



## Solicitation Cover Page

1. Solicitation #: 0900000375

2. Solicitation Issue Date: 04/04/2019

3. Brief Description of Requirement:

The Office of Management and Enterprise Services Employees Group Insurance Division (EGID) is seeking to contract with a qualified Firm to provide day to day subrogation services.

All questions regarding this solicitation must be submitted in writing and are to be emailed no later than **April 18, 2019 at 3:00 p.m. CDT**. Questions are to be emailed to [vanessa.young@omes.ok.gov](mailto:vanessa.young@omes.ok.gov). Questions received after this date will not be answered. If any questions are received, an amendment to this solicitation will be posted on our website after this deadline listing all questions received and their answers.

NOTE: On a request for proposal, no pricing shall be released at the time of opening. Should a public opening be requested the only information to be released will be a list of bidders without pricing.

4. Response Due Date<sup>1</sup>: May 16, 2019

Time: 3:00PM CST/CDT

5. Issued By and **RETURN SEALED BID TO**<sup>2</sup>:

U.S. Postal Delivery Address: 5005 N Lincoln Blvd

Oklahoma City, OK 73105

Common Carrier Delivery Address: 5005 N Lincoln Blvd

Oklahoma City, OK 73105

6. Solicitation Type (type "X" at one below):

- ☐ Invitation to Bid
- ☒ Request for Proposal
- ☐ Request for Quote

7. Contracting Officer:

Name: Vanessa Young

Phone: 405-202-3850

Email: [vanessa.young@omes.ok.gov](mailto:vanessa.young@omes.ok.gov)

<sup>1</sup> Amendments to solicitation may change the Response Due Date (read GENERAL PROVISIONS, section 3, "Solicitation Amendments")

<sup>2</sup> If "U.S. Postal Delivery" differs from "Carrier Delivery, use "Carrier Delivery" for courier or personal deliveries



## Responding Bidder Information

*"Certification for Competitive Bid and Contract" **MUST** be submitted along with the response to the Solicitation.*

1. RE: Solicitation # 0900000375

2. Bidder General Information:

FEI / SSN : \_\_\_\_\_ Supplier ID: \_\_\_\_\_

Company Name: \_\_\_\_\_

3. Bidder Contact Information:

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Title: \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Email: \_\_\_\_\_ Website: \_\_\_\_\_

4. Oklahoma Sales Tax Permit<sup>1</sup>:

☐ YES – Permit #: \_\_\_\_\_

☐ NO – Exempt pursuant to Oklahoma Laws or Rules – Attach an explanation of exemption

5. Registration with the Oklahoma Secretary of State:

☐ YES - Filing Number: \_\_\_\_\_

☐ NO - Prior to the contract award, the successful bidder will be required to register with the Secretary of State or must attach a signed statement that provides specific details supporting the exemption the supplier is claiming ([www.sos.ok.gov](http://www.sos.ok.gov) or 405-521-3911).

6. Workers' Compensation Insurance Coverage:

Bidder is required to provide with the bid a certificate of insurance showing proof of compliance with the Oklahoma Workers' Compensation Act.

☐ YES – Include with the bid a certificate of insurance.

☐ NO – Exempt from the Workers' Compensation Act pursuant to 85A O.S. § 2(18)(b)(1-11) – Attach a written, signed, and dated statement on letterhead stating the reason for the exempt status.<sup>2</sup>

<sup>1</sup> For frequently asked questions concerning Oklahoma Sales Tax Permit, see <https://www.ok.gov/tax/Businesses/index.html>

<sup>2</sup> For frequently asked questions concerning workers' compensation insurance, see <https://www.ok.gov/wcc/Insurance/index.html>

## 7. Disabled Veteran Business Enterprise Act

- ☐ YES – I am a service-disabled veteran business as defined in 74 O.S. §85.44E. Include with the bid response 1) certification of service-disabled veteran status as verified by the appropriate federal agency, and 2) verification of not less than 51% ownership by one or more service-disabled veterans, and 3) verification of the control of the management and daily business operations by one or more service-disabled veterans.
- ☐ NO – Do not meet the criteria as a service-disabled veteran business.

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Authorized Signature

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Date

---

Printed Name

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Title



**Certification for Competitive  
Bid and/or Contract  
(Non-Collusion Certification)**

**NOTE:** A certification shall be included with any competitive bid and/or contract exceeding \$5,000.00 submitted to the State for goods or services.

Agency Name: OMES EGID Agency Number: 090

Solicitation or Purchase Order #: 0900000375

Supplier Legal Name: \_\_\_\_\_

**SECTION I [74 O.S. § 85.22]:**

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
  - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
  - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
  - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
  - d. to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to Section 85.45j.1. of this title.

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

**SECTION II [74 O.S. § 85.42]:**

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

The undersigned, duly authorized agent for the above named supplier, by signing below acknowledges this certification statement is executed for the purposes of:

☒ the competitive bid attached herewith and contract, if awarded to said supplier;

**OR**

☐ the contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma statutes.

\_\_\_\_\_  
Supplier Authorized Signature

\_\_\_\_\_  
Certified This Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email

\_\_\_\_\_  
Fax Number



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## **A. GENERAL PROVISIONS**

The following provisions shall apply where and as applicable to this Solicitation.

### **A.1. Definitions**

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

- A.1.1.** "Acquisition" means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, or rental pursuant to applicable state law.
- A.1.2.** "Amendment" means a written restatement of or modification to a Contract Document executed by both parties.
- A.1.3.** "Bid" means an offer in the form of a bid, proposal or quote a Bidder submits in response to this Solicitation.
- A.1.4.** "Bidder" means an individual or Business Entity that submits a Bid in response to this Solicitation.
- A.1.5.** "Business Entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, limited liability limited partnership, sole proprietorship, joint stock company, consortium, or other legal entity recognized by statute.
- A.1.6.** "COTS" means software that is commercial off the shelf.
- A.1.7.** "Contract" means this Solicitation, which together with other Contract Documents, as may be amended from time to time, evidences the final agreement between the parties with respect to the contract awarded pursuant to this Solicitation.
- A.1.8.** "Contract Document" means, when executed by all applicable parties as necessary, this Solicitation, the Bid of the awarded Supplier, any statement of work, work order, rider or similar document related hereto, any purchase order related hereto, other statutorily required or mutually agreed documents related hereto, and any Amendment to any of the foregoing.
- A.1.9.** "Closing Date and Time" is 3:00 P.M. Central Time on the date this Solicitation closes.
- A.1.10.** "Interlocal Entity" means, with respect to any state other than Oklahoma, any authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of such state government, any political subdivision of such state, and any organization related to any of the foregoing.
- A.1.11.** "OMES - ISD" means the Office of Management and Enterprise Services, Information Services Division, on behalf of the State of Oklahoma.
- A.1.12.** "Procuring Agency" means the State of Oklahoma Agency initiating the procurement.
- A.1.13.** "Request for Information or RFI" means a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation.
- A.1.14.** "State" means the government of the State of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of Oklahoma.
- A.1.15.** "State Entity" means any agency, authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of the State government, any political subdivision of the State, and any organization related to any of the foregoing.
- A.1.16.** "State CIO" is the State Chief Information Officer or designee, in the capacity of the State Purchasing Director for information technology and telecommunications Acquisitions.
- A.1.17.** "Solicitation" means this document inviting Bids for the Acquisition referenced herein.
- A.1.18.** "Supplier" means the Bidder with whom the State enters into the Contract awarded pursuant to this Solicitation.
- A.1.19.** "Utilities" means a Bidder's reusable or pre-existing proprietary intellectual property that forms the basis for a customized or developed software deliverable for the State and which is specifically identified as such by the Bidder in writing prior to execution of the Contract awarded pursuant to this Solicitation.

### **A.2. Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

By submitting a Bid to this Solicitation:

- A.2.1.** The Bidder certifies that the Bidder and its principals or participants:
  - A.2.1.1.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;
  - A.2.1.2.** Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; or for violation of federal or

state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

A.2.1.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the foregoing offenses enumerated in this certification; and

A.2.1.4. Have not within a three-year period preceding this Contract had one or more public (federal, state or local) contracts terminated for cause or default.

**A.2.2.** Where the Bidder is unable to certify to any of the statements in the certification above, Bidder shall attach an explanation to the Bid.

### **A.3. Bid Public Opening**

Sealed Bids may be opened upon public request at the time and date specified herein as the Closing Date and Time.

### **A.4. Late Bid**

Bids received by the State after the Closing Date and Time shall be deemed non-responsive and shall not be considered for any resultant award.

### **A.5. Legal Contract**

By submitting a Bid to this Solicitation:

**A.5.1.** Submitted Bids are rendered as a legal offer and when accepted by the State, shall constitute a contract.

**A.5.2.** The Contract Documents resulting from this Solicitation shall have the following order of precedence: this Solicitation, other contract award documents, including but not limited to the Purchase Order, Amendments, required certification statements, change orders, license and other similar agreements; and the successful Bid. In the event there is a conflict between any of the preceding documents, the other contract award documents prevail over this Solicitation, and both the other contract award documents and this Solicitation shall prevail over the successful Bid. If there is a conflict between the terms of any Contract Document and applicable Oklahoma law, rules or regulations, such laws, rules and regulations shall prevail over the conflicting terms of the Contract Document.

**A.5.3.** Any Contract Document related to this Solicitation shall be legibly written or typed.

**A.5.4.** All transactions related to this Solicitation, and any Contract Document related hereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

### **A.6. Pricing**

**A.6.1.** Bids shall remain firm for a minimum of one-twenty (120) days after the Closing Date and Time.

**A.6.2.** Bidders guarantee unit prices to be correct.

**A.6.3.** In accordance with 74 O.S. §85.40, all travel expenses to be incurred by Supplier in performance of the Contract shall be included in the total Bid price/contract amount.

**A.6.4.** All costs incurred by the Bidders for Bid preparation and participation in this competitive procurement shall be the sole responsibility of the Bidder. The State of Oklahoma shall not reimburse any Bidder for any such costs.

### **A.7. Firm Fixed Price**

Unless this Solicitation specifies otherwise, a Bidder shall submit a firm, fixed price for the term of the Contract.

### **A.8. Pricing Requirements**

If Bidder pricing does not meet requirements of the section herein titled Price and Cost, the Bid may be considered non-responsive.

### **A.9. Manufacturers' Name and Approved Equivalents**

Unless otherwise specified in this Solicitation, manufacturers' names, brand names, information, and/or catalog numbers listed in a specification are for information and not intended to limit competition. Bidder may offer any brand for which it is an authorized representative, which meets or exceeds the specification for any item(s). However, if a Bid is based on equivalent products, indicate on the Bid form the manufacturer's name and number. Bidder shall submit sketches, descriptive literature, and/or complete specifications with their Bid. Reference to literature submitted with a previous Bid shall not satisfy this provision. The Bidder shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids that do not comply with these requirements are subject to rejection.

### **A.10. Rejection of Offer**

The State reserves the right to reject any Bids that do not comply with the requirements and specifications of this Solicitation. A Bid may be rejected when the Bidder imposes terms or conditions that would modify requirements of this Solicitation or limit the Bidder's liability to the State. Other possible reasons for rejection of Bids are listed in OAC 260:115-7-32.

Attempts to impose unacceptable conditions on the State, or impose alternative terms not in the best interest of the State shall not be tolerated. Continued attempts to impose unacceptable conditions or terms on the State shall result in a determination of non-responsiveness of the Bid due to lack of compliance with the terms and conditions of negotiation or this Solicitation.

#### **A.11. Award of Contract**

- A.11.1.** The State may award the contract to more than one Bidder by awarding the contract(s) by item or groups of items, or may award the contract on an all or none basis, whichever is deemed to be in the best interest of the State of Oklahoma.
- A.11.2.** Contract awards shall be made to the lowest and best Bid(s) unless this Solicitation specifies that best value criteria is being used.
- A.11.3.** In order to receive an award or payments from the State of Oklahoma, Bidder must be registered. The Bidder registration process can be completed electronically through the website at the following link:  
<https://www.ok.gov/dcs/vendors/index.php>.
- A.11.4.** It is the preference of the State to award to a single Bidder. However, the State reserves the right to award to multiple Bidders when it has been determined to be in the best interest of the State.

#### **A.12. Contract Modification**

- A.12.1.** The Contract Documents issued as a result of this Solicitation is under the authority of the State personnel signing the Contract Documents. The Contract may be modified only through a written Amendment, signed by the State.
- A.12.2.** Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by OMES - ISD in writing, or that is made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including but not limited to any unauthorized written Amendment, shall be void and without effect, and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.

#### **A.13. Delivery, Inspection and Acceptance**

- A.13.1.** All deliveries shall be F.O.B. Destination. The Supplier shall prepay all packaging, handling, shipping and delivery charges and prices quoted shall include all such charges. Any products delivered pursuant to this Contract shall be subject to final inspection and acceptance by the procuring entity at destination and the procuring entity has no responsibility for the delivered products prior to acceptance. Title and risk of loss or damage to all items shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance. "Destination" shall mean delivered to the receiving dock or other point specified in the applicable purchase order.
- A.13.2.** Supplier shall be required to deliver products as offered on or before the required date. Deviations, substitutions, or changes in the products shall not be made unless expressly authorized in writing by the State or Interlocal Entity, as applicable.

#### **A.14. Invoicing and Payment**

Intentionally Omitted. Not applicable to this Solicitation.

#### **A.15. Audit and Records Clause**

- A.15.1.** 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. In accepting any contract with the State, the Supplier agrees any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Contract.
- A.15.2.** The Supplier is required to retain records relative to this Contract for the duration of this Contract and for a period of seven (7) years following completion and/or termination of this Contract. If an 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.

#### **A.16. Non-Appropriation Clause**

Intentionally Omitted. Not applicable to this Solicitation.

#### **A.17. Choice of Law and Venue**

- A.17.1.** Any claims, disputes or litigation relating to the Contract Documents, singularly or in the aggregate, or the execution, interpretation, performance, or enforcement thereof shall be governed by the laws of the State of Oklahoma, or in the case of an Interlocal Entity, in the state in which the Interlocal Entity is located, without regard to application of choice of law principles.



- A.17.2.** Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents shall be in Oklahoma County, Oklahoma, or in the case of an Interlocal Entity, as agreed to between such Interlocal Entity and Supplier or as otherwise provided by applicable law.

#### **A.18. Termination for Cause**

- A.18.1.** The Supplier may terminate this Contract in whole or in part for default with both a thirty (30) day written request and upon written approval from the State. The State may terminate this Contract in whole or in part for default or any other just cause upon a thirty (30) day written notification to the Supplier.
- A.18.2.** The State may terminate this Contract immediately, in whole or in part, without a thirty (30) day written notice to the Supplier, when violations are found to be an impediment to the function of the State and detrimental to the cause of a State Entity, when conditions preclude the thirty (30) day notice, or when the State determines that an administrative error occurred prior to Contract performance. Similarly, an Interlocal Entity may terminate its obligations to Supplier immediately upon any of the foregoing conditions in this subsection.
- A.18.3.** If this Contract or certain obligations hereunder are terminated, the State, State Entity or Interlocal Entity, as applicable, shall be liable only for payment for products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

#### **A.19. Termination for Convenience**

- A.19.1.** The State may terminate this Contract, in whole or in part, for convenience if the State Chief Information Officer determines that termination is in the State's best interest. The State shall terminate this Contract by delivering to the Supplier a notice of termination for convenience specifying the terms and effective date of termination. The Contract termination date shall be a minimum of sixty (60) days from the date the notice of termination is issued by the State. Similarly, an Interlocal Entity may terminate its obligations to Supplier upon a determination by the proper authority for such Interlocal Entity that termination is in the Interlocal Entity's best interest and notice of termination by such Interlocal Entity shall be provided in accordance with the foregoing requirements set forth in this subsection.
- A.19.2.** If this Contract or certain obligations hereunder are terminated pursuant to this section, the State, State Entity, or Interlocal Entity, as applicable, shall be liable only for products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

#### **A.20. Insurance**

The Supplier shall maintain and promptly provide proof to the State of the following insurance coverage, and any renewals, additions or changes thereto, as long as the Supplier has any obligation under a Contract Document:

- a) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b) Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage;
- c) Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including bodily injury and property damage and with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles;
- d) Professional Errors and Omissions Insurance which shall include Consultant's Computer Errors and Omissions Coverage with limits not less than \$1,000,000 per claim and in the aggregate; and
- e) Additional coverage required by the State in writing in connection with a particular Acquisition.

#### **A.21. Employment Relationship**

This Contract does not create an employment relationship between the parties. Individuals performing services required by this Contract are not employees of the State, a State Entity or an Interlocal Entity and, accordingly, shall not be eligible for rights or benefits accruing to such employees including but not limited to health insurance benefits, workers' compensation insurance, paid vacation or other leave, or any other employee benefit.

#### **A.22. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007**

By submitting a Bid to this Solicitation, the Bidder certifies that it is registered and participates in the Status Verification System, available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify), as required under applicable State law and is in compliance with applicable federal immigration laws and regulations. The Bidder agrees that compliance with the certification set forth in this section shall be a continuing obligation.

#### **A.23. Compliance with Applicable Laws**

- A.23.1.** In connection with its performance of obligations under the terms of this Contract, the Bidder certifies compliance with and, if awarded the Contract pursuant to this Solicitation, shall continue to comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, including but not limited to the following:
- a) Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;

- b) If the payments pursuant to the Contract are expected to exceed \$100,000.00, 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 under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;
- c) Prospective participant requirements set forth at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
- d) 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973 and Executive Orders 11246 and 11375, Americans with Disabilities Act of 1990;
- e) For Persons entering into a grant or cooperative agreement over \$100,000.00 (as defined at 45 C.F.R. §93.105 and 93.110), Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;
- f) 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; and
- g) Be registered as a business entity licensed to do business in the State, (registration through the Oklahoma Secretary of State at <https://www.sos.ok.gov>), have obtained a sales tax permit and be current on franchise tax payments to the State, as applicable.

**A.23.2.** The Supplier shall maintain all applicable licenses and permits required in association with its obligations hereunder.

**A.23.3.** The Supplier shall inform its employees, agents and proposed subcontractors who perform services for the State under this Contract of the Supplier's obligations hereunder and shall require compliance accordingly. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations hereunder.

## **A.24. Gratuities**

The rights of Supplier under the terms of this Contract may be immediately terminated , in whole or in part, by written notice if it is determined that the Supplier, its employee, agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to any State or Interlocal Entity employee directly involved in this Contract. In addition, a Supplier determined to be guilty of such a violation may be suspended or debarred.

## **A.25. Preclusion from Resulting Contracts**

Any Bidder that has provided any consulting services or technical assistance that resulted in any specifications or concepts in this Solicitation, either directly or indirectly, is precluded from being awarded the Contract and from securing a sub-contractor that has provided such services.

## **A.26. Mutual Responsibilities**

The State and Supplier agree that:

- A.26.1.** Neither party grants the other the right to use any trademarks, trade names, or other designations in any promotion or publication without express written consent by the other party.
- A.26.2.** This is a non-exclusive Contract and each party is free to enter into similar agreements with others.
- A.26.3.** Each party grants the other only the licenses and rights specified in the Contract Document and all other rights and interests are expressly reserved.
- A.26.4.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by either party is required under this Contract, such action shall not be unreasonably delayed or withheld

## **A.27. Background Checks and Verifications**

At the sole discretion of the State, State Entity or Interlocal Entity, as applicable, employees of the Supplier and any subcontractor of the Supplier may be subject to background checks. If background check information is requested, the Supplier must submit, or cause to be submitted, the required information in a timely manner and the Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State, State Entity or Interlocal Entity.

## **A.28. Confidentiality**

- A.28.1.** The Supplier shall maintain strict security of all State data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and state laws, rules, regulations and policies and shall use any such data or records only as needed by Supplier for performance of its obligations hereunder. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or state laws, rules and regulations. If Supplier utilizes a permitted subcontractor, Supplier 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 Supplier, to the extent applicable. Such written assurance may be set forth in the required subcontractor agreement referenced herein.

- A.28.2.** No State data or records shall be provided or the contents thereof disclosed to a third party unless specifically authorized to do so in writing by the State CIO or in compliance with a valid court order. The Supplier shall immediately forward to the State and the State CIO any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

## **A.29. Unauthorized Obligations**

At no time during the performance of this Contract shall the Supplier have the authority to obligate any other party hereto for payment of any goods or services over and above those set forth in this Contract. If the need arises for goods or services over and above the products, Supplier shall cease the project and contact the appropriate procuring entity for written approval prior to proceeding.

## **A.30. Electronic and Information Technology Accessibility**

Supplier 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](http://www.ok.gov/cio/documents/isd_itas.pdf) and Supplier shall provide a Voluntary Product Accessibility Template ("VPAT") describing such compliance, which may be provided via a URL linking to the VPAT. If the products will require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to state bids, request for proposals, statements of work, riders, agreements, purchase orders and Amendments. Accordingly, in each statement of work or similar document issued pursuant to this Contract, Supplier 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.

All representations contained in the VPAT provided will be relied upon by the State for accessibility compliance purposes.

## **A.31. Patents and Copyrights**

Intentionally Omitted. Not applicable to this Solicitation.

## **A.32. Assignment**

Supplier's obligations under a Contract Document may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld in its sole discretion. Rights granted under the terms of this Contract may be assigned or transferred, at no additional cost, to other entities within the State.

## **A.33. Severability**

If any provision for this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

## **A.34. Paragraph Headings**

The headings used in this Contract are for convenience only and do not constitute part of the Contract.

## **A.35. Failure to Enforce**

Failure by the State, as applicable, at any time to enforce a provision of, or exercise a right under, any Contract Document 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 to enforce any provision of, or exercise any right under, a Contract Document at any time in accordance with its terms. Likewise, a waiver of a breach of any provision in a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in a Contract Document.

## **A.36. Conflict of Interest**

- A.36.1.** Bidder must provide immediate disclosure of any contractual relationship or any other relevant contact with any State personnel or another Supplier involved in the development of a Bidder's response to this Solicitation. Any conflict of interest shall, at the sole discretion of the State, be grounds for rejection of the Bid or termination of project involvement.
- A.36.2.** In addition to any requirement of law or through a professional code of ethics or conduct, the Supplier and the Supplier's employees performing services for the State are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Further, without prior written approval of the State, such employees shall not plan, prepare, or engage in any activity that conflicts or may conflict with the best interest of the State as long as the Supplier has an obligation under this Contract. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State.

### **A.37. Limitation of Liability**

To the extent any limitation of liability in any Contract Document is construed by a court of competent jurisdiction to be a limitation of liability in violation of applicable law, such limitation of liability shall be void.

### **A.38. Media Ownership (Disk Drive and/or Memory Chip Ownership)**

Intentionally Omitted. Not applicable to this Solicitation.

### **A.39. Offshore Services**

No offshore services are provided for under this Contract. State data shall not be used or accessed internationally, for troubleshooting or any other use not specifically provided for herein without prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State.

### **A.40. Failure to Provide**

The Supplier's repeated failure to provide defined services, without reasonable basis as determined in the sole discretion of the State CIO, shall constitute a material breach of the Supplier's obligations, which may result in partial or whole cancellation of the Contract.

### **A.41. Agency Policies**

The Supplier's employees and/or sub-contractors must adhere to the applicable State policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. It is up to the Supplier to review and relay State policies covering the above to the consulting staff.

### **A.42. Compliance with Technology Policies**

The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at:

[www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG\\_osf\\_12012008.pdf](http://www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG_osf_12012008.pdf)

### **A.43. High Technology System Performance and Upgrades**

Intentionally Omitted. Not applicable to this Solicitation.

### **A.44. Emerging Technologies**

Intentionally Omitted. Not applicable to this Solicitation.

### **A.45. Ownership Rights**

Intentionally Omitted. Not applicable to this Solicitation.

### **A.46. Source Code Escrow – Reference Title 62 O.S. § 34.31**

Intentionally Omitted. Not applicable to this Solicitation.

### **A.47. Right to Renegotiate**

Prior to exercising the State's right to cancel this Contract, the State may renegotiate the Contract for the purpose of obtaining more favorable terms for the State, provided that the term of the Contract is not modified.

### **A.48. Used or New Products**

Bidder shall offer new items of current design unless this Solicitation specifies used, reconditioned, or remanufactured products are acceptable. Warranties in both cases should be the same.

### **A.49. Publicity**

The award of this Contract to Supplier is not in any way an endorsement by the State of Supplier or the products and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales promotion, and other publicity matters relating to this Contract wherein the State's name is mentioned or language used from which the connection of the State's name therewith may, in the State's judgment, be inferred or implied as an endorsement. Supplier 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 concerning this Contract without obtaining the prior written approval of the State.

### **A.50. Mandatory and Non-Mandatory Terms**

**A.50.1.** Whenever the terms "shall", "must", "will", or "is required" are used in this Solicitation, the specification being referred to is a mandatory specification of this Solicitation. Failure to meet any mandatory specification may cause rejection of a Bid.

**A.50.2.** Whenever the terms "can", "may", or "should" are used in this Solicitation, the specification being referred to is a desirable item and failure to provide any item so termed shall not be cause for rejection of a Bid.

### **A.51. Non Tobacco – Smoke Free**

By order of the Governor's Executive Order 2012-01, effective August 06, 2012 the use of any tobacco product shall be prohibited on any and all properties owned, leased or contracted for use by the State of Oklahoma, including but not limited to all buildings, land and vehicles owned, leased or contracted for use by agencies or instrumentalities of the State of Oklahoma.

#### **A.52. OMES - ISD / Agency Relationship**

Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, OMES - ISD is the entity designated to purchase information technology assets on behalf of the State of Oklahoma. The Act directs OMES - ISD to acquire necessary hardware and software, and directs OMES - ISD to authorize the use of these assets by other State agencies. OMES - ISD, as the owner of information technology assets on behalf of the State of Oklahoma, allows other State agencies to use these assets while retaining ownership and the right to reassign them upon written notification to the Supplier.

#### **A.53. Acceptance of Solicitation Content**

Unless otherwise provided in Section One of the Bidder's response to this Solicitation, all Bids shall be firm representations that the responding Bidder has carefully investigated and will comply with all terms and conditions contained in this Solicitation. Upon award of any contract to the successful Bidder, the contents of this Solicitation shall become contractual obligations between the parties. Failure to provide all proposed Amendments to the terms and conditions contained in this Solicitation of the Bid may cause the Bid to be rejected from consideration for award.

#### **A.54. Special Provisions**

Special Provisions apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.



## **B. SPECIAL PROVISIONS**

### **B.1. Contract Period**

- B.1.1. January 1, 2020 through December 31, 2020 with the option to renew for four (4) additional one (1) year periods, expiring December 31, 2024.
- B.1.2. The contract being proposed is for a one (1) year term, with four (4), one (1) year renewals at the option of EGID. EGID will consider renewing the contract for the additional four (4) years subject to the terms and conditions of the contract, unless EGID, at its sole discretion, determines that re-bidding the services is in the members' best interest
- B.1.3. The State, at its sole option, may choose to exercise an extension for ninety (90) days beyond the final renewal option period, at the Contract pricing rate. If this option is exercised, the State shall notify the Supplier in writing prior to contract end date. The State, at its sole option, may choose to exercise subsequent ninety (90) day extensions, by mutual consent and at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

### **B.2. Definitions**

- B.2.1. "Business Associate" shall have the meaning given to Business Associate under the Privacy Rule, including, but not limited to, 45 CFR§ 160.103.
- B.2.2. "CMS" shall mean Centers for Medicare and Medicaid Services.
- B.2.3. "Contract" shall mean the definition of contract as defined in Section A.9.
- B.2.4. Firm – Individual, company or corporation that supplies the expertise required in this solicitation. This term used interchangeably with "vendor" or "supplier".
- B.2.5. "CPT" means Current Procedural Terminology
- B.2.6. "EBC" means Employee Benefits Council
- B.2.7. "EGID" shall have the meaning given to the term 'Covered Entity' under the Privacy Rule including, but not limited to, 45 CFR § 160.103 for purposes of this Business Associate Agreement only and to the extent required by law.
- B.2.8. "HCPCS" means Healthcare Common Procedure Coding System
- B.2.9. "HIPAA" means Health Insurance Portability and Accountability Act of 1996.
- B.2.10. "OMES/CP" shall mean the Office of Management and Enterprise Services Central Purchasing.
- B.2.11. "OPERS" means Oklahoma Public Employees Retirement System
- B.2.12. "OEIBB" means Oklahoma Employees Insurance and Benefits Board

### **B.3. Contract Type**

This is a firm fixed price contract for indefinite delivery and indefinite quantity for the supplies/services specified.

### **B.4. Acceptance of Offer**

The submission of a proposal shall constitute a binding offer to perform those services described within the proposal. By submitting a proposal, the Firm agrees not to make any claims for, or have any right to, damages because of any misunderstanding or misrepresentation of the specifications or because of any misinformation or lack of information.

### **B.5. Bid Opening**

Please note that on an RFP, no pricing shall be released at the time of opening. Should a public opening be requested the only information to be released will be a list of bidders without pricing.

### **B.6. Solicitation Amendments**

In addition to Section A.3 OMES/CP and EGID reserve the right to alter these dates and/or withdraw this RFP should it be determined to be in its best interest to do so.

### **B.7. No Commissions**

The Firm agrees:

- B.7.1. To and is to perform all services described in this solicitation and the final EGID/State of Oklahoma contract.
- B.7.2. That absolutely no commissions or finder's fees should be paid to anyone or any organization resulting from the State of Oklahoma's contract, either arising from an agreement to pay a commission or finder's fee prior to or during the term of this contract; and,
- B.7.3. To provide a statement as part of its response to this solicitation, and prior to each contract renewal, that absolutely no commissions or finder's fees are to be paid to any subcontractor, broker, agent or other individual, organization or entity.

### **B.8. Incurred Expenses**

OMES/CP and EGID will not be responsible for any costs a proposing Firm may incur in preparing and submitting a bid, in making an oral presentation, in providing a demonstration, or in performing any other related activities.

### **B.9. Termination**

- B.9.1. In addition to Section A.24.1, the Firm shall also provide thirty (30) days written notice prior to non-renewal. Said notice shall state the grounds for such cancellation or non-renewal.
- B.9.2. EGID and the Firm agree that each party reserves the right to terminate this contract if funds are not available to support the continuation of this benefit program, or if it is otherwise determined by EGID, at its sole discretion, that it is in the best interest to terminate the contract.
- B.9.3. EGID may terminate this contract without cause upon thirty (30) days written notice.

### **B.10. Records**

In addition to Section A.20.1 the Firm shall identify the adequate safeguards they have in place for all books and records.

### **B.12. Hold Harmless**

- B.12.1. The Firm alone is to be responsible for the work, direction, and compensation of all its employees, auditing firms, agents and subcontractors. Nothing in the contracts, or the performance thereof by the Firm, are to impose any liability or duty whatsoever on the State including, but not limited to, any liability for taxes, compensation, disability benefits, social security or other employee benefits for any person or entity.
- B.12.2. The contract is to hold harmless and indemnify EGID, its officers, employees and employee representatives from and against any injury, damage, loss or liability to persons or property resulting from or arising out of:
  - B.12.2.1.** This contract; and
  - B.12.2.2.** The acts, omissions, liabilities or obligations of the Firm as an expert firm, independent contractor, subcontractor, employee or agent.

### **B.13. Severability**

The terms and provisions of this contract are to be deemed to be severable one from the other, and any determination at law or in a court of equity that one term or provision is unenforceable, shall have no effect on the remaining terms and provisions of this contract, or any one of them, in accordance with the intent and purposes of the parties hereto.

### **B.14. Notice**

The termination notice required by the terms of this contract, is to be provided in writing and (1) mailed by the United States Postal Service (USPS), postage prepaid, certified mail, return receipt requested; or, (2) delivered by an overnight delivery company with written delivery confirmation; or, (3) hand delivered with written delivery confirmation. Notice to EGID shall be to the attention of the Deputy Administrator, 3545 N.W. 58th, Suite 1000, Oklahoma City, Oklahoma 73112.

### **B.15. Supremacy of State Statutes**

This contract is subject to all applicable Oklahoma State Statutes, EGID's Rules and Administrative Directives. Any provision of this contract that is not in conformity with existing or future legislation is to be considered amended to comply with such legislation. Any interpretation or disputes with respect to contract provisions are to be resolved according to the laws of the State of Oklahoma. Jurisdiction and venue for any litigation between EGID and the Firm shall occur in either a State or Federal court in Oklahoma County, Oklahoma.

### **B.16. Force Majeure**

Neither party is to be liable for any delay or failure of performance under this contract due to an act of God, or due to war mobilization, insurrection, rebellion, civil commotion, riot, act of extremist or public enemy, sabotage, explosion, fire, flood or storm.

### **B.17. Ownership of Data**

- B.17.1. The Firm shall recognize that all data generated during the performance of this contract by EGID, the Firm, or its subcontractor and/or affiliates, is proprietary and confidential to OMES/CP and EGID and shall not be used by the Firm for purposes not recognized by this RFP.
- B.17.2. The Firm shall recognize OMES/CP and EGID's exclusive ownership of all data and information and shall not reveal or sell any portion of such to any third party or otherwise use for its own financial gain.

### **B.18. Assignments**

This contract shall not be assigned in whole or in part without prior written approval by OMES/CP and EGID.

### **B.19. Data Transmission Security**

The Firm shall transmit all confidential EGID data and information, whether in electronic, paper or other form, to EGID according to applicable HIPAA standards and usual and customary confidential methods of transmission. The Firm shall maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the integrity and confidentiality of confidential information; protect against reasonable anticipated threats to the security or integrity of the confidential information; and otherwise ensure compliance with 42 USC § 1320d- 2(d)(1),(2) and HIPAA Privacy and Security Regulations.



## **B.20. Proposals Are OMES Property**

- B.20.1. To the extent permitted by law, the Firm's proposals will not be disclosed, except for purposes of evaluation, prior to approval by the Office of Management and Enterprise Services/Central Purchasing Division of the resulting contract. All material submitted becomes the property of EGID and the Office of Management and Enterprise Services/Central Purchasing.
- B.20.2. Submitted proposals may be reviewed and evaluated by any person designated by EGID, other than one associated with a competing proposer. EGID reserves the right to use any and all ideas presented in any response to the solicitation. Selection or rejection of a proposal does not affect this right.

## **B.21. Notification of Award**

Notification will be made to the successful proposer by issuance an agency specific contract from the Office of Management and Enterprise Services/Central Purchasing. Public information releases pertaining to this project shall not be made without prior written approval by EGID and then only in conjunction with EGID.

## **C. SOLICITATION SPECIFICATIONS**

### **C.1. STATEMENT OF PURPOSE**

The Office of Management and Enterprise Services Employees Group Insurance Division (EGID) is seeking to contract with a qualified Firm (hereinafter Supplier) to provide day to day subrogation services.

### **C.2 IDENTIFICATION OF EGID**

C.2.1. EGID was established by, and operates pursuant to, the Oklahoma Employees Insurance and Benefits Act, 74 O.S. § 1301, et seq., hereinafter (Act). The Act was established for the benefit of state and education employees, employees of other state governmental entities and quasi-state governmental entities authorized by the Act to participate in the insurance plans offered by EGID. The medical plans offered by EGID are known as the HealthChoice plans. EGID makes decisions on all policy matters affecting the group insurance plans, including member benefits and premium rates. EGID serves over 900 employer groups located throughout the state of Oklahoma. See [www.ok.gov/sib/](http://www.ok.gov/sib/) for more information about EGID and plans offered.

C.2.2. Pursuant to legislative authority, EGID Rules set forth the eligibility, type of participation and benefits guidelines for all participating employers. A copy of the official agency Rules is on file with the Office of the Secretary of State beginning at Oklahoma Administrative Code Title 260:45, or the Rules may be found at [www.ok.gov/sib/](http://www.ok.gov/sib/) ("About EGID").

C.2.3. The census data for the active and retired non-Medicare members in EGID Health Plans as of January 31, 2019 was 93,838 primary members and 150,312 total participants. The participants live in all 77 of Oklahoma counties and in contiguous states. In 2018 EGID paid out approximately \$603,000,000 in medical claims.

### **C.3. SCOPE OF SERVICES REQUESTED**

The objective of this RFP is to retain a supplier to provide day to day subrogation services. EGID's subrogation procedures include both the review of pended claims data weekly and paid claims data monthly. EGID and the chosen Supplier will pend claims that meet specific criteria for investigation prior to payment. EGID's legal department will retain ultimate authority to approve subrogation settlements. The chosen supplier should describe how it will:

- C.3.1. Identify possible subrogation claims.
- C.3.2. Manage the subrogation process beginning to end.
- C.3.3. Identify possible recovery opportunities in weekly pended claims data files, directing EGID's claims payor to pend for additional investigation or release for immediate payment.
- C.3.4. Describe the data mining process or software it will use to identify recovery opportunities through monthly paid claims data files.
- C.3.5. Correspond with members to identify third party liability.
  - C.3.5.1. Provide sample correspondence.
- C.3.6. Once third party liability is determined, notify insurance/attorneys of subrogation interest and subsequent case management.
- C.3.7. Provide case management to include negotiation, litigation, and claims settlement. Recover and collect settlement funds.
- C.3.8. Provide reports monthly of open cases and settled cases and their amounts.

- C.3.9. Describe the electronic communications and software it will use to provide the requested services.
- C.3.10. Coordinate with EGID's claims processor for secure data exchange of weekly pending claims files/data and monthly paid claims files/data.
- C.3.11. Provide transparency of data pertaining to recoveries, inventory and case activities.
- C.3.12. Provide necessary legal services in those cases which require litigation.
- C.3.13. Identify any services which will be provided by outside vendors and identify said subcontractor(s).
- C.3.14. If available, the Supplier should describe how it can handle extraordinary subrogation claims for medical expenses caused by defective medical devices, dangerous drugs, and toxic exposures.
- C.3.15. If available, the Supplier should describe whether it offers a "hybrid" approach wherein the Supplier would manage part of the subrogation process and let EGID manage the rest of its subrogation operations.

#### **C.4. Requirements**

C.4.1. The Supplier shall comply with all requirements in this section and provide appropriate documentation in its response to each requirement. The Supplier's compliance with the requirements shall be determined according to the sole unrestricted discretion of OMES/CP and EGID. The Supplier must state in its response exactly how it will comply and provide detailed information and state affirmatively its understanding of the requirement and its agreement to comply with that requirement for the duration of the contract. Bids failing to meet these requirements shall not be considered.

C.4.2. The Supplier is to:

- C.4.2.1. Designate an individual to work with EGID regarding all aspects of this contract and identify the office location(s) from which all work will be performed.
- C.4.2.2. Agree to make its facilities available to OMES/CP and EGID if it is determined that an on-site visit will be beneficial and utilized as part of the final evaluation process.
- C.4.2.3. Disclose any apparent or potential conflict of interest or affirm that it has none. The Supplier shall have no interest, direct or indirect, which OMES/CP and EGID deems to conflict in any manner or degree with the performance of services required under this contract. The Supplier shall not engage in any conduct that violates or induces others to violate provisions in the Oklahoma Statutes regarding the conduct of public employees. This includes, but is not limited to, The Anti-Kickback Act of 1974 at 74 O. S. (2001) § 3401, et seq., and the Conflict of Interest provision in the Oklahoma Central Purchasing Act at 74 O. S. (2001) §85.3.
- C.4.2.4. Disclose any prior lawsuits and litigation involving alleged or actual violations of administrative rules and hearings, or any lawsuits and litigation threatened or impending, involving itself and the State of Oklahoma or any political subdivisions, and/or any state officer and/or any state employee acting in the capacity of a state employee, and any settlements, compromises (if confidential, a statement of that fact) or Judgments of Record resulting from the foregoing described litigation or administrative proceedings for the past five (5) years or affirm there are none.
- C.4.2.5. List and disclose contract cancellations or negligent causes of action that arose from work performed that is the same or similar to work identified in the Scope of Services in this RFP that was initiated by persons or entities other than the Supplier and resulted in a settlement with or judgment against the Supplier in any jurisdiction in the United States in an amount of Ten Thousand Dollars (\$10,000.00) or more within the previous five (5) years, or affirm there are none.
- C.4.2.6. If appropriate, acknowledge that certain conditions may preclude the Supplier from meeting each and every detail specified in this RFP. It is also foreseeable that the Supplier will have a better method of accomplishing the required services of the RFP. The Supplier should outline in its response:
  - C.4.2.6.1. How the Supplier would accomplish OMES/CP and EGID's requirements as stated and then outline alternative ways of doing business that the Supplier is offering.
  - C.4.2.6.2. Any alternative method or exceptions to terms, conditions or other requirements in any part of the RFP must be clearly pointed out in both the appropriate section of the proposal and listed in the Statement of Compliance attached to and made a part of this RFP as Attachment B.
  - C.4.2.6.3. Otherwise, OMES/CP and EGID shall consider that all items offered are in strict compliance with the RFP and the Supplier shall be responsible for compliance. OMES/CP and EGID shall specify at the time of the awarding of the contract what, if any, optional, alternative methods are accepted.

**C.4.3. References.** Provide as Attachment C, three (3) references of non-affiliated clients, of similar size, requiring similar services. Include for each reference a:

- C.4.3.1. Contact name;
- C.4.3.2. Address;
- C.4.3.3. Email address;
- C.4.3.4. Telephone number(s);
- C.4.3.5. Type(s) of services provided; and the number of primary participants.

- C.4.4. Acknowledge that all member information concerning this RFP and EGID is the sole property of the State of Oklahoma and shall remain confidential. It shall not be used by the Supplier nor transmitted to others for any reasons whatsoever, except as shall be required to administer and implement the program, and then only with prior written approval from EGID. A list of individuals with EGID who are capable of granting this approval shall be supplied to the successful Supplier. EGID shall maintain confidentiality to the extent permitted by law.
- C.4.5. Execute a HIPAA Business Associate Agreement with EGID according to the terms as defined in the HIPAA Business Associate Agreement attached to this RFP as Attachment A.
- C.4.6. Acknowledges the terms of EGID's Fraud Waste and Abuse Compliance Program. EGID's Compliance Program can be viewed at <https://omes.ok.gov/services/employees-group-insurance-division/about-egid> Go to the right column under Resources, then click on Fraud Waste and Abuse Program, then Compliance Plan.
- C.4.7. Agrees that it does not currently, nor during the term of this contract will it, contract with or employ individuals or entities that are excluded by the Department of Health and Human Services, Office of the Inspector General or included on the Excluded Parties List System maintained by the General Services Administration.

## **D. EVALUATION**

### **D.1. Best Value**

D.1.1. Notwithstanding anything to the contrary herein, any and all decisions as to suitability, competency, ability to perform, conflicts of interest or the appearance thereof, responsiveness of the Supplier's proposal, acceptability of such proposal, or other decisions of qualifications with performance, shall be at the unrestricted sole discretion of OMES/CP and EGID. The contract will be evaluated and awarded based on:

- D.1.1.1. Fee for services- percentage of subrogation proceeds to be retained by Supplier as a result of the Supplier's services;
- D.1.1.2. Response to sections C.3 and C.4.
- D.1.1.3. Reference responses (C.4.3)

D.1.2. OMES/CP and EGID reserve the right to consider historical information and facts, whether gained from the Supplier's proposal, question and answer conferences, or references in the evaluation process.

## **E. INSTRUCTIONS TO BIDDER**

### **E.1. Introduction**

Suppliers are urged to read this solicitation carefully. Failure to do so will be at the Supplier's risk. Provisions, terms, and conditions may be stated or phrased differently than in previous solicitations. Irrespective of past interpretations, practices or customs, proposals will be evaluated and any resultant contract(s) will be administered in strict accordance with the plain meaning of the contents hereof. The Supplier is cautioned that the requirements of this solicitation can be altered only by written amendment approved by the state and that verbal communications from whatever source are of no effect. In no event shall the Supplier's failure to read and understand any term or condition in this solicitation constitute grounds for a claim after contract award.

### **E.2. Submission/Copies**

E.2.1. Suppliers are to submit two (2) electronic copies of their completed response on USB drives, to include scanned images of the required completed and signed forms. Electronic copy can be in Word, Excel, or PDF format

E.2.2. Faxed or emailed responses will not be accepted. Hard copies of the solicitation are not needed. This requirement overrides A.2.4 of the General Provisions.

### **E.3. Revisions to the RFP and/or Solicitation Responses**

E.3.1. OMES/CP and EGID may at any time hereafter supplement the RFP, the bid and the resulting contract for purposes of enumerating, defining, and clarifying services, duties and functions, but not to add new services, duties, or functions. Any changes made to the RFP, bid, and resulting contracting will be done by Amendment or Addendum.

E.3.2. During the evaluation period, Suppliers may be requested to present supplemental information clarifying its bid. This supplemental information must be submitted in writing and will be included as a formal part of the Supplier's bid.

## **F. CHECKLIST**

### **F.1. Vendor Response**

- F.1.1. OMES Form CP 076 – Responding Bidder Information
- F.1.2. OMES Form CP 004 –Certification for Competitive Bid and/or Contract
- F.1.3. Response to section C
- F.1.6. Business Associate Agreement (Attachment A)
- F.1.7. Statement of Compliance (Attachment B)
- F.1.8. References (Attachment C)
- F.1.9. Solicitation Request (Attachment D)
- F.1.10. Two (2) electronic copies as outlined in Section E.2.

## **G. OTHER**

### **Questions**

All questions regarding this solicitation must be submitted in writing and are to be emailed no later than April 23, 2019 at 3:00 p.m. Central Daylight Time. Questions are to be emailed to [Vanessa.Young@omes.ok.gov](mailto:Vanessa.Young@omes.ok.gov) Questions received after this date will not be answered. If any questions are received, an amendment to this solicitation will be posted on our website after this deadline listing all questions received and their answers. Any communication regarding this RFP must be sent to the Contracting Officer listed above. Failure to do so, (contacting the agency directly) may result in your proposal being deemed as non-responsive. Please be sure to reference the RFP number when emailing questions.

## **H. PRICE AND COST**

### **Quoted Fee**

The quoted fee shall be submitted on Attachment D as a percentage of subrogated funds recovered as a result of the Supplier's services, which shall be retained by the Supplier as compensation for said services.

**BUSINESS ASSOCIATE AGREEMENT BETWEEN THE OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES EMPLOYEES GROUP INSURANCE DIVISION (COVERED ENTITY) AND [REDACTED] (BUSINESS ASSOCIATE)**

**Definitions**

Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean [REDACTED].

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Oklahoma **Office of Management and Enterprise Services Employees Group Insurance Division**.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

**Obligations and Activities of Business Associate**

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by this Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement;

(c) Report to Covered Entity any use or disclosure of protected health information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware, provided however that Business Associate shall not be required to report any routine unsuccessful attempts to access, modify or destroy electronic data, or to interfere with an electronic data system, such as “pings” or other broadcast attacks on a firewall, port scans, routine unsuccessful log-on attempts, or denial of service attacks; breaches involving 100 or more affected individuals shall be reported within ten (10) days of discovery, and breaches involving less than 100 affected individuals shall be reported within thirty (30) days of discovery; Business Associate shall provide Covered Entity with information regarding the nature and extent of the improper use or disclosure and any additional information Covered Entity may reasonably request;

## Attachment A

(d) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;

(e) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

(f) In accordance with 45 CFR 164.514(d)(3), only request, use and disclose the minimum amount of protected health information necessary to accomplish the purpose of the request, use or disclosure;

(g) Make available protected health information in a designated record set to the individual or the individual's designee as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(h) Provide access, at the request of Covered Entity and during normal business hours, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524, provided that Covered Entity delivers to Business Associate a written notice at least five (5) business days in advance of requesting such access. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information in a Designated Record Set of Covered Entity;

(i) Make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526, at the request of Covered Entity or an Individual. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information from a Designated Record Set of Covered Entity;

(j) Maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(k) Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Covered Entity or to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule or Security Rule. Business Associate shall have a reasonable time within which to comply with requests for such access and in no case shall access be required in less than five (5) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary;

(l) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

(m) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **Permitted Uses and Disclosures by Business Associate**

(a) Except as otherwise limited by this Agreement, Business Associate may make any uses and disclosures of Protected Health Information necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement, if such use or disclosure would not violate the Privacy Rule if done by

## Attachment A

Covered Entity. All other uses or disclosures by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.

(b) Business Associate may use or disclose protected health information as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for protected health information consistent with the minimum necessary policies and procedures of the HIPAA Rules.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

(e) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(f) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

### **Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

(a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

### **Indemnification**

Business Associate will indemnify, defend and hold harmless Covered Entity and its respective employees, directors, officers, subcontractors, agents and affiliates from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs or expenses (including without limitation reasonable attorneys' fees) suffered by Covered Entity arising from or in connection with any breach of this Agreement, or any negligent or wrongful acts or omissions in connection with this Agreement, by Business Associate or by its employees, directors, officers, subcontractors, or agents. Notwithstanding the foregoing, the Business Associate shall not be responsible or liable for following Covered Entity's instructions with regard to the protected health and/or confidential information or from and to the extent of any breach of contract or negligent actions or omissions by the Covered Entity. No person or entity is to be considered a third-party beneficiary under the agreement, nor shall any third party have any rights as a result of the agreement.

## **Term and Termination**

(a) Term. This agreement shall be effective upon execution by both parties and will continue until terminated by either party for any reason with a written notice of 30 days, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement, and Business Associate agrees to such termination, if Business Associate has breached a material term of this Agreement and does not cure the breach or cure is not possible.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, at the option of Covered Entity, Business Associate shall do one or more of the following: 1) return all protected health information to Covered Entity, 2) transmit the protected health information to another business associate of the Covered Entity, and/or, 3) destroy all protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. Business Associate and its subcontractors shall retain no copies of the protected health information.

## **Miscellaneous**

(a) Assignment. The Parties will not sublicense or assign this Agreement or any right or interest hereunder without prior written consent, and any attempted sublicense or assignment without such consent will be void. Subject to the foregoing restriction, this Agreement will bind and benefit the parties and their respective successors and assigns.

(b) Governing law; Severability. Except as preempted by federal law, this Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Oklahoma, without giving effect to its principles of conflict of laws. If any provision of this Agreement is determined to be invalid to any extent or in any context, such provision will be enforced to the extent and in the contexts in which it is valid, and the remaining provisions are severable and will not be affected by any such determination of invalidity.

(c) Entire Agreement. This Agreement sets forth the entire agreement, and supersedes any and all prior agreements, of the Parties with respect to the subject matter hereof. No amendment of this Agreement will be valid unless set forth in a writing signed by both Parties. No waiver will be binding unless signed by the party to be bound.

(d) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(e) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(f) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.



Attachment A

(g) No Third-Party Beneficiaries. Nothing express or implied in the PBM Agreement or in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

(h) Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity:

First Point of Contact:

Title: OMES Privacy Officer/HealthChoice Chief Compliance Officer  
Name: Paul King  
Address: 3545 N.W.58<sup>th</sup> Street, Suite 600  
Oklahoma City, OK 73112  
Telephone: 405-717-8880  
Fax: 405-717-8609  
Email: Paul.King@omes.ok.gov

Second Point of Contact:

Title: HealthChoice Deputy Compliance Officer  
Name: Lori Baer  
Address: 3545 N.W.58<sup>th</sup> Street, Suite 600  
Oklahoma City, OK 73112  
Telephone: 405-717-8809  
Fax: 405-717-8609  
Email: Lori.Baer@omes.ok.gov

Website URL <https://www.ok.gov/sib>

If to Business Associate:

First Point of Contact:

Title:   
Name:   
Address:   
  
  
Telephone:   
Fax:   
Email:

Second Point of Contact:

Title:

Attachment A

Name:   
Address:   
  
  
Telephone:   
Fax:   
Email:   
  
Website URL

**Agreed and Accepted**

COVERED ENTITY - The Office of Management  
and Enterprise Services Employees Group  
Insurance Division

By:

Printed Name: Frank Wilson

Title: Administrator

Date Signed:

BUSINESS ASSOCIATE -

By:

Printed Name:

Title:

Date Signed:

## ATTACHMENT B FOR RFP #0900000375

### Statement of Compliance

Certain conditions may preclude the Supplier's strict compliance with a term specified in this solicitation. The Supplier may describe its method of compliance to accomplish the requirements of the specific term and EGID reserves its unrestricted discretion to determine, whether an alternative method offered by the Supplier is acceptable to EGID.

The Supplier shall be required to submit a response to this solicitation as it is written. Any alternative method or exceptions to terms, conditions or other requirements in any part of the solicitation must be clearly described in:

- a. The appropriate section of the solicitation; **and**
- b. Listed in the Exceptions Table on page 2 of the Statement of Compliance.

If a Statement of Compliance is submitted with exceptions, EGID will consider such exceptions and/or alternatives in the evaluation process. Such exception and/or alternative may constitute grounds for rejection of the proposal. Should there be a difference in the exceptions provided in the appropriate section of the solicitation and the Exceptions Table in the Statement of Compliance, the Statement of Compliance Exceptions Table will prevail.

Even if exceptions are clearly described in the appropriate section(s) of the solicitation, they must also be listed on the Exceptions Table of the Statement of Compliance. If a Statement of Compliance is submitted without listing those exceptions, EGID shall consider that all items offered are in strict compliance with the solicitation, and the Supplier shall be responsible for compliance.

If a Statement of Compliance is not returned to EGID with the Supplier's original proposal, the response may be excluded from further consideration. Notwithstanding anything to the contrary, EGID maintains the unrestricted discretion to make any decision as to suitability, competency, ability to perform, conflicts of interest or the appearance thereof, responsiveness of the Supplier's proposal, acceptability of such proposal, or other decisions concerning qualifications.

☐ The bid response submitted to EGID is in strict compliance with this solicitation. The bid response submitted to EGID contains no exceptions to the solicitation.

☐ The bid response submitted to EGID contains exceptions to the solicitation. The exceptions are attached.

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

**Exceptions Table for [Supplier Name] for RFP #0900000375**

<b>Exception #</b>	<b>Solicitation Section</b>	<b>Original Solicitation Reference</b>	<b>Supplier's Bid Response</b>
<i>Ex: 1</i>	<i>[Specific Section #]</i>	<i>[Exact language from the RFP]</i>	<i>[Exception Request: Specifically requested changes to the RFP language]</i>
1			
2			
3			
4			
5			



# SOLICITATION REQUEST

Attachment D

☐ Request for Quote

☐ Request for Proposal

☐ Request for Bid

**Dispatch via Print**

Request Quote ID.	Date	Page
0900000375	04/04/2019	1
Payment Terms	DateTime Quote Open	Closing
0 Days	04/04/2019 02:39 AM	05/16/2019 03:00 PM
Requisition Number Reference:		Subrogation Services

**Mgmt and Enterprise Services**  
 OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES  
 ADMINISTRATION  
 122 STATE CAPITOL BUILDING  
 OKLAHOMA CITY OK 73105

**Supplier:** NAME

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ ST: \_\_\_\_\_ ZIP: \_\_\_\_\_

## Supplier Responses

Line	Cat CD / Item # - Descr	Qty.	UOM	Percentage
1	80121610 / Fee for Subrogation Services Year 1 - Jan 1, 2020- Dec 31, 2020	1	EA	_____
2	80121610 / Fee for Subrogation Services Year 2 - Jan 1, 2021- Dec 31, 2021	1	EA	_____
3	80121610 / Fee for Subrogation Services Year 3 - Jan 1, 2022- Dec 31, 2022	1	EA	_____
4	80121610 / Fee for Subrogation Services Year 4 - Jan 1, 2023- Dec 31, 2023	1	EA	_____

### This is NOT AN ORDER

All returned quotes and related documents must be identified with our request for quote Number.



# SOLICITATION REQUEST

Attachment D

☐ Request for Quote

☐ Request for Proposal

☐ Request for Bid

**Dispatch via Print**

## Mgmt and Enterprise Services

OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES  
ADMINISTRATION  
122 STATE CAPITOL BUILDING  
OKLAHOMA CITY OK 73105

Request Quote ID.	Date	Page
0900000375	04/04/2019	2
Payment Terms	DateTime Quote Open	Closing
0 Days	04/04/2019 02:39 AM	05/16/2019 03:00 PM

Requisition Number Reference:

Subrogation Services

**Supplier:** NAME

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ ST: \_\_\_\_\_ ZIP: \_\_\_\_\_

### Supplier Responses

Line	Cat CD / Item # - Descr	Qty.	UOM	Precentage
5	80121610 / Fee for Subrogation Services Year 5 - Jan 1, 2024- Dec 31, 2024	1	EA	_____

### This is NOT AN ORDER

All returned quotes and related documents must be identified with our request for quote Number.



## Vendor/Payee Form

**Agency:** OMES Vendor Management requires the following information for all new non-registered vendors (payees) before payments may be processed. Information is used to establish the payee in the State's PeopleSoft vendor file for payment and procurement activities.

**DO NOT use this form for:**

- **Garnishment Payees:** Use [OMES Form GarnVendor](#)
- **State Employees:** Use [OMES FORM Employee Vendor Request](#)
- **Vendors pending contract award** to a solicitation released by the division of Central Purchasing or another Oklahoma state agency **MUST** first register online with the state unless exempt per statute. For additional information, please refer to [Central Purchasing Vendor Registration](#).

**AGENCY SECTION** (To be completed by state agency representative):

State agency should email completed and signed form to [vendor.form@omes.ok.gov](mailto:vendor.form@omes.ok.gov) or fax to 405-522-3663.

**VENDOR/PAYEE SECTION** (To be completed by vendor/payee)

*Please print legibly or type this information. Form must be completed and signed by authorized individual. Email or fax to requesting state agency.*

<b>Agency Name</b>		<b>Contact Name</b>	
<b>Phone #</b>	<b>Fax #</b>	<b>Email</b>	
<b>Agency Request To</b> – Please select all applicable request types			
<input type="checkbox"/> Add New Vendor	<input type="checkbox"/> Update Existing Vendor	PeopleSoft 10-digit Vendor ID _____	
<input type="checkbox"/> Add New Address	<input type="checkbox"/> Change Address/Location	PeopleSoft Address # _____	PeopleSoft Location # _____
<input type="checkbox"/> Change Vendor Tax ID	<input type="checkbox"/> Change Vendor Name	<input type="checkbox"/> Add Alternate Payee Name	PeopleSoft Location # _____
<input type="checkbox"/> Other Explain _____			
<b>Vendor 1099 Reportable Status</b> <b>Attention Paying Agency:</b> Please check the <b>Add</b> box on the left if payments to this vendor/payee are represented by Account Codes listed on page 3 of this form. If the vendor is incorrectly showing as 1099 Reportable, check the <b>Remove</b> box. The PeopleSoft system requires specific details regarding the type of transaction. Please check the box that applies to this vendor:			
<input type="checkbox"/> <b>Add:</b>	<input type="checkbox"/> 1 - Rents	<input type="checkbox"/> 2 - Royalties	<input type="checkbox"/> 3 - Other Income
<input type="checkbox"/> <b>Remove:</b>	<input type="checkbox"/> 6 - Medical & Health Care	<input type="checkbox"/> 7 - Non-Employee Compensation	<input type="checkbox"/> 10 - Crop Insurance Proceeds
	<input type="checkbox"/> 14 - Gross Proceeds to an Attorney		

**VENDOR/PAYEE SECTION** (To be completed by vendor/payee)

*Please print legibly or type this information. Form must be completed and signed by authorized individual. Email or fax to requesting state agency.*

<b>Payee Information:</b> Please provide the requested information for the payee receiving funds from the Oklahoma state agency. All information should match U.S. Internal Revenue Service filing records for the business, individual or government entity receiving payment.			
<b>Name</b>		<b>Contact Name</b>	
Payee Legal Name for Business, Individual or Government Entity as filed with IRS		<b>Contact Title</b>	
<b>DBA Name</b>		<b>Phone #</b>	
Doing Business As "DBA", or Disregarded Entity Name if different than Legal Name		<b>Fax #</b>	
<b>Tax Identification Number (TIN) and Type:</b>		<input type="checkbox"/> Federal Employer ID (FEIN) <input type="checkbox"/> Social Security Number (SSN)	
<b>Business Address</b> -- Please provide primary business address as filed with the U.S. Internal Revenue Service			
<b>Address</b>		<b>City</b>	
<b>State</b>	<b>Zip+4</b>	<b>Remittance Email</b>	
<b>Optional Addresses</b> – Please select address type as applicable			
Type:	<input type="checkbox"/> Remitting	<input type="checkbox"/> Ordering	<input type="checkbox"/> Pricing <input type="checkbox"/> Returning <input type="checkbox"/> Mailing <input type="checkbox"/> Other:
<b>Address</b>		<b>City</b>	
<b>State</b>	<b>Zip+4</b>	<b>Remittance Email</b>	
<b>Financial Registration:</b> Please provide contact information for the Authorized Individual who can provide financial information used for ACH Electronic Funds Transfer payment processes. An email will be sent providing instructions for accessing the State of Oklahoma online registration system.			
<b>Name</b>	<b>Title</b>	<b>Email</b>	

**W-9 SUPPLEMENTAL INFORMATION – ALL VENDORS OR PAYEES**

The information below is requested under U.S. Tax Laws. Failure to provide this information may prevent you from being able to do business with the state, or may result in the state having to deduct backup withholding amounts from future payments.

**U.S. Taxpayer Identification Number (TIN)**

Federal Employer Identification Number (FEIN) \_\_\_\_\_ If none, but applied for, date applied \_\_\_\_\_

U.S. Social Security Number (SSN) \_\_\_\_\_ If none, but applied for, date applied \_\_\_\_\_

**Entity Filing Classification:**

☐ Domestic (U.S.) Sole Proprietor or Individual ☐ Domestic (U.S.) Partnership ☐ Domestic (U.S.) Corporation Type: \_\_\_\_\_

☐ Limited Liability Company Type: \_\_\_\_\_

LLC Disregarded Entity: ☐ YES ☐ NO **Must be verified by LLC's tax division. If applicable, parent name/tax id is required.**

☐ Domestic (U.S.) Other Explain: \_\_\_\_\_

☐ Foreign (Non-U.S.) Sole Proprietor or Individual\* ☐ Foreign (Non-U.S.) Partnership\* ☐ Foreign (Non-U.S.) Type: \_\_\_\_\_

☐ Foreign (Non-U.S.) Other\* Explain: \_\_\_\_\_

**FOREIGN VENDOR INSTRUCTIONS: \* ADDITIONAL DOCUMENTATION IS REQUIRED.**

Please submit the proper U.S. Internal Revenue Service (IRS) Form W-8, Certificate of Foreign Status. Select form below matching the payee's entity or individual description. Please refer to IRS for additional instructions (<http://www.irs.gov/pub/irs-pdf/iw8.pdf>).

- **Form W-8BEN:** Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals). <http://www.irs.gov/pub/irs-pdf/iw8ben.pdf>
- **Form W-8BEN-E:** Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities). <http://www.irs.gov/pub/irs-pdf/iw8bene.pdf>
- **Form W-8ECI:** Certificate of Foreign Person's Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States. <http://www.irs.gov/pub/irs-pdf/iw8eci.pdf>
- **Form W-8EXP:** Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting. <http://www.irs.gov/pub/irs-pdf/iw8exp.pdf>
- **Form W-8IMY:** Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting. <http://www.irs.gov/pub/irs-pdf/iw8imy.pdf>

This may exempt you from backup withholding. Form W-8 does not exempt you from the 30% (or lower percentage by treaty) non-resident withholding taxes. To claim this exemption, you must file IRS Form 8233 with us. For more information, refer to IRS Publication 519.

**SIGNATURE - AND SUBSTITUTE IRS FORM W-9 CERTIFICATION**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions:** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement account (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN.

\_\_\_\_\_  
Signature of Vendor Representative or Individual Payee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of individual signing form for company

\_\_\_\_\_  
Vendor/Payee (Must be the same as Payee Name from page 1)



**Account Codes for 1099 Reporting - By Category (TO BE COMPLETED BY AGENCY REPRESENTATIVE)**

<input type="checkbox"/> <b>1 - RENTS</b> 532110 Rent of Office Space 532120 Rent of Land 532130 Rent of Other Building Space 532140 Rent of Equipment and Machinery 532150 Rent of Telecommunications Equip 532160 Rent of Electronic Data Processing Equipment 532170 Rent of Electronic Data Processing Software 532190 Other Rents	<input type="checkbox"/> <b>1- RENTS (continued)</b> 532141 Rent of Motor Vehicles 532142 Lease of Motor Vehicles  <input type="checkbox"/> <b>2 – ROYALTIES</b> 553170 Royalties	<input type="checkbox"/> <b>3 – OTHER INCOME</b> 552120 Incentive Awards – Monetary & Material 552160 Incentive Payments – Oklahoma Horse Breeders & Owners 552170 Incentive Payments – Oklahoma Film Enhancement Rebate 553165 Current/Former Employee Reportable Court Ordered or Legal Settlements 553220 Other IRS Reportable Income		
<input type="checkbox"/> <b>6 - MEDICAL &amp; HEALTH CARE PAYMENTS</b> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> 515530 Veterinary Services  515700 Offices of Physicians (except Mental Health Specialists)  515710 Offices of Physicians, Mental Health Specialists  515720 Offices of Dentists  515730 Offices of Chiropractors  515740 Offices of Optometrists  515750 Offices of Mental Health Practitioners (except Physicians)  515760 Offices of Physical, Occupational &amp; Speech Therapists, &amp; Audiologists  515770 Offices of Podiatrists  515780 Offices of all other Miscellaneous Health Practitioners  515790 Family Planning Centers  515800 Outpatient Mental Health &amp; Substance Abuse Centers  515810 Other Outpatient Care Centers  515820 Medical and Diagnostic Laboratories </td> <td style="width: 50%; vertical-align: top;"> 515830 Home Health Care Services  515840 Ambulance Services  515850 All other Ambulatory Health Care Services  515860 General Medical &amp; Surgical Hospitals  515870 Psychiatric &amp; Substance Abuse Hospitals  515880 Specialty Hospitals (except Psychiatric &amp; Substance Abuse)  515890 Nursing Care Facilities  515900 Residential Services for People with Developmental Disabilities  515910 Residential Mental Health &amp; Substance Abuse Facilities  515920 Community Care Facilities for the Elderly  515930 Other Residential Care Facilities  537210 Laboratory Services &amp; Supplies  551230 Medical Services to Indigents (from agencies other than DHS)  551240 Hospital Services to Indigents (from agencies other than DHS)  551250 Other Health Services to Indigents (from agencies other than DHS) </td> </tr> </table>			515530 Veterinary Services 515700 Offices of Physicians (except Mental Health Specialists) 515710 Offices of Physicians, Mental Health Specialists 515720 Offices of Dentists 515730 Offices of Chiropractors 515740 Offices of Optometrists 515750 Offices of Mental Health Practitioners (except Physicians) 515760 Offices of Physical, Occupational & Speech Therapists, & Audiologists 515770 Offices of Podiatrists 515780 Offices of all other Miscellaneous Health Practitioners 515790 Family Planning Centers 515800 Outpatient Mental Health & Substance Abuse Centers 515810 Other Outpatient Care Centers 515820 Medical and Diagnostic Laboratories	515830 Home Health Care Services 515840 Ambulance Services 515850 All other Ambulatory Health Care Services 515860 General Medical & Surgical Hospitals 515870 Psychiatric & Substance Abuse Hospitals 515880 Specialty Hospitals (except Psychiatric & Substance Abuse) 515890 Nursing Care Facilities 515900 Residential Services for People with Developmental Disabilities 515910 Residential Mental Health & Substance Abuse Facilities 515920 Community Care Facilities for the Elderly 515930 Other Residential Care Facilities 537210 Laboratory Services & Supplies 551230 Medical Services to Indigents (from agencies other than DHS) 551240 Hospital Services to Indigents (from agencies other than DHS) 551250 Other Health Services to Indigents (from agencies other than DHS)
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<input type="checkbox"/> <b>7 - NON-EMPLOYEE COMPENSATION</b> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> 515010 Office of Lawyers  515020 Offices of Notaries  515030 Other Legal Services  515060 Accounting, Tax Preparation, Bookkeeping &amp; Payroll Services  515210 Payments for Contract Mentor Services  515220 Architectural Services  515230 Landscape Architectural Services  515240 Engineering Services  515250 Drafting Services  515260 Building Inspection Services  515270 Geophysical Surveying &amp; Mapping Services  515280 Surveying and Mapping (except geophysical) Services  515290 Testing Laboratories  515300 Interior Design Services  515310 Industrial Design Services  515320 Graphic Design Services  515330 Other Specialized Design Services  515350 Custom Computer Programming Services  515360 Computer Systems Design Services  515370 Computer Facilities Management Services  515380 Other Computer Related Services  515400 Administrative Management &amp; General Management Consulting Services  515410 Human Resources &amp; Executive Search Consulting Services  515420 Marketing Consulting Services  515430 Process, Physical Distribution, &amp; Logistics Consulting Services  515440 Other Management Consulting Services  515450 Environmental Consulting Services  515460 Other Scientific &amp; Technical Consulting Services  515470 Research &amp; Development in the Physical, Engineering, &amp; Life Sciences  515480 Research &amp; Development in the Social Sciences &amp; Humanities  515490 Advertising and Related Services  515500 Marketing Research &amp; Public Opinion Polling  515510 Photographic Services  515520 Translation &amp; Interpretation Services  515540 All other Professional, Scientific and Technical Services  515550 Management of Companies &amp; Enterprises  515560 Office Administrative Services  515570 Employment Placement Services  515580 Business Support Services  515590 Document Preparation Services </td> <td style="width: 50%; vertical-align: top;"> 515600 Telephone Call Centers  515610 Business Service Centers  515620 Collection Agencies  515630 Credit Bureaus  515640 Other Business Support Services  515650 Investigation &amp; 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Repair – Employee Uniforms  545110 Purchase of Land Improvements  545210 CIP (Construction in Progress) – Land Improvements  546210 Buildings and Other Structures – Construction and Renovation  546220 Major Maintenance and Repair of Equipment  547110 Highway and Bridge Construction Expense – Contractual  547120 Maintenance and Repairs to Highways and Bridges  547210 Major Maintenance and Renovation – Bridges  552100 Stipends – Other  552120 Teacher Stipends ("Incentive" payments)  552130 Oklahoma Police Corps Stipends  553160 Non-Employee Reportable Court Ordered or Legal Settlements  554190 Voter Registration Services  561140 Pollution Remediation </td> </tr> </table>			515010 Office of Lawyers 515020 Offices of Notaries 515030 Other Legal Services 515060 Accounting, Tax Preparation, Bookkeeping & Payroll Services 515210 Payments for Contract Mentor Services 515220 Architectural Services 515230 Landscape Architectural Services 515240 Engineering Services 515250 Drafting Services 515260 Building Inspection Services 515270 Geophysical Surveying & Mapping Services 515280 Surveying and Mapping (except geophysical) Services 515290 Testing Laboratories 515300 Interior Design Services 515310 Industrial Design Services 515320 Graphic Design Services 515330 Other Specialized Design Services 515350 Custom Computer Programming Services 515360 Computer Systems Design Services 515370 Computer Facilities Management Services 515380 Other Computer Related Services 515400 Administrative Management & General Management Consulting Services 515410 Human Resources & Executive Search Consulting Services 515420 Marketing Consulting Services 515430 Process, Physical Distribution, & Logistics Consulting Services 515440 Other Management Consulting Services 515450 Environmental Consulting Services 515460 Other Scientific & Technical Consulting Services 515470 Research & Development in the Physical, Engineering, & Life Sciences 515480 Research & Development in the Social Sciences & Humanities 515490 Advertising and Related Services 515500 Marketing Research & Public Opinion Polling 515510 Photographic Services 515520 Translation & Interpretation Services 515540 All other Professional, Scientific and Technical Services 515550 Management of Companies & Enterprises 515560 Office Administrative Services 515570 Employment Placement Services 515580 Business Support Services 515590 Document Preparation Services	515600 Telephone Call Centers 515610 Business Service Centers 515620 Collection Agencies 515630 Credit Bureaus 515640 Other Business Support Services 515650 Investigation & Security Services 515660 Educational Services 515940 Individual & Family Services 515950 Community Food, Housing & Emergency & Other Relief Services 515960 Vocational Rehabilitation Services 515970 Child Day Care Services 515980 Arts, Entertainment and Recreation 515990 Other Services (except Public Administration) 517110 Moving Expense – Employee Transfer 531150 Printing and Binding Contract 531160 Advertising 531170 Informational Services 531190 Exhibitions, Shows and Special Events 531220 Burial Charges 531330 Jury and Witness Fees 531500 Moving Expenses – General 533100 Maintenance & Repair – Other Items 533110 Maintenance & Repair of Buildings & Grounds (outside vendors) 533120 Maintenance & Repair – Equipment (outside vendors) 533130 Maintenance & Repair of Telephone Equipment (outside vendors) 533140 Maintenance & Repair of Data Processing Equipment (outside vendors) 533150 Maintenance & Repair of Data Processing Software (outside vendors) 533190 Maintenance & Repair – Employee Uniforms 545110 Purchase of Land Improvements 545210 CIP (Construction in Progress) – Land Improvements 546210 Buildings and Other Structures – Construction and Renovation 546220 Major Maintenance and Repair of Equipment 547110 Highway and Bridge Construction Expense – Contractual 547120 Maintenance and Repairs to Highways and Bridges 547210 Major Maintenance and Renovation – Bridges 552100 Stipends – Other 552120 Teacher Stipends ("Incentive" payments) 552130 Oklahoma Police Corps Stipends 553160 Non-Employee Reportable Court Ordered or Legal Settlements 554190 Voter Registration Services 561140 Pollution Remediation
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<input type="checkbox"/> <b>14 - GROSS PROCEEDS TO AN ATTORNEY</b> 553180 Settlements – Paid To/Thru Attorney				

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**ATTACHMENT F – IS SECURITY PROVISIONING DOCUMENT**

**Please note, contracts involving particular classes of sensitive data may result in revisions to the terms below.**

**DISCLAIMER: Terms may change or be adjusted without notice.**

**Additional Contract Terms Related to Hosting Services**

The parties agree to the following provisions in connection with any Customer Data stored or hosted by or on behalf of Supplier in connection with the Contract. Unless otherwise indicated herein, capitalized terms used in this Attachment without definition shall have the respective meanings specified in the Contract.

**I. Definitions**

- a. “Customer Data” shall mean all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier.
- b. “Data Breach” shall mean the unauthorized access by an unauthorized person that results in the use, disclosure or theft of Customer Data.
- c. “Non-Public Data” shall mean Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.
- d. “Personal Data” shall mean Customer Data that contains 1) any combination of an individual’s name, social security numbers, driver’s license, state/federal identification number, account number, credit or debit card number and/or 2) contains electronic protected health information that is subject to the Health Insurance Portability and Accountability Act of 1996, as amended.
- e. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the hosted environment used to perform the services.

## **II. Customer Data**

- a. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).
- b. Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.
- c. Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

## **III. Data Security**

- a. Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the hosted environment and Customer Data and to protect against both unauthorized access to the hosting environment, and unauthorized communications between the hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice

and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

- b. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data.
- c. Supplier represents and warrants to the Customer that the hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
- d. Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
- e. Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.
- f. Supplier shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
- g. Any remedies provided in this Attachment are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

#### **IV. Security Assessment**

- a. The State requires any entity or third-party vendor hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the contract, including renewals, constitutes a material breach.
- b. To the extent Supplier requests a different sub-contractor than the third-party hosting vendor already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party hosting vendor in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party hosting vendor's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party hosting vendor does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party vendor in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

#### **V. Security Incident or Data Breach Notification:** Supplier shall inform Customer of any Security Incident or Data Breach.

- a. Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
- b. Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).
- c. Supplier shall: (i) maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Supplier; and (iv) documents all Security Incidents and their outcomes.
- d. If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth

herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

**VI. Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Supplier.

- a. Supplier, unless stipulated otherwise, shall promptly notify the Customer identified contact within 2 hours or sooner, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach. Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- b. Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.
- c. If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

**VII. Notice:** In addition to notice requirements under the terms of the Contract otherwise, contact information for Customer for notifications in connection with hosting services provided by Supplier are:

Chief Information Officer  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

And

Chief Information Security Officer  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

And

OMES Information Services General Counsel  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

**VIII. Supplier Representations and Warranties:** Supplier represents and warrants the following:

- a. The product and services provided in connection with hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
- b. Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.
- c. The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.
- d. Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

**IX. Indemnity**

- a. Supplier's Duty of Indemnification. Supplier agrees to indemnify and shall hold the State of Oklahoma and State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees) (collectively "Damages") (other than Damages that are the fault of Customer) arising from or in connection with Supplier's breach of its express representations

and warranties in this Hosting Agreement and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of the Contract or this Hosting Agreement infringes that party's patent or copyright, Supplier shall defend and indemnify the State of Oklahoma and Customer against the claim at Supplier's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State of Oklahoma and/or Customer. The State of Oklahoma and/or Customer shall promptly notify Supplier of any third party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State of Oklahoma does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section but Supplier shall remain responsible to indemnify Customer and the State of Oklahoma for all associated costs, damages and fees incurred by or assessed to the State of Oklahoma and/or Customer. Should the software become, or in Supplier's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

**X. Termination and Suspension of Service:**

- a. In the event of a termination of the contract, Supplier shall implement an orderly return of Customer Data in a mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of State Data.
- b. During any period of service suspension, Supplier shall not take any action to intentionally erase any Customer Data.
- c. In the event of termination of any services or agreement in entirety, Supplier shall not take any action to intentionally erase any Customer Data for a period of:
  - i. 10 days after the effective date of termination, if the termination is in accordance with the contract period
  - ii. 30 days after the effective date of termination, if the termination is for convenience
  - iii. 60 days after the effective date of termination, if the termination is for cause

After such period, Supplier shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.



- d. The State shall be entitled to any post termination assistance generally made available with respect to the services.
- e. Supplier shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar days of its request for disposal of data.