the Contractor's quotation/sales order or in similar documents subsequently provided by the Contractor (unless such terms are referenced in the Master Agreement).

6. **Participating State Modifications or Additions to Master Agreement:**
The following modifications or additions apply only to actions and relationships between the Participating Entity and Contractor.

A. **Reporting.** Contractor **must** submit yearly reports to the Arkansas Office of State Procurement via email to OSP.ITContracts@dfa.arkansas.gov. Reports **shall** be due on or before the last day of the month following the end of the quarter. The Contractor **shall** provide an electronic usage report in Excel format which lists, but is not limited to, the following:

1) Contractor Contract Number
2) State
3) Customer Type (State, Education, Local Government)
4) Bill to Name
5) Customer PO Number
6) Customer Number
7) Order Date
8) Service Provided; and
9) Total Price

B. **Payments.** Payments will be submitted to the Contractor at the address shown on the invoice. Payments should be tendered to the Contractor within thirty (30) days of the date of invoice. After the sixtieth (60th) day from the date of invoice, unless mutually agreed to, interest may be paid on the unpaid balance due to the Contractor at the rate of one half (1/2) of one (1) percent per month in accordance with Arkansas Code Annotated §19-11-224. The Participating Entity will make a good-faith effort to pay within thirty (30) days after the date of invoice. The State shall have the right to dispute billed goods or services and withhold payment for those goods or services that are in dispute. Interest shall not be charged on disputed amounts while in dispute.

C. **No Assignment**. The Contractor **shall not** assign the contract in whole or in part or any payment arising there from without the prior written consent of the State Procurement Official.

D. **Records.** In addition to the terms of Master Agreement Appendix A Section 9 (C), financial and accounting records relevant to State of Arkansas transactions under this PA **shall** be subject to examination by appropriate Arkansas government authorities for a period of seven (7) years from the expiration date and final payment under this PA or extension thereof, provided, however, that such government authorities will provide written notice to the Contractor of its intent to conduct such examination contemplated by this section in conformity with the Master Agreement terms.

E. **Governing Law.** The laws of the State of Arkansas **shall** govern this PA, and exclusive venue arising under this PA is Pulaski County, Arkansas. Nothing under this PA or the Master Agreement shall be deemed or construed as a waiver of the State's right of sovereign immunity.

F. **Arkansas State Claims Commission.** The parties acknowledge that any claims, disputes, liability, costs, expenses, demands, settlements, or judgments arising from the negligence, acts

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or omissions of a Participating Entity or its employees or agents in the performance of this Agreement must be presented to the Arkansas State Claims Commission ("Claims Commission").

G. **Enforcement of Citations of Law**. Any and all references in the Master Agreement to the laws and regulations of another state, including statutes, rules, regulations, or case law, shall be enforced by and between the Parties in this PA as a reference to corresponding Arkansas law or regulations, as such exists, with the most closely corresponding Arkansas law or regulation controlling. In no event shall any other state's law, including but not limited to state law cited in the Master Agreement, be controlling law in this PA, even in the absence of directly corresponding Arkansas law.

H. **Master Agreement Rights and Benefits**. Any and all rights, benefits, or duties owed to, DIR or the State of Texas under the Master Agreement, whether explicitly or implicitly stated, shall inure to the benefit of the State of Arkansas under this PA, as between Contractor and the State of Arkansas or OSP.

I. **Travel Expenses**. Expenses for travel **shall not** be reimbursed unless specifically permitted under the duties of the Contractor. All travel **must** be approved in advance by the State. Approved expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with Arkansas Travel Guidelines and Procedures.

J. **Cancellation.**

i. For Convenience. The State may cancel this PA for any reason by giving the Contractor written notice of such cancellation thirty (30) days prior to the date of cancellation, subject, however, to the lease terms attached to the Master Agreement, as applicable.

ii. For Cause: The State may cancel this PA for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the PA, and provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. The parties may endeavor to agree to reasonable modifications in the PA to accommodate the causes of the cancellation for cause and avoid the cancellation, to the extent permitted by law, and at the discretion of each party individually.

K. **Indemnification**. The following indemnification clause replaces in its entirety the Indemnification clause specified in the Master Agreement.

Contractor shall indemnify, defend and hold harmless State and its affiliates, and their respective employees, directors, officers, principals and agents, from and against any third party claims, demands, loss, damage or expenses (including reasonable attorney's fees and court costs) relating to bodily injury, death or dismemberment of any person or damage to any real and/or tangible personal property directly caused by the negligence or willful misconduct of Contractor, its personnel, or agents during the course of the provision of Services under this Agreement.

Upon notification of a claim against State alleging any Work Product, as defined in the Master Agreement, infringes a copyright, US patent, trade secret or any intellectual property right of any third party, Contractor will defend such claim at its expense and will pay any costs or damages

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that may be finally awarded against State. Contractor will not indemnify State however, if the claim of infringement is caused by (1) State's misuse or modification of the Work Product; (2) State's failure to use corrections or enhancements made available by Contractor. If any Work Product is, or in Contractor's opinion is likely to be, held to be infringing, Contractor shall at its expense and option either: (a) procure the right for State to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing, or (d) direct the return of the Work Product and refund to State the fees paid for such Work Product.

L. **Confidential Information**. Under Arkansas law, the release of public records is governed by The Arkansas Freedom of Information Act found at Section 25-19-101 et. seq. of the Arkansas Statutes.

M. **Contingent Fee.** The Contractor guarantees that Contractor has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.

N. **Disclosure.** Under Arkansas law, OSP is required to obtain and have a copy of EO 98-04 Disclosure Form on file for the Contractor. Contractor must submit the disclosure form prior to entering into this Addendum. Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this PA. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the State.

O. **Technology Access:**

1. When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Prospective Contractor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

2. Accordingly, the Prospective Contractor expressly represents and warrants to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

   a. Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means.
   b. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use.

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c. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

d. Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means.

e. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact.

f. Integrating into networks used to share communications among employees, program participants, and the public.

Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired

P. **Certifications.** Under Arkansas law, OSP is required to obtain and have a copy of certain certifications, including but not limited to certification forms pursuant to Arkansas Code Annotated § 19-11-104 and Arkansas Code Annotated § 25-1-503. The Contractor shall promptly provide any and all such certifications, and any and all supporting documents reasonably requested, in the time and manner requested by OSP. Failure to provide any and all such certifications in the time and manner requested by OSP shall be a breach of this PA.

Q. **Contractor Registration**. In order to receive payment, Contractor must register online at https://www.ark.org/vendor/index.html

R. **For Services Only:**

1. **Equal Opportunity Policy.** In compliance with Arkansas Code Annotated § 19-11-104, if a state agency is purchasing services, OSP is required to have a copy of the Contractor's *Equal Opportunity (EO) Policy* prior to entering into this PA. *EO Policies* may be submitted in electronic format to the following email address: eeopolicy.osp@dfa.arkansas.gov or Contractor may submit a hard copy with this Addendum. The submission of an *EO Policy* to OSP is a one-time requirement. Contractor is responsible for providing updates or changes to its policy, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute. If Contractor is not required by law to have an *EO Policy*, Contractor must submit a written statement to that effect.

2. **Prohibition of Employment of Illegal Immigrants.** Pursuant to Arkansas Code Annotated § 19-11-105, if a state agency is purchasing services, OSP is required to have a certification on file from the Contractor stating that the Contractor does not employ or contract with illegal immigrants. The Contractor must certify online at www.arkansas.gov/dfa/procurement that the Contractor does not employ or contract with any illegal immigrant prior to entering into this PA.

3. **Performance Standards** Under Arkansas law, all state agencies, boards, commissions, and institutions of higher education must include performance standards when purchasing services. Performance standards shall be mutually agreed upon by the parties hereto for any services purchased.

S. **Restriction of Boycott of Israel.** Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written

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certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.

T. **Leasing.** Leasing **shall not** be authorized under this Participating Addendum.

U. **Value Added Services**. The Contractor **shall not** propose or provide value-added services unless it meets one (1) or more of the following criteria:
- It is of no cost to the purchasing entity;
- Services are linked to services the entity has purchased through a current or past transaction.

V. **Data Residency.** All data associated with the State of Arkansas Participating Addendum **shall** reside on servers located in the continental United States and **shall not** be transferred outside of the United States.

W. **Data Ownership.** The State **shall** retain sole ownership, right, title, and interest to all data stored on the Contractor provided Cloud Solution. At the end of the contract, the Contractor **shall** transfer 100% of State-owned data back to the State. After the confirmed transfer of 100% of State-owned data back to the State, the Contractor **shall** destroy all copies of the State-owned data that the Contractor possesses and provide the State with certification of its destruction.

X. **Security Breaches.** The Contractor **shall** notify the State within one (1) hour of discovery of a security breach where the State's data may have been compromised.

7. Purchase Order Instructions:
All purchase orders issued by Purchasing Entities within the jurisdiction of this participating addendum **shall** include the following:

A. Texas Master Agreement number **DIR-TSO-3998**
B. State contract number **[SP-18-0112/4600045457]**
C. Agency Name, Address, Contact, and Phone-Number
D. Applicable approvals
E. Orders shall be made out to the Contractor

The Purchasing Entities shall not be required, by the Contractor or its subcontractors, to sign any additional terms and conditions when utilizing this Agreement.

8. Subcontractors:
The Contractor may use subcontractors; however, the Contractor will be responsible for any agreements with the subcontractors. The Participating State/Entity is not agreeing to and is not responsible for any terms and conditions with a subcontractor. Any subcontractors who will be providing product delivery or services must be preauthorized by the Participating State/Entity, such authorization and subcontractor information being added to this PA as an amendment.

9. Individual Customer:
Each State agency and political subdivision, as a Participating Entity, that purchases products/services **shall** be treated as if they were individual customers. Except to the extent modified by this PA, each agency and political subdivision **shall** be responsible to follow the terms and conditions of the Master Agreement; and they **shall** have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision **shall** be responsible for their own charges, fees, and liabilities. Each agency and political subdivision

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shall have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor **shall** apply the charges to each Participating Entity individually.

10. Orders:
Any order placed by a Participating Entity for a Product and/or Service available from 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.

11. Publicity:
Contractor shall not issue a news release pertaining to this award without OSP's prior written approval.

12. Terms:
The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with this PA and/or Arkansas law.

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

Lead State	Name	Sandy Fang
	Telephone	(512) 475-4650
	E-mail	sandy.fang@dir.texas.gov
Contractor	Name	
	Telephone	
	E-mail	
Participating Entity	Name	Shane Phillips
	Telephone	(501) 324-9322
	E-mail	jordan.phillips@dfa.arkansas.gov

The contacts listed above can be changed by the parties from time to time in writing. Such updates do not require an amendment to this Addendum.

14. Period of Performance:
This Participating Addendum **shall** be co-terminus with Texas DIR's Master Agreement # DIR-TSO-3998, unless canceled in writing by any of the parties. In no event **shall** the term of the Participating Addendum exceed seven (7) years.

15. Sovereign Immunity:
Nothing in this PA or any amendments or modifications thereto shall be deemed or interpreted as a waiver of sovereign immunity by the Participating State/Entity.

This Participating Addendum and the Master Agreement number **DIR-TSO-3998** (administered by the State of Texas together with its exhibits (including any terms referenced in the Master Agreement) , set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of

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this Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

Participating State:	**CIMA Solutions Group:**
By: Camber Thompson	By:
Name: Camber Thompson	Name: John Alday
Title: IT Contract Manager	Title: CEO
Date: 9/16/19	Date: 9/13/19

Lead State:
By: DocuSigned by: Hershel Becker 7F04C0B913D547D
Name: Hershel Becker
Title: Chief Procurement Officer
Date: 9/19/2019 | 10:06 PM CDT