



**STATE OF OKLAHOMA CONTRACT WITH EMERGENCY CARE RESEARCH
INSTITUTE**

This State of Oklahoma Contract (“Contract”) is entered into between the State of Oklahoma by and through the Oklahoma Healthcare Authority (“State”) and Emergency Care Research Institute (“Supplier”) and is effective as of the effective date set forth on a properly issued purchase order or, if no effective date is listed, the date of last signature (“Effective date”). The term of the Contract is one year and there are (4) one-year options to renew the Contract.

Purpose

The State is awarding the Contract to Supplier for the provision of an online subscription for medical research to support medical and dental decisions made by the Chief Medical Office, as more particularly described in certain Contract Documents. Supplier submitted a proposal with exceptions, vendor documents and confidentiality requests. Supplier did include a best and final offer. This Contract Document memorializes the agreement of the parties with respect to terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under the Contract. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation No. EV00000674, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Agency Specific Terms, Attachment C;
 - 2.4. Reserved, Attachment D;
 - 2.5. Response to Specification and Price, Attachment E;
 - 2.6. Pricing, Attachment E-1;
 - 2.7. Additional Terms, Attachment E-2
3. The parties additionally agree:
 - 3.1. Except for information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.

- 3.2. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.
4. Payment obligations rest solely with the Oklahoma Healthcare Authority.
- Please send invoices and billing inquiries to:
 4345 N. Lincoln Blvd, Oklahoma City, Oklahoma 73105, USA
 INVOICES@okhca.org
5. The undersigned Agency hereby attests that any required terms and conditions based on a Federal Award applicable to this Contract are included herein.
6. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

SIGNATURES

The undersigned represent and warrant that they are authorized, as representatives of the party on whose behalf they are signing, to sign this Agreement and to bind their respective party thereto.

**STATE OF OKLAHOMA
 by and through the OKLAHOMA
 HEALTHCARE AUTHORITY :**

**EMERGENCY CARE RESEARCH
 INSTITUTE**

By: 
Sherri White (Aug 4, 2025 11:45:24 CDT)

By: 
Kent Brunen (Jul 31, 2025 09:27:32 MDT)

Name: Sherri White

Name: Kent Brunen

Title: Manager

Title: Director North America

Date: Aug 4, 2025

Date: Jul 31, 2025

The State Purchasing Director is signing solely to ensure state agency compliance with the provisions of the Oklahoma Central Purchasing Act pursuant to 74 O.S., 85.5 concerning acquisitions by state agencies.

By: 
Sherri White (Aug 4, 2025 11:45:24 CDT)

Name: Amanda Otis

Title: State Purchasing Director

Date: Aug 4, 2025

Attachment A

Solicitation No. EV00000674

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded on behalf of Oklahoma Health Care Authority by and through the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract document.

I. PURPOSE

The Office of Management and Enterprise Services (OMES), Central Purchasing Division, is seeking responses on behalf of Oklahoma Health Care Authority from potential Suppliers to provide a contract for the purchase of an online subscription for medical research to support medical and dental decisions made by the Chief Medical Office. A Contract resulting from this Solicitation may be designated for use as a Statewide Contract.¹

The Contract is awarded on behalf of Oklahoma Health Care Authority for the purchase of a subscription to an online database for medical research to support medical and dental decisions by the Chief Medical Office.

1. Contract Term and Renewal Options:

- 1.1. The initial Contract term, which begins on the effective date of the Contract, is one year and there are (4) one-year options to renew the Contract.

2. Solicitation Criterion:

2.1. The Bid will be evaluated using a best value criterion, based on the following:

- i. Price
- ii. Technical Response
- iii. Webinar – Demonstration of product

2.2 Scope and Description:

- i. The Oklahoma Health Care Authority (OHCA) Medical Professional staff are accepting proposals for an online database for medical research to support medical and dental decisions made by the chief Medical Office. The initial contract period will begin July 1, 2025, thru June 30, 2026. After the initial term there are (4) one-year options to renew the contract..
- ii. The Bid Response shall show the ability of the Bidder to meet or exceed the following mandatory specifications:

¹ 74 O.S. 85.5(G)(3)

- a. The online database should contain un-biased research for new healthcare technologies, procedures, medical devices, drugs or pharmaceuticals and diagnostic radiology testing and genetic molecular laboratory testing to support clinical policy and coverage (or non-coverage) decisions.
 - b. Use of a grading system or rating system for the evidence reviewed reflects the strength of the evidence presented, so that it assists medical professionals in making sound clinical policy decisions with evidence to back up those decisions.
 - c. Interpretation and publication of contextualized clinical evidence for informed decision making and best practice guideline development.
 - d. Independent, unbiased research on healthcare practices and products that improve the safety, quality and cost-effectiveness of patient care.
 - e. Ability to conduct research reviews, evidence-based reports and assessments on medical technologies and health policy issues.
 - f. Evidence-based product comparisons based on price, efficiency and safety.
 - g. Maintain a comprehensive database/repository of evidence-based reviews with unlimited access for approximately 30-40 staff members, that I easily accessible.
 - h. Ability to track trends over time on previous decisions made, adjusting or reassessments as new evidence emerges.
 - i. Credentialed Medical staff availability for queries when necessary.
 - j. Evaluators (3) require access to a webinar or a feature that allows for product demonstration. Provide a contact person's name and phone number for evaluators to schedule demonstration.
- iii. Pricing shall be proposed using the Exhibit [No.2] titled Pricing.

3.2 Executive Summary, Company Information and Technical Response are on Exhibit 01.

3.3 The response to pricing shall be proposed using Exhibit 02: Price Template.

II. STATE OF OKLAHOMA NON-NEGOTIABLE GENERAL TERMS

In addition to other terms contained in an applicable Contract document, Supplier and State agree to the following General Terms:

1 Scope and Contract Renewal

- 1.1 Supplier may not add products or services to its offerings under the Contract without the State's prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for

goods or services outside the scope of the Contract, Supplier shall contact the State.

- 1.2 At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3 If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier's performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Amendment. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4 Upon mutual agreement, the Parties may extend the Contract for ninety (90) days beyond a final renewal term. The Parties may to the extent allowable by law, choose to exercise subsequent ninety (90) day extensions.
- 1.5 Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

2 Contract Effectiveness

- 2.1 Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until a proper purchase order has been issued.
- 2.2 Any Contract document shall be legibly written in ink or typed. All Contract transactions, and any Contract document related thereto, may be

conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

3 Modification of Contract Terms and Contract documents

- 3.1** The Contract may only be modified, amended, or expanded by an Amendment. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, 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.
- 3.2** Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.
- 3.3** Except for information deemed confidential by the State pursuant to applicable law, rule, regulation, or policy, the parties agree Contract terms are not confidential and are disclosable without further approval of or notice to Supplier.
- 3.4** Unless mutually agreed to in writing by the State of Oklahoma by and through the Office of Management and Enterprise Services, no Contract document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State.
- 3.5** To the extent any term or condition in any Contract document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.

4 Pricing

- 4.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 4.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 4.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery
- 4.4** Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product 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
- 4.5** Pursuant to OAC 260:115-9-1, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

5 Invoices and Payments

- 5.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted This section shall not prohibit

the payment of membership dues or payment for subscriptions to magazines, periodicals or books or for payment to vendors providing subscription services under 74 O.S. 85.44B.

The following terms additionally apply:

- A. An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B. Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C. Payment of all fees under the Contract shall be due NET 30 days, but shall not be deemed late until 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.
- D. The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E. If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F. If the Supplier accepts payment by Purchase Card they shall do so according to Oklahoma law.

6 Oklahoma Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 et seq. Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required. Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section.

Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) pricing provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

7 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. 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. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

8 State Shall Not Indemnify

The State of Oklahoma cannot lawfully agree to indemnify a private contractor. The credit of the State shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality, or political subdivision of the State pursuant to Oklahoma Constitution article 10, Section 15, OAC 260:115-7-32(k)(3)(A) and Attorney General Opinion 2012-18.

9 Indemnification Coordination of Defense

9.1 In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

10 Termination for Funding Insufficiency

10.1 Notwithstanding anything to the contrary in any Contract document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

10.2 Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.

10.3 The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

11 Suspension of Supplier

- 11.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.
- 11.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.
- 11.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

12 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract. A determination that Supplier knowingly rendered an erroneous certification, in

addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide

written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

13 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

14 Notices

All notices, approvals or requests allowed or required by the terms of any Contract shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. Notice information may be updated in writing to the other party as necessary.

In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the email address set forth below.

Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall be delivered to the address below in addition to e-mail.

If sent to the State:

State Purchasing Director
2401 North Lincoln Blvd., Second Floor
Oklahoma City, Oklahoma 73105

With a copy, which shall not constitute notice, to:

Purchasing Division Deputy General Counsel
2401 North Lincoln Blvd., Second Floor
Oklahoma City, Oklahoma 73105

15 Miscellaneous

15.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract documents, in the singular or in the aggregate, shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles. Pursuant to 74 O.S. §85.7(F), where Federal awards are involved, applicable federal laws, rules and regulations shall govern to the extent

necessary to insure ensure compliance with the terms of the Federal award. Venue for any action, claim, dispute, or litigation relating in any way to the Contract documents, shall be in Oklahoma County, Oklahoma. The State expressly declines any terms that minimize its rights under Oklahoma Law, including but not limited to, Statutes of Limitations.

15.2 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

15.3 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

15.4 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or condition is void and unenforceable. By executing any Contract document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

15.5 Severability

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

circumstances shall remain valid and in full force and effect. 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.

15.6 Section Headings

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

15.7 Sovereign Immunity

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State; provided, however, that the parties hereby agree that the doctrine of sovereign immunity does not apply to actions grounded in contract and therefore does not prohibit Supplier from pursuing claims arising under the Contract against the State and Customers.

15.8 Survival

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

15.9 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its authorized employee, agent, or another representative acting within the scope of their authority violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

15.10 Import/Export Controls

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

ATTACHMENT B

STATE OF OKLAHOMA NEGOTIABLE GENERAL TERMS

This State of Oklahoma General Terms (“General Terms”) is a Contract document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract document, Supplier and State agree to the following General Terms:

1 Contract Order of Priority

1.1 Contract documents shall be read to be consistent and complementary. Any conflict among the Contract documents shall be resolved by giving priority to Contract documents in the following order of precedence:

- A.** any Amendment;
- B.** terms contained in this Contract document.
- C.** any Contract-specific State terms contained in a Contract document including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
- D.** any applicable Solicitation;
- E.** any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation, Contract or applicable law;
- F.** any statement of work, work order, or other mutually agreed Contract documents.

1.2 If there is a conflict between the terms contained in this Contract document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms provided by Supplier shall not take priority over this Contract document or Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Amendment.

2 Definitions

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 2.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 2.2 **Amendment** means any mutually executed, written modification to a Contract document or a written change, addition, correction or revision to a Solicitation.
- 2.3 **Bid** means an offer a Bidder submits in response to the Solicitation.
- 2.4 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 2.5 **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 2.6 **Customer** means the entity receiving goods or services contemplated by the Contract.
- 2.7 **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 2.8 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract document.
- 2.9 **Federal award** means the Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity
- 2.10 **Governmental Entity** means any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claim Act including any associated institution, instrumentality, board, commission, committee, department, or other entity designated to act on behalf of the state.

- 2.11 Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 2.12 Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 2.13 Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 2.14 OAC** means the Oklahoma Administrative Code.
- 2.15 OMES** means the Office of Management and Enterprise Services.
- 2.16 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 2.17 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.
- 2.18 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 2.19 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 2.20 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 2.21 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works

of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

3 Additional Pricing

- 3.1** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.
- 3.2** Supplier shall have no right of setoff.
- 3.3** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.

4 Ordering, Inspection, and Acceptance

- 4.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.
- 4.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product 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.

Pursuant to OAC 260:115-9-1, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 4.3** Supplier shall deliver products and services on or before the required date specified in a Contract document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.
- 4.4** Product warranty and return policies and terms provided under any Contract document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

5 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

- 5.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a notice of cancellation and includes the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;

- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$2,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$2,000,000 combined single limit each accident;
- D.** If the Supplier will access, process, or store state data, then Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and
- E.** Additional coverage required in writing in connection with a particular Acquisition.

5.2 Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.

5.3 Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

6 Compliance with Applicable Laws

6.1 As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following list. For purposes of determining the applicability of the below federal, State, and local laws, rules, regulations, ordinances, and order, the parties acknowledge that

Customer and the State are not sharing data, sensitive or otherwise, with Supplier under this Agreement.

- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
- B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
- C.** Prospective participant requirements set 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, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
- E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;
- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
- G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
- H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at [Home | E-Verify](#);
- I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards;

Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and

- J.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- 6.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at [Information Security Policy, Procedures, Guidelines \(oklahoma.gov\)](#) Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors. For purposes of determining the applicability this section 6.2, the parties agree that Customer and the State are not sharing data, sensitive or otherwise, with Supplier under this Agreement. The parties further agree that Supplier will provide all goods and services under this Agreement remotely.
- 6.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 6.4** In addition to compliance under subsection 6.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory contract provisions required in connection with the receipt of federal funds or other funding source.
- 6.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. 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 under the Contract.
- 6.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.

- 6.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, 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 party.
- 6.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.
- 6.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 6.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

7 Audits and Records Clause

- 7.1** As used in this clause and pursuant to 67 O.S. §203, "record" includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, 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.
- 7.2** Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 7.3** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following

completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

- 7.4** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

8 Confidentiality

- 8.1** The Supplier shall maintain strict security of all State and citizen 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 and records only as necessary for Supplier to perform its obligations under the Contract. 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. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer's prior express written permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.
- 8.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 8.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees,

officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll free telephone call center services.

- 8.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 8.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.
- 8.6** The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, 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.

9 Assignment and Permitted Subcontractors

- 9.1** Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.
- 9.2** Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.
- 9.3** If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.
- 9.4** All payments under the Contract shall be made directly to the Supplier, except as provided in subsection A above regarding the Supplier's assignment of

payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.

9.5 Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

10 Background Checks and Criminal History Investigations

Prior to the commencement of any services, performance of background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required. If required, the Supplier agree to provide the State with a description of the background check process to include any vendor's used to gather information. Supplier will further attest that each employee and subcontractor providing services has passed the back ground check. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide verification of results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or services.

11 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property, copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably

available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

12 Indemnification

12.1 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.

- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

12.2 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed

infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

12.3 Notice and Cooperation

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended and where applicable the Attorney General of Oklahoma, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

12.4 Limitation of Liability

- A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.

- B.** LIMITATION ON LIABILITY. EACH PARTY'S ENTIRE LIABILITY IN ANY CALENDAR YEAR FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT WILL NOT EXCEED THE AMOUNT PAYABLE IN THE PRIOR 12 MONTHS FOR THE MEMBERSHIP THAT IS THE SUBJECT OF THE CLAIM FOR DAMAGES. ECRI SHALL NOT BE LIABLE FOR ANY PENALTIES, INTEREST, TAXES OR OTHER AMOUNTS IMPOSED BY ANY GOVERNMENTAL OR

REGULATORY AUTHORITY. NEITHER PARTY IS LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, FOR LOSS OF DATA, OR LOSS OF PROFITS (IN EITHER CASE, WHETHER DIRECT OR INDIRECT) EVEN IF THE DAMAGES OR LOSSES COULD HAVE BEEN FORESEEN OR PREVENTED

- C. The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

13 Termination for Cause

- 13.1** Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.
- 13.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.
- 13.3** The State may terminate the Contract if the scope includes PR Vendor services and the Supplier, or Supplier's employee, violate the lobbying clause. PR Vendor services is defined to include a contract for public relations (PR),

marketing or communication services. The State may immediately terminate the Contract with no more than 10-day notice under this section.

13.4 Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

13.5 The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-1 is an example.

14 Termination for Convenience

14.1 The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.

14.2 Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

15 Suspension of Supplier

15.1 Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.

15.2 Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

15.3 Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

16 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

17 Force Majeure

17.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

17.2 Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

17.3 Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

18 Security of Property and Personnel

For purposes of determining the applicability this section 18, the parties agree that Customer and the State are not sharing data, sensitive or otherwise, with Supplier under this Agreement. The parties further agree that Supplier will provide all goods and services under this Agreement remotely. In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

19 Miscellaneous

19.1 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

19.2 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services 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 the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. 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 the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

19.3 Mutual Responsibilities

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

19.4 Entire Agreement

The Contract documents taken together as a whole constitute the entire agreement between the parties. The Contract documents include this Contract, any Amendments to this Contract, applicable Solicitation, and any successful bid as may be amended or limited through negotiation. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract document shall be binding or valid. The Supplier's certifications, including any completed electronically, are incorporated by reference into the Contract.

ATTACHMENT C – AGENCY TERMS

CONTRACT TERMS AND CONDITIONS

OKLAHOMA HEALTH CARE AUTHORITY

Based upon the following recitals, the Oklahoma Health Care Authority (hereinafter referred to as OHCA), and Supplier enter into this Contract. All terms are as applicable.

Contents

C.1 CONTRACT GENERAL TERMS AND CONDITIONS	2
C.2 PAYMENTS AND REIMBURSEMENT	5
C.3 AVAILABILITY OF FUNDING	6
C.4 HOLD HARMLESS.....	6
C.5 FORCE MAJEURE	6
C.6 CONTRACT COMPLIANCE AND PENALTIES	7
C.7 TERMINATION	8
C.8 SCOPE OF WORK	8
C.9 LAWS APPLICABLE	8
C.10 FEDERAL REGULATIONS.....	10
C.11 AUDIT AND INSPECTION.....	11
C.12 CONFIDENTIALITY AND SECURITY OF PROTECTED HEALTH INFORMATION 12	
C.13 REQUIRED INSURANCE COVERAGE.....	19
C.14 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES	20
C.15 MEDIA OWNERSHIP (DISK DRIVE AND/OR MEMORY CHIP OWNERSHIP)	20
C.16 INFORMATION TECHNOLOGY ACCESS CLAUSE.....	20
C.17 SYSTEM SECURITY	21
C.18 DISASTER PREPARATION AND DATA RECOVERY	25
C.19 DISASTER RECOVERY PLAN.....	27
C.20 OFFSHORING.....	28
c.21 OWNERSHIP OF MATERIALS	28
C.22 PUBLICATIONS RIGHTS/SCHOLARY WORK.....	29
C.23 PUBLICITY	29
C.24 TURNOVER.....	29

ATTACHMENT C – AGENCY TERMS

C.25 DISCLOSURE OF OWNERSHIP30

C.1 CONTRACT GENERAL TERMS AND CONDITIONS

1. Purpose

The purpose of this Contract is to acquire the services necessary to assist OHCA in successfully carrying out functions described in Attachment A: Proposal.

2. The Parties

a. Oklahoma Health Care Authority (“OHCA”)

- i. OHCA is the single State agency designated by the Oklahoma Legislature through 63 O.S. § 5009(B) to administer Oklahoma’s Medicaid Program .
- ii. OHCA has authority to enter into this Contract pursuant to 63 O.S. § 5006(A), 74 O.S. § 85.1 *et. seq.* OHCA’s Chief Executive Officer has authority to execute this Contract on OHCA’s behalf pursuant to 63 O.S. § 5008(B).
- iii. OHCA’s contact information for the purposes of this Contract is as follows:

Email (preferred): Procurement@okhca.org

Mailing address: Oklahoma Health Care Authority

Attn: Contracts Development Unit

4345 N. Lincoln Boulevard

Oklahoma City, OK 73105-5101

- iv. OHCA’s email address for **electronic submission of invoices** is as follows:

Contracts@okhca.org

- v. OHCA may update its contact information described above upon written notice (email is sufficient) to Supplier.

b. Supplier

- i. Supplier has the authority to enter into this Contract pursuant to its organizational documents, bylaws, or properly enacted resolution of its governing authority. The person executing this Contract has authority to execute this Contract on Supplier’s behalf pursuant to Supplier’s organizational documents, bylaws, or properly enacted resolution of Supplier’s governing authority.

3. General Provisions

a. Contract Term

ATTACHMENT C – AGENCY TERMS

- i. This Contract shall begin on the date of signature and will expire as described in Attachment A.
 - b. Contract Extension Option
 - i. OHCA may choose to exercise an extension for up to 180 days beyond the final renewal option period at this Contract pricing rate; the extension shall be executed by mutual agreement. If this option is exercised, OHCA shall notify the Supplier in writing prior to this Contract end date.
 - ii. OHCA may choose to exercise subsequent extensions, up to 180 days each, by mutual agreement and at this Contract pricing rate, to facilitate the finalization of related terms and conditions of a new contract or as needed for transition to a new Supplier.
4. Amendments/Modifications
 - a. This Contract contains all of the agreements of the parties and no oral representations by either Party are binding. Any amendments and/or modifications to this Contract's term, scope of work, and/or pricing methodology shall be in writing and signed by both Parties.
 - b. Legislative, regulatory, and programmatic changes may require changes in the terms and conditions of the Contract. Modifications of terms and conditions of this Contract shall be authorized in such cases upon mutual approval by OHCA and Supplier. At all times, all Parties shall adhere to the overall intent of the Contract.
 - c. Not-to-exceed increases or decreases, solely at the time of Contract renewal, shall not require an amendment/modification.
5. Independent Contractor
 - a. Supplier is in all respects an independent contractor and is neither an agent nor an employee of OHCA.
 - b. This Contract does not create an employment relationship. Supplier and Supplier's employees shall not be considered employees of the State of Oklahoma nor of OHCA for any purpose, and accordingly shall not be eligible for rights or benefits (including but not limited to worker's compensation) accruing to State employees.
 - c. The Supplier shall not have authority to bind OHCA.
6. Assignment/Subcontract
 - a. Supplier shall not assign, transfer, or subcontract any rights or obligations under this Contract without prior written consent of OHCA. This Contract shall be binding and effective on any and all permitted successors and assigns.
 - b. Supplier shall be responsible for all subcontractors' performance and shall be solely responsible for meeting all the terms of the Contract. No subcontract or delegation shall relieve or discharge Supplier for any obligation or liability

ATTACHMENT C – AGENCY TERMS

under this Contract. Any subcontractor shall be subject to the same conditions as Supplier, including Contract modifications subsequent to award, confidentiality, audit, certifications, and other relevant Contract terms.

- c. All subcontractors shall be identified by name and FEIN in a document made available in an electronic form for review or inspection by OHCA within thirty (30) days after the execution of the Contract.
 - d. All subcontracts shall be available in an electronic form for review or inspection by OHCA upon request.
7. Product and/or Services Substitutions
Substitutions are not permitted without the written permission of OHCA or authorized in the Scope of Work.
8. Conflict of Interest
1. Supplier certifies and agrees that it presently has no interest and shall not acquire any interest, either direct or indirect, which would conflict in any manner or degree with the performance of this Contract. The Supplier must disclose any outside activity or interest that conflicts or may conflict with the best interest of the State of Oklahoma. In the event that Contractor acquires any interest that may be in conflict with the performance of this Contract, Supplier will notify OHCA within three (3) business days. Any conflict of interest shall, at the sole discretion of OHCA, be grounds for partial or whole termination of the Contract.
9. Equipment and Electronic Communication
- a. Equipment is defined by the State of Oklahoma as a tangible nonexpendable item having a useful life of more than one year and total acquisition cost of \$500.00 or more per unit. In the event Supplier is loaned equipment by OHCA under this Contract, this equipment remains the property of OHCA. Supplier may not add software to any equipment and shall follow all OHCA policies regarding computer usage and storage. The equipment shall be returned to OHCA in the same condition as when originally loaned upon completion of this Contract, subject to normal wear and tear through routine use.
 - b. In order to access OHCA's systems network for purpose of performing duties pursuant to this Contract, Supplier is required to utilize equipment supplied by OHCA or equipment that meets the security requirements of OHCA.
 - c. Supplier is prohibited from using OHCA's equipment, OHCA's offices, or any other resources of OHCA or the State for any purpose other than performing services under this Contract. For this purpose, equipment includes, but is not limited to, copy machines, computers, and telephones. Any charges incurred by Supplier using OHCA's equipment for any purpose other than performing services under this Contract shall be fully reimbursed by Supplier to OHCA within ten (10) business days upon demand by OHCA. Such use shall constitute breach of Contract and may result in termination of this Contract and other remedies available to OHCA under this Contract and applicable law.
10. Use of State Property
Supplier is prohibited from using any OHCA fitness/gym equipment/facilities. Additionally, Supplier is prohibited from participating in any OHCA sponsored activities and/or events, including, but not limited to, all-star days, employee recognition days, holiday celebrations, and activities related to physical exertion or general

ATTACHMENT C – AGENCY TERMS

clinical/health/wellness guidance sessions whether on premises or off-site. Supplier hereby waives, discharges, releases, promises to indemnify, and forever hold harmless the State of Oklahoma and OHCA, its respective officers, agents, servants, representatives, and employees and any associated entity from any and all personal or derivative actions, claims, all pain and suffering, damage to property, all losses and expense of whatever character, and demands, whether it be caused by the negligence of OHCA, its agents, servants, or employees or any other associated entity that Supplier, Supplier's heirs, executors, administrators, legal representatives, assignees, and successors in interest, now or hereafter, have related to the prohibited use of fitness/gym equipment/facilities during business hours, non-business hours, and weekends.

11. Public Disclosure

Supplier shall not cause public disclosures or news releases pertaining to this Contract without prior written approval of OHCA.

12. Non Tobacco – Smoke Free

By operation of the Governor's Executive Order 2012-01, effective August 6, 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.

C.2 PAYMENTS AND REIMBURSEMENT

1. In consideration of satisfactory performance of the services enumerated in Attachment A of this Contract, OHCA shall make payments to Supplier at the rate specified in the proposal. Total payments shall not exceed the amount specified in Attachment A for the initial phase of the contract. Final approval of scope expansion and renewal amounts will be at the sole discretion of OHCA. Payment shall be inclusive of all costs (*e.g.*, salaries, fringe benefits, supplies, equipment, travel, long distance, copying, etc.) required to provide the services detailed in this Contract. Billable time shall include time spent working at OHCA or time spent working on assigned OHCA business. No additional payments shall be made under this Contract.
2. It is understood and agreed to by the Parties hereto that all obligations of OHCA, including the continuation of payments, are contingent upon the availability and continued appropriation of State and Federal funds, and in no event shall OHCA be liable for any payments in excess of such available appropriated funds.
3. Supplier shall submit a proper invoice for services rendered in order to receive payment. A proper invoice is one which contains, at a minimum, the following information:
 - a. Supplier name;
 - b. FEI or vendor number;
 - c. Invoice number;
 - d. Purchase order number (where applicable);
 - e. Description of service(s);
 - f. Date(s) of service;
 - g. Detail of amount(s) billed; and,

ATTACHMENT C – AGENCY TERMS

- h. Detailed attachments to support work and travel being billed.
4. Supplier shall maintain documentation of all billed charges and shall submit documentation to OHCA with invoice submission.
5. All invoices for services rendered under this Contract shall be received by OHCA within 90 calendar days of the services being rendered. OHCA will not be held responsible for payment of invoices submitted beyond the deadline established by this paragraph.
6. OHCA shall have 45 calendar days within which to pay a proper invoice. If OHCA fails to pay an invoice within that time, Supplier shall have the right to interest thereon pursuant to 62 O.S. §§ 34.71 and 34.72.

C.3 AVAILABILITY OF FUNDING

In the event funding of the Medicaid Program from the State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract, OHCA may reduce or terminate this Contract upon notice to Supplier delivered through email. OHCA shall be the final authority as to the availability of funds. The effective date of such Contract reduction or termination shall be specified in the notice. In the event of a reduction, Supplier may cancel this Contract as of the effective date of the proposed reduction upon notice to OHCA delivered through email. OHCA agrees to reimburse Supplier for all work satisfactorily performed prior to the date of any notice of termination of this Contract pursuant to this section. This clause shall operate as an exception to the notice provisions otherwise applicable to amendment or termination of the Contract.

C.4 HOLD HARMLESS

The Parties intend that each shall be responsible for its own intentional and/or negligent acts or omissions to act. OHCA shall be responsible for the acts and omissions to act of its officers and employees while acting within the scope of their employment according to the Governmental Tort Claims Act, 51 O.S. § 151, *et seq.* Supplier shall be responsible for any damages or personal injury caused by the negligent acts or omissions to act by its officers, employees, or agents. Supplier agrees to hold harmless OHCA for any claims, demands, liabilities, and causes of action resulting from any act or omission on the part of Supplier and/or its agents, servants, subcontractors, and employees in the performance of this Contract. It is the express intention of the Parties hereto that this Contract shall not be construed as, or given the effect of, creating a joint venture, partnership, affiliation, or association that would otherwise render the Parties liable as partners, agents, employer-employee, or otherwise create any joint and severable liability.

C.5 FORCE MAJEURE

1. Insofar as it is consistent with Section 17 of Attachment neither Supplier nor OHCA shall be liable for any damages or excess costs for failure to perform their Contract responsibilities if such failure arises from causes beyond the reasonable control of and without fault or negligence by Supplier or OHCA. Such causes may include, but are not limited to, catastrophic events or acts of God. In all such cases, the failure to perform must be beyond the reasonable control of, and without fault

ATTACHMENT C – AGENCY TERMS

or negligence of, either Party.

2. Within 72 hours of the occurrence of such an event, Supplier shall initiate disaster recovery and/or back up procedures to provide alternate services. Supplier shall notify OHCA prior to initiation of alternate services as to the extent of the disaster and/or emergency and the expected duration of alternate services within this same 72 hour period.

C.6 CONTRACT COMPLIANCE AND PENALTIES as applicable

1. Performance-based contracts may require Supplier to meet specific standards and/or metrics. Supplier's performance may be assessed by such means as written reports, oral communication, onsite visits, audit, and data analysis.
2. Supplier shall be required to complete deliverables as offered on or before the agreed upon completion date. Deviations, substitutions, or changes in the deliverables shall not be made unless expressly authorized in writing by OHCA, as applicable.
3. OHCA and Supplier shall establish performance standards for this Contract based on the scope. All products and services are subject to inspection, testing and acceptance by OHCA. Any products and services that do not meet or exceed the specifications may be rejected. If Supplier fails to meet these standards or fails to meet any other Contract requirements, OHCA will email Supplier to discuss the issues. OHCA may request Supplier to prepare and submit for approval a Corrective Action Plan (CAP) for identified issues.
4. The CAP shall clearly specify which sections of this agreement describe the affected work, the performance deficiencies, and identify specific actions to be performed by Supplier to correct the performance. Supplier shall implement the CAP to correct the product/services deficiencies within the timeframe specified by OHCA.
5. If the Supplier's product or services fail to meet the specifications, then the products or services may be rejected and returned to the Supplier with a Notice stating the reasons for non-acceptance. Such rejection will exempt OHCA from all related costs incurred by the Supplier. The Supplier shall be given thirty (30) business days to cure the nonconforming products or services and resubmit the deliverable(s) to OHCA, with a letter explaining the corrections made, for inspection, retesting, or reevaluation, OHCA shall be given up to one hundred and twenty (120) business days or no less than the original time period established for the product or service agreed upon by OHCA in the project a written notice of acceptance or rejection of the deliverables. If the deliverables submitted fail to pass acceptance within one hundred and twenty business days, OHCA may, at its sole discretion, continue with the Supplier or terminate the agreement.
6. Supplier warrants that, upon receipt of written Notice by OHCA of a latent defect in design, material, or workmanship, or a latent nonconformity of the software or services to the specifications which would have constituted a basis for rejection if discovered prior to acceptance, it will repair or replace or otherwise correct the defect to the level of performance specified within ten (10) calendar days of the date the Supplier was

ATTACHMENT C – AGENCY TERMS

notified by OHCA of latent defect. If the Supplier fails to correct the latent defect(s) within ten (10) calendar days, OHCA may, at its sole discretion, continue with the Supplier or terminate the agreement.

7. Failure to resolve the issue may result in a penalty which is the withholding or reduction of Supplier reimbursement for the specific deliverable, milestone, product or service included in the CAP or Contract action, up to and including termination.

C.7 TERMINATION

1. Either Party may terminate this contract in whole or in part for cause with a 30-day written notice to the other Party. Either Party may terminate this contract in whole or in part without cause with a 60-day written notice to the other Party. In the event of termination, payments will be made for all work satisfactorily performed up to the date of termination.
2. OHCA may terminate this Contract immediately, in whole or in part, with a written notice to Supplier when one of the following applies:
 - a. Funding of the Medicaid Program from the State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract;
 - b. This Contract is no longer authorized by law or is otherwise found illegal;
 - c. Violations are found to be an impediment to the function of OHCA;
 - d. Conditions preclude the 30 day notice;
 - e. OHCA determines that an administrative error occurred prior to Contract performance; or,
 - f. Both Parties agree to terminate this Contract immediately without cause.
3. Upon termination of this contract, the termination and turnover provisions of sections C.12 and C.18 apply.

C.8 SCOPE OF WORK

1. The scope of work is described in the Attachment A.

C.9 LAWS APPLICABLE

1. The Parties to this Contract acknowledge and expect that changes may occur over the term of this Contract regarding Federal and State Medicaid statutes and regulations, and other statutes and regulations governing the practice of health care professions. The Parties shall be mutually bound by such changes.
2. The parties agree to comply with all applicable relevant federal and state laws, including but not limited to the following:
 - a. Bipartisan Budget Act of 2018 and its implementing regulations issued by CMS;
 - b. the Medicare Improvements for Patients and Providers Act of 2008 and its implementing regulations issued by CMS; 42 CFR Part 422;
 - c. Title IX of the Education Amendments of 1972, as amended (20 USC § 1681 et seq.);
 - d. Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended (41 USC § 9849);

ATTACHMENT C – AGENCY TERMS

- e. Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*
- f. Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*;
- g. Drug-Free Workplace Act, 41 U.S.C. § 8101 *et seq.*;
- h. Title XIX and Title XXI of the Social Security Act, 42 U.S.C. § 1396 *et seq.* and § 2101 *et seq.*;
- i. Civil Rights Act, 42 U.S.C. § 2000d *et seq.* and § 2000e *et seq.*;
- j. Age Discrimination Act, 42 U.S.C. § 6101 *et seq.*;
- k. Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*;
- l. Oklahoma Anti-Discrimination Act, 25 O.S. § 1101 *et seq.*;
- m. Oklahoma Worker’s Compensation Act, 85A O.S. § 1 *et seq.*;
- n. Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*;
- o. Equal Pay Act, 29 U.S.C. § 206(d);
- p. 31 U.S.C. § 1352 and 45 C.F.R. § 93.100 *et seq.*, which
 - i. Prohibit the use of Federal funds paid under this Contract to lobby Congress or any Federal official to enhance or protect the monies paid under this Contract; and,
 - ii. Require disclosures to be made if other monies are used for such lobbying;
- q. Presidential Executive Orders 11141, 11246, 11375, and 11478, and Amendments thereto, and 5 U.S.C. § 3501, and as supplemented in the Department of Labor regulations at 41 C.F.R. Subtitle B, Chapter 60, which together require certain Federal contractors and subcontractors to institute affirmative action plans to ensure absence of discrimination for employment because of age, race, color, religion, sex, sexual orientation, gender identity, disability, or national origin;
- r. The American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), pursuant to Title XIII Of Division A and Title IV of Division B, called the “Health Information Technology for Economic and Clinical Health” (HITECH) Act, provides modifications to the HIPAA Security and Privacy Rule (hereinafter, all references to the “HIPAA Security and Privacy Rule” are deemed to include all amendments to such rule contained in the HITECH Act and any accompanying regulations, and any other subsequently adopted amendments or regulations);
- s. Vietnam Era Veterans’ Readjustment Assistance Act, 38 U.S.C. § 4212 and 41 C.F.R. Part 60-300;
- t. Protective Services for Vulnerable Adults Act, 43A O.S. § 10-101 *et seq.*;
- u. Non-procurement, debarment, and suspension, 2 C.F.R. Part 376;
- v. 74 O.S. § 85.44(B) and (C) and 45 C.F.R. §§ 75.320, 75.439, and 75.465 (as defined by 45 C.F.R. § 75.2);
- w. Anti-Kickback Act of 1986, 41 U.S.C. § 8701 *et seq.*;
- x. Oklahoma Anti-Kickback Act of 1974, 74 O.S. § 3401 *et seq.*;
- y. Federal False Claims Act, 31 U.S.C. §§ 3729-3733 and § 3801 *et seq.*;
- z. Oklahoma Medicaid False Claims Act, 63 O.S. § 5053 *et seq.*; and

ATTACHMENT C – AGENCY TERMS

- aa. Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1313 and participation in the Status Verification System. The Status Verification System is defined at 25 O.S. § 1312 and includes, but is not limited to, the free Employment Verification Program (e-Verify) available at www.dhs.gov/E-Verify.
3. The explicit inclusion of some statutory and regulatory duties in this Contract is not intended to, and shall not be construed to, exclude other statutory or regulatory duties under applicable federal and/or State law.
 4. All questions pertaining to validity, interpretation, and administration of this Contract shall be determined in accordance with the laws of the State of Oklahoma, regardless of where any service is performed.
 5. The venue for civil actions arising from this Contract shall be in the District Court of Oklahoma County, Oklahoma. For the purpose of Federal jurisdiction, in any action in which the State of Oklahoma is a party, venue shall be in the United States District Court for the Western District of Oklahoma.
 6. If any portion of this Contract is found to be in violation of State or Federal statutes, that portion shall be struck from this Contract and the remainder of this Contract shall remain in full force and effect.

C.10 FEDERAL REGULATIONS

1. The Federal Government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal government purposes, such software, modifications, and documentation according to 45 CFR 95.617(b).
2. Supplier shall comply all applicable federal regulations, including without limitation (as applicable):

Category	Citation
Procurement Standards	SMM Section 11267 45 C.F.R. § 95.615 45 C.F.R. Part 74 State Medicaid Director (SMD) Letter of Dec. 4, 1995 42 C.F.R. § 433.122 42 C.F.R. § 433.112
Access to Records	45 C.F.R. §95.615 SMM Section 11267

ATTACHMENT C – AGENCY TERMS

<p>Software & Ownership Rights, Federal Licenses, Information Safeguarding, Health Insurance Portability and Accountability Act of 1996 (HIPAA) Compliance, and Progress Reports</p>	<p>The State shall own any software, procedures, or publications designed, developed, installed, or improved with 90 percent FFP. The State shall retain the right to sign, extend, and cancel any licenses for software used in operation of MMIS. OHCA has a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use software, modifications to the software, and documentation designed, developed, installed, or improved with 90 percent FFP. 45 C.F.R. § 95.617 42 C.F.R. 433.112 42 C.F.R. § 431.300 45 C.F.R. Part 164</p>
<p>Information Safeguarding</p>	<p>42 C.F.R. § 433.112(b)(9) 45 C.F.R. § 205.50</p>
<p>Progress Reports</p>	<p>SMM Section 11267</p>
<p>Disaster Recovery Procedure</p>	<p>All Supplier(s) will be required to develop and maintain a Business Continuity Plan that will address aspects of disaster recovery. The Business Continuity Plan will provide procedures for emergencies and disasters, and for maintaining a state of readiness to meet all operational requirements.</p>
<p>IV&V</p>	<p>45 C.F.R. § 95.626</p>

C.11 AUDIT AND INSPECTION

1. As used in this Contract, “records” includes books, documents, accounting procedures and practices, and other data regardless of type and regardless of whether such items are in written or electronic form, in the form of computer data, or in any other form.

2. Supplier shall keep records as are necessary to fully disclose the extent of service provided under this Contract, and shall furnish records and information regarding any claim for providing such service to OHCA, the State Auditor & Inspector (SA&I), the Office of Management and Enterprise Services Central Purchasing Division (CPD), the U.S. General Accounting Office (GAO), the Oklahoma Attorney General’s Medicaid Fraud Control Unit (MFCU), and the U.S. Secretary of the Department of Health and Human Services (hereinafter, referred to as “Secretary”). Supplier is required to retain records relating to this Contract for the duration of this Contract and for a period of ten (10) years following completion and/or termination of the Contract. If an audit, review, litigation, or other action involving such records is started before the end of this ten (10) 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 ten (10) year retention period, whichever is later.

ATTACHMENT C – AGENCY TERMS

3. Authorized representatives of OHCA, SA&I, CPD, GAO, MFCU, and the Secretary shall have the right to make physical inspection of Supplier's location or facility and to examine records relating to financial statements or claims submitted by Supplier under this Contract and to audit Supplier's financial records.
4. Pursuant to 74 O.S. § 85.41, OHCA, CPD, and the SA&I shall have the right to examine Supplier's books, records, documents, accounting procedures, practices, or any other items relevant to this Contract. OHCA shall allow for the inspection of public records in accordance with the provisions of the Oklahoma Open Records Act, 51 O.S. §§ 24A *et seq.*
5. Supplier shall, upon request Health and Human Services, and/or their representatives access to State agency documents papers, or other records pertinent to the procurement of this contract in order to make federal audits, examinations, excerpts and transcripts.

C.12 RESERVED

C.13 REQUIRED INSURANCE COVERAGE

Supplier shall obtain and maintain

- a. Commercial General Liability Insurance with a limit of liability of \$2,000,000.00 per occurrence.
- b. Directors and Officers Insurance which shall include Employment Practices Liability with a policy limit of \$2,000,000 in the aggregate; and
- c. Supplier shall provide the OHCA with evidence of such insurance and renewals.
- d. Any insurance coverage amounts listed here that exceed the insurance coverage amounts listed in Attachment B are mandatory additional requirements connected to this specific Acquisition.

C.14 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES

Supplier represents and warrants that Supplier has not been found liable in any administrative hearing, litigation, or other proceeding of Deceptive Trade Practice violations as defined under the Oklahoma Consumer Protection Act, 15 O.S. § 15-751 and has no outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation, or other proceeding.

C.15 RESERVED

C.16 INFORMATION TECHNOLOGY ACCESS CLAUSE as applicable

1. State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at <https://omes.ok.gov/services/information-services/accessibility-standards>. Supplier shall provide a Voluntary Product Accessibility Template ("VPAT") describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier.

ATTACHMENT C – AGENCY TERMS

2. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.
3. All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.
4. Supplier shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the product, system or application developed and/or customized by Supplier from any claim arising out of Supplier's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

C.17 SYSTEM SECURITY as Applicable

1. Insofar as the Supplier handles systems or information involving Medicaid data, the Supplier shall support and ensure all relevant compliance with Federal and State Medicaid and Health Benefit Exchange laws, regulations, and policies relevant to System security, confidentiality, and safeguarding of information. External Supplier responsibilities include, but are not limited to:
 - a. Patient Protection and ACA (ACA), Public Law 111–148;
 - b. HIPAA Privacy Rule, 45 CFR Part 160 and Subparts A and E of Part 164, established under the Health Insurance Portability and Accountability Act, Public Law 104-191 (42 USC 1320d);
 - c. HIPAA Security Rule, 45 CFR Part 160 and Subparts A and C of Part 164;
 - d. Health Insurance Portability and Accountability Act of 1996 (HIPAA), pursuant to sections 1104 and 1501 of ACA, including the privacy, security, and transaction requirements;
 - e. Federal Information Security Management Act (FISMA) of 2002;
 - f. Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH);
 - g. Minimum Acceptable Risk Safeguards for Exchanges (MARS-E) Ver.2.2;
 - h. Federal Enterprise Architecture Security and Privacy Profile, version 3.0; and
 - i. Federal Information Processing Standards (FIPS), Publication 140-3.
2. The most recent versions for standards and specifications shall be applicable. Where policies overlap, the System shall always strive to attain the more stringent policy. Supplier may email securitygovernance@okhca.org requesting the most recent CMS MASR-E release control standards template and provide your security contact for distribution of OHCA Security communications.
 1. If Supplier handles OHCA protected health information (PHI) the Supplier shall maintain systems, policies and procedures that ensure State and federal standards for compliance and security are met and to protect the integrity of all business and technical components of the Supplier's operations under this Contract. This includes, but is not limited to, a requirement that Supplier must comply with the most current version of the suite of documents entitled the Minimum Acceptable Risk Safeguards for Exchanges (“MARS-E”) or the new upcoming version being retitled to Acceptable Risk Controls for ACA, Medicaid, and Partner Entities (“ARC-AMPE”), once made available and required by CMS. Alternatively, Supplier agrees to implement and maintain equivalent standards that meet or

ATTACHMENT C – AGENCY TERMS

exceed these requirements should an alternative be approved. For example, HiTrust Common Security Framework (CSF)/R2 will be considered an acceptable framework and certification in place of the current MARS-E framework. Supplier further agrees to maintain a level of security that is commensurate with the risk and magnitude of the harm that could result from, but not limited to, the loss, misuse, disclosure, or modification of the information contained within the system. If at any time, Supplier plans to implement and maintain security standards other than MARS-E, the Supplier must submit the specific details of the planned change to OHCA for approval not later than sixty (60) Days before the date of planned implementation. Supplier is prohibited from implementing different security standards that would reduce the level of protection provided or that would cause OHCA to fall out of compliance with any applicable laws, regulations, or requirements of government agencies with jurisdiction or enforcement authority over OHCA.

2. Even if supplier does not handle OHCA PHI supplier shall minimally maintain a comprehensive information security program that includes industry best practices with a third-party major industry certification approved by OHCA. MARS-E control standards shall be considered for controls where relevant. Approved Major industry certifications for this paragraph includes ISO 27001, MARS-E, NIST SP 800-171, NIST CSF, SOC 2 Type 2 (5 Trust Services Criteria), HiTrust CSF/R2, FedRAMP, and StateRAMP. Alternatives certifications may be approved upon formal request to OHCA Security at OHCA's discretion. Certifications shall be maintained as a continuous process with a reassessment cycle not to exceed 3 yrs. Supplier further agrees to maintain a level of security that is commensurate with the risk and magnitude of the harm that could result from the loss, misuse, disclosure, or modification of information with the highest reasonable security standards.
3. The Supplier shall ensure access to data systems is restricted using Minimum Necessary Rule concepts and employing automated access management functions to ensure individual identities are properly authenticated and logged when accessing the data. The Supplier shall ensure access to information is based on job functions with the overarching concept of access to information across development and operational cycles required for adequate performance of the job function (e.g., users permitted inquiry privileges only will not be permitted to modify information if not applicable to the requirements of the job the individual is performing).
4. Insofar as Supplier hosts, stores, or maintains OHCA data the Supplier shall ensure data at rest or in motion has all appropriate protections employed for confidentiality, integrity, and availability. The Supplier shall be responsible for providing physical safeguards to its data processing center, operations center and any related information or systems. These safeguards shall remain in place for the duration of the Supplier's relationship with OHCA. The Supplier shall grant authorized OHCA and CMS personnel and any designees access to its facilities upon request.
5. The Supplier shall maintain data history readily accessible for no less than three (3) years; and shall retain additional archive history for no less than ten (10) years and the Supplier shall ensure such data is retrievable within 48 Hours.
6. The Supplier agrees to provide OHCA Security reasonable access to review security related materials upon request and in a timely manner for the purpose of confirming security posture and monitoring performance of this agreement. OHCA agrees to keep information confidential and not disclose to third-parties without prior mutual agreement, unless required

ATTACHMENT C – AGENCY TERMS

by law. The Supplier further agrees to accept any comments made by OHCA reviews and appropriately address any concerns raised in accordance with regulations and best practices.

7. The Supplier shall abide by the current State of Oklahoma Security Standards at: <https://oklahoma.gov/content/dam/ok/en/global/cio/documents/infosecppg.pdf> and any updates thereto.
8. The Supplier recognizes that it may be necessary for OHCA to require the Supplier to adhere to additional or modified security standards which may be more stringent than the State of Oklahoma Security Standards, in order to maintain compliance with applicable laws, rules, regulations, legal requirements, and industry best practices. In the event OHCA determines additional or modified security standards to be necessary, it will give the Supplier at least sixty (60) Days advance written notice of any changes in requirements, and the Supplier agrees to timely implement and comply with the same.
9. The Supplier must sign OHCA Acceptable Use/Rules of Behavior, Non-Disclosure Agreements, Access Agreements, or other organization/user level security requirements in a timely manner as a condition of maintaining OHCA system and data access.
10. The Supplier shall complete State of Oklahoma Security and Accreditation Assessment(s) located in the Bidder's Library, based on the proposed system environment, as a part of Proposal submission. If State data is to be stored or hosted by the vendor, the Supplier shall complete and execute OMES Hosting Agreement and meet or exceed the terms therein. To the extent the Supplier requests to use a third-party hosting vendor, that vendor is subject to OHCA's approval and must satisfactorily complete the State's Certification and Accreditation Review and any supplemental requests by OHCA. Supplier agrees not to migrate OHCA's data or otherwise utilize a different third-party hosting vendor in connection with key business functions that are Supplier's obligations under the Contract until OHCA approves the third-party hosting vendor's State Certification and Accreditation Review. In the event the third-party hosting vendor is not approved by OHCA, Supplier acknowledges and agrees it may not utilize such third-party vendor in connection with key business functions that are Supplier's obligations under the Contract, until such third-party meets OHCA requirements.
11. Supplier shall maintain a Security and Privacy Program in accordance with the Contract, associated requirements, and industry best practices at all times.

C.18 DISASTER PREPARATION AND DATA RECOVERY as applicable

1. The Supplier shall submit a plan that addresses disaster recovery and business continuity related to emergency situations to OHCA during Readiness and annually for review and approval as specified in the Reporting Manual.
2. The plan shall align with best practices and content identified under the latest revision of NIST SP 800-34 Contingency Planning Guide for Federal Information Systems, Moderate Impact, or better.
3. Each aspect included within the disaster recovery plan must describe both the Supplier and OHCA's responsibilities. For purposes of this requirement, "disaster" means an occurrence of any kind that adversely affects, in whole or in part, the error-free and continuous operation of the Supplier's or its Subcontractors' IS or affects the performance, functionality, efficiency, accessibility, reliability or security of the system. Disasters may include natural disasters, human error/malfeasance/neglect, computer virus

ATTACHMENT C – AGENCY TERMS

or malfunctioning hardware or electrical supply.

4. The Supplier shall take all steps necessary to fully recover the data or system from the effects of a disaster and to reasonably minimize the recovery period. OHCA and the Supplier will jointly determine when unscheduled system downtime will be elevated to a “disaster” status.
5. The Supplier shall notify OHCA via phone and email to critical OHCA contacts identified for your emergency communications plan within two (2) Hours of discovering a disaster or other significant disruption to continuity of normal business operations. If there is no response from OHCA, the Supplier shall also contact the twenty-four (24) Hour OMES Help Desk to create an appropriate ticket to OHCA of the event. Such notification shall include a detailed explanation of the impact of the disaster, particularly related to mission critical business processes, such as claims processing, eligibility and Enrollment processing, PA management, Provider enrollment and data management, Encounter Data management, and any other processing affecting the Supplier’s capability to interface with OHCA or OHCA’s contractors. If all information required herein is not available within the required time frame for reporting, Supplier shall not delay the initial report, but shall provide as much information as is available at the time and shall continue to update OHCA with additional information at least every four (4) Hours until complete information is provided. OHCA, in its discretion, may require the Supplier to provide a detailed plan for resuming operations.
6. The Supplier shall develop Information system contingency planning in accordance with the requirements of this Section and with 45 C.F.R. § 164.308, which relates to administrative safeguards. Contingency plans shall include data backup plans; disaster recovery plans; and emergency mode of operation plans. Application and Data Criticality analysis and testing and revisions procedures shall also be addressed within the Supplier’s contingency plan documents. The Supplier shall be responsible for executing all activities needed to recover and restore operation of information systems, data, and software at an existing or alternative location under emergency conditions within forty-eight (48) Hours of identification of a business continuity or disaster event, or as mutually agreed upon with OHCA based on details of the event. The Supplier shall protect against hardware, software, and human error. The Supplier shall maintain appropriate checkpoint and restart capabilities and other features necessary to ensure reliability and recovery, including telecommunications reliability, file back-ups and disaster recovery. The Supplier shall maintain full and complete back-up copies of data and software and shall back up on tape or optical disk and store its data in an off-site location approved by OHCA.
7. In the event of a catastrophic or natural disaster, including, but not limited to fire, flood, earthquake, storm, hurricane, war, invasion, act of foreign enemies, or terrorist activities, the Supplier shall resume normal business functions at the earliest possible time, not to exceed thirty (30) Calendar Days from the date of the catastrophic event or natural disaster.
8. The Supplier may include resources outside Oklahoma but within the United States as part of this plan. The plan must satisfy all requirements for State and federal certification.
9. The plan shall be maintained and updated by the Supplier throughout the term of this Contract and shall be available for review by State or Federal officials on request. The Supplier shall certify to OHCA that the disaster recovery plan has been tested at least annually and has passed all aspects of testing.
10. The Supplier shall have a contingency plan specific to operating information systems in a disaster situation.

ATTACHMENT C – AGENCY TERMS

11. The data system shall be accessible remotely and offsite. The offsite system shall be capable of providing basic system functions in the event of a disaster incapacitating another system site.
12. The Supplier and its Subcontractors' responsibilities include, but are not limited to:
 - a. Supporting immediate restoration and recovery of lost or corrupted data or software;
 - b. Establishing and maintaining, in an electronic format, a weekly back-up and a daily back-up that are adequate and secure for all computer software and operating programs; database tables; files; and system, operations and user documentation;
 - c. Demonstrating an ability to meet back-up requirements by submitting and maintaining data backup and disaster recovery plans that address:
 - i. Checkpoint and restart capabilities and procedures;
 - ii. Retention and storage of back-up files and software;
 - iii. Hardware back-up for the servers;
 - iv. Hardware back-up for data entry equipment;
 - v. Network back-up for telecommunications; and
 - vi. Developing coordination methods for disaster recovery activities with OHCA and its contractors to ensure continuous eligibility, Enrollment, and delivery of services; and
 - d. Providing OHCA with business resumption documents, reviewed and updated at least annually, but not limited to:
 - i. Disaster recovery plans;
 - ii. Business continuity and contingency plans;
 - iii. Facility plans; and
 - iv. Any other related documents as identified by OHCA.
13. At no additional charge to OHCA, the Supplier shall be required to have in a place a comprehensive, fully tested IT business continuity/disaster recovery plan (BCDR) with respect to the system and services it provides to OHCA under this Contract. The BCDR plan will, at a minimum, meet the requirements of National Institute of Standards and Technology (NIST) SP800-34 and its successor publications once made final.
14. The State and the Supplier will mutually agree on reasonable Recovery Point Objectives and Recovery Time Objectives reflective of the State's business requirements and the critical nature of the Supplier's systems and services in support of the associated State business operations:
 - a. At a minimum, the Recovery Time Objectives will be no more than forty-eight (48) Hours; and
 - b. At a minimum, the Recovery Point Objectives will be no more than twenty-four (24) Hours.
15. These Objectives will be reviewed and, as necessary, modified on an annual basis.
16. The Supplier shall coordinate its BCDR plan with OHCA's IT business continuity/disaster recovery plans, including other State solutions with which the Supplier's system interfaces to assure appropriate, complete, and timely recovery.
17. The Supplier agrees to coordinate the development, updating, and testing of its BCDR plan with the State in the State's development, updating, and testing of its Continuity of Operations Plan (COOP), as required by State policy and Homeland Security Presidential Directive (HSPD) 20.
18. The BCDR plan will be based on the agreed upon Recovery Point Objectives and

ATTACHMENT C – AGENCY TERMS

Recovery Time Objectives, and a comprehensive assessment of threat and risk to be performed by the Supplier, with such threat and risk assessment updated no less than annually by the Supplier, reflecting technological changes, Supplier business changes, OHCA business operations changes, and other appropriate factors agreed upon by the Supplier and OHCA.

19. The Supplier shall test its BCDR plan no less than annually, with such testing being comprehensive in nature and scope assuring point-to-point testing in meeting the agreed upon Recovery Point Objectives and Recovery Time Objectives.
20. The Supplier will conduct annual (every 365 Days Business Continuity Plan [BCP]/Disaster Recovery Plan [DRP]) exercises in accordance with best practices. A simulation exercise is required at least once every three (3) years and within one (1) year of a new system. The results and/or after-action report shall be made available to OHCA upon request. The latest BCP/DRP exercise results and after-action report shall be submitted to OHCA prior to production operations of this agreement.

C.19 DISASTER RECOVERY PLAN as applicable

1. Project continuity planning shall be maintained and updated by Supplier throughout the term of the Contract and shall be available for review by State or Federal officials on request.

C.20 OFFSHORING

1. Supplier shall not enter into any subcontract which uses any public funds within its control to purchase services which will be provided outside the United States. This reflects prohibition on the purchase of offshore services. The service provider shall:
 - a. Disclose the location(s) where all services will be performed by Supplier and subcontractor (s);
 - b. Disclose the location(s) where any State data associated with any of the services are provided, or seek to provide, will be accessed, tested, maintained, backed-up, or stored;
 - c. Disclose any shift in the location of services being provided by Supplier or subcontractor(s); and,
 - d. Disclose the principle location of business for Supplier and all subcontractor(s) who are supplying services to the State of Oklahoma under the proposed contract(s).
2. If contracted or subcontracted services shall be performed at multiple locations, the known or anticipated value of the services performed shall be identified and reported to OHCA.
3. The State of Oklahoma will determine when the purchase of offshore services does not apply in regard to:
 - a. Situations in which it is deemed an emergency; and,
 - b. OHCA deems necessary to waive some or all of the requirements herein.
4. Supplier must perform all functions within the continental United States. Oklahoma health data shall never leave or be accessed from outside the continental United States. If any Supplier or subcontractor(s) work identified for performance in the United States is moved to another country outside the continental United States, such action may be deemed a breach of the Contract.

C.21 OWNERSHIP OF MATERIALS

ATTACHMENT C – AGENCY TERMS

1. Materials developed and/or produced by Supplier for which OHCA pays Supplier are owned by OHCA. This does not include any material or intellectual property Supplier did not create for the sole purpose of this contract that Supplier provides OHCA access to as part of the Contract but does include any proprietary rights or interests in the products, materials, and intellectual properties developed, data, documentation, approaches, systems, programs, methodologies, or concepts developed, produced or provided in connection with the services provided under the Contract. All such items, rights and/or interests shall belong exclusively to OHCA, unless specifically approved in writing by OHCA. All materials produced as a result of this Contract become the sole property of OHCA. This includes all digital design files and layouts, as well as all final artwork and files. This excludes any stock photography or commercial photography or artwork that may be subject to pre-determined usage fees or ownership/copyright matters. Supplier agrees not to use OHCA's names, trademarks, service marks, logos, images, or any data resulting from this Contract as a part of any commercial advertising or proposal without the express prior written consent of OHCA in each instance.
2. Materials developed, produced, or purchased by Supplier for its own use with multiple clients that are not reimbursed by OHCA shall not become property of OHCA just by virtue of being employed to provide services under this Contract. However, when provided to OHCA, Supplier grants OHCA an irrevocable perpetual license to use such materials.

C.22 RESERVED

C.23 PUBLICITY

The award of this Contract to Supplier is not in any way an endorsement by OHCA of Supplier the products and shall not be so construed by the Supplier in any advertising or publicity materials. The Supplier agrees to submit to OHCA all advertising, sales, promotion, and other publicity matters relating to this Contract wherein OHCA's name is mention or language used from which the connection of OHCA's name therewith may, in OHCA'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 OHCA.

C.24 TURNOVER

1. If a project turnover plan is necessary OHCA will notify the vendor within the timeframe specified by the OHCA prior to the conclusion of this Contract, or in the event Supplier ceases to do business with OHCA. Supplier shall provide, at no extra charge, assistance in turning over the operations to OHCA or its agent. Supplier shall provide a draft Turnover Plan which includes at least the following:
 - a. Proposed approach to turnover;
 - b. Identification of State-owned equipment and/or furnishings;
 - c. Identification of documentation in Supplier's possession that is necessary for the operation of services under this Contract;
 - d. Description of the format and method of transfer Supplier will use to transfer all data pertaining to services performed for this Contract to OHCA. Format and

ATTACHMENT C – AGENCY TERMS

transfer method are subject to OHCA approval;

- e. Turnover tasks and schedule;
 - f. A template turnover status report;
 - g. Acceptance criteria for turnover activities; and
 - h. Estimated date that all data in Supplier's possession will be turned over to OHCA.
- 2. OHCA and Supplier shall work together to develop the Turnover Plan.
- 3. Supplier shall not begin work on turnover activities until OHCA approves the Turnover Plan.
- 4. At the turnover date to be determined by OHCA, Contractor shall provide to OHCA or its agent the following:
 - a. All documentation and records that will be required by OHCA for continuity of services under this Contract; and
 - b. Certification that all data in Supplier's possession has been turned over to OHCA.
- 5. OHCA may begin withholding 15% of the total invoice amount each month no more than six (6) months prior to the conclusion of this Contract for the following deliverables:
 - a. Approved Turnover Plan – OHCA may withhold five percent (5%) of each monthly invoice until the Turnover Plan is approved. Upon approval, Supplier shall invoice OHCA the total amount withheld; and,
 - b. Approved Operations Turnover – OHCA may withhold ten percent (10%) of each monthly invoice until the completed turnover of operations is approved by OHCA. Upon approval, Supplier shall invoice OHCA for the total amount withheld.

C.25 RESERVED

Section Two: Executive Summary, Company Information and Technical Response. EXHIBIT 01: OFFEROR RESPONSE WORKSHEET		
Offeror must provide complete and succinct responses to each item below. Insert your responses into this worksheet directly into the yellow boxes If your response does not fit into the boxes below a clearly labeled response (Example: 7.2.etc). will be considered. Offeror should provide all information necessary to demonstrate Offeror's ability to meet the requirements of this RFP and the RFP's Scope of Work. Responses to the below questions in this Attachment are mandatory and will be evaluated. Failure to respond to any question may result in your proposal being deemed nonresponsive.		
Any bidder responses left blank to any of the below requirements will not proceed further in the evaluation phase.		
Section Two: Executive Summary and Company Information		
Bidders Instructions		Record Responses Below
7.2	Bidder marketing information, general company information and other similar resources the Bidder wishes to provide	Thank you for inviting ECRI to participate in Oklahoma Health Care Authority's RFP for an online database for medical research to support medical and dental decisions. After carefully analyzing your requirements, we are confident in our ability to deliver a solution to supported the decisions of the chief Medical Office. We appreciate the opportunity to present OHCA with ECRI's Clinical Evidence Assessment and Precision Medicine (<i>formerly known as Genetic Test Assessment</i>) solutions. We are committed to supporting your policy and utilization decisions by providing the most comprehensive collection of clinical and genetic evidence, and on-demand custom research to control risk and maintain defensible coverage policies with accurate and succinct evidence syntheses.
7.2.a	Provide the length of time the Bidder has been in business	1968
7.2.b	Insert a brief description of the company	<p>ECRI is an independent, non-profit organization (501(c)(3)) with a rich 54-year history and commitment to improving patient safety and quality. We are formally designated as an Evidence-Based Practice Center of the U.S. Agency for Healthcare Research and Quality (AHRQ) and have held that designation since inception of the program in 1997. ECRI's best-practice standard, decision-support technology solution designed to improve new product and standardization decisions and connects users to best-in-class intelligence and clinical evidence content.</p> <p>ECRI's main operations and its employees are in the United States of America. ECRI does have some global satellite operations in the EMEA (Europe, the Middle East, and Africa), the Netherlands, and Asia Pacific, with their employees residing in those areas. The business operations for those global satellite offices have specific work that they complete relative to that region and are not considered an outsource or subcontract to a third party for any part of our business.</p> <p>ECRI currently employees just over 500 employees worldwide. In the last 5 years, ECRI has transitioned primarily to a work-from-home organization, with 95% of its domestic workforce no longer traveling to an office each day.</p>
7.2.c	Indicate Company size and organization structure (an Organizational chart is recommended)	ECRI employs just over 500 employees world wide. Please see the organizational chart provided on the next tab.
7.2.d	The number of years the Bidder has been providing products and/or services of the type requested, (must be at least 36months)	ECRI's Clinical Evidence solutions have been available as a subscription-based library for over 30 years.
7.2.e	Estimated Number of clients	ECRI's Clinical Evidence client base includes approximately 200 US health systems comprised of over 1200 facilities, third party payers representing approximately 57% of US covered lives, and numerous state, national and international government agencies and health services.

Section 7.7: Executive Summary and Technical response		
Bidders Instructions		Record Responses Below
Attachment A 2.2a	The Online database should contain un-biased research for new healthcare technologies, procedures, medical devices, drugs or pharmaceuticals and diagnostic radiology testing and genetic molecular laboratory testing.	ECRI's Clinical Evidence Assessment database contains 3,000+ searchable evidence reports on new, emerging, and established devices, drugs, diagnostics, genetic tests, procedures, and other care processes. Additionally, a curated database of genetic tests provides detailed data on test characteristics, regulatory and accreditation status, CPT® and other coding, evidence on clinical validity and utility, and applicable clinical practice guidelines.

Attachment A 2.2b	Use of a grading system or rating system for the evidence reviewed reflects the strength of the evidence presented.	ECRI performs qualitative assessment of the literature using the international gold standard GRADE methodology to assess the strength and quality of the existing evidence. GRADE is used by ECRI researchers to determine our confidence in the collective published studies on an intervention. GRADE domains that may affect strength of evidence include risk of bias, consistency, directness, precision, magnitude of effect, dose-response gradient, and plausible confounders that would reduce a demonstrated effect. Applying GRADE and other qualitative research instruments enables ECRI researchers to apply a rigorous, objective, and transparent approach to assessing the strength and quality of the collective literature base. Once GRADE is applied, ECRI can render an evidence rating using our Evidence Bar (a visualization of our judgment about the balance of benefits and harms of the technology after assessing the available published clinical evidence in light of key outcomes and comparisons of interest). The Evidence Bar rubric shows five possible choices for our expert judgment. After review and analysis of evidence identified through literature searches conducted by master's level medical librarians, ECRI research analysts, extensively trained in methods of evidence assessment, weigh potential benefits and harms of a technology to arrive at their expert judgment.
Attachment A 2.2c	Interpretation and publication of contextualized clinical evidence for informed decision making and best practices guideline development.	Yes
Attachment A 2.2d	Independent, unbiased research on helathcare practices and products that improve the safety, quality and cost-effectiveness of patient care.	Yes
Attachment A 2.2e	Ability to conduct research reviews, evidence-based reports and assessments on medical technologies and health policy issues.	Yes
Attachment A 2.2f	Evidence-based product comparisons based on price, efficiency and safety.	ECRI's Clinical Evidence team produces broad technology class reports that include comparative effectiveness research across a category of technology. These include perspectives on cost. In addition, ECRI analysts prepare on-demand comparisons of multiple technologies in a specific category for treating a particular condition. These comparisons include relevant safety data from ECRI's Alerts database and FDA's MAUDE database.
Attachment A 2.2g	Maintain database/repository of evidence-based reviews with unlimited access for approximately 30-40 staff members, that is easily accessible.	Membership to ECRI's solutions includes unlimited user access based on client email domain.
Attachment A 2.2h	Ability to track trends over time on previous decisions made, adjusting or reassessing as new evidence emerges.	ECRI updates existing Clinical Evidence reports on demand or proactively based on the publication of new clinical data. Members may bookmark ECRI's findings on a particular intervention and return to it periodically to see updated findings. ECRI sends weekly email alerts to members when reports are added or updated. The Evidence Bar rating may change over time based on emergence of new published literature.
Attachment A 2.2i	Credentialed Medical staff availability for querries when necessary.	Armchair consulting is built into the membership program and is available to members at no additional fee. This includes access to consult with ECRI's doctorate level clinical research analysts, medical librarians, and board-certified licensed genetic counselors.
Attachment A 2.2j	Evaluators require access to a webinar or a feature that allows for product demonstration. Provide contact name and phone number to schedule webinar	Cameron Cole, RFP Project Coordinator will assist in setting up a demonstration call with our Subject Matter Experts. Please contact her via email ccole@ecri.org.

**Exhibit 2
Cost Sheet
EV00000674**

Fields highlighted in yellow **shall** be used in calculating low price determination. Prospective Suppliers **shall not** alter the Cost Sheet.

Table 1

Year 1: July 1, 2025 to June 30, 2026. Cost for a subscription to an online database for medical research to support medical and dental decisions for coverage.	
One Time Cost	\$43,745 *OHCA currently has Precision Medicine/GTA contract ending 12/31/25. Quoted price only includes 01/01/26-06/30/26 for Precision Medicine plus full 12-months of Clinical Evidence Assessment.

Table 2

Year 2: July 1, 2026 to June 30, 2027. Cost for a subscription to an online database for medical research to support medical and dental decisions for coverage.	
One Time Cost	\$50,980 *Yr. 2 reflects a full year of Precision Medicine & Clinical Evidence Assessment, with a 3% escalation.-

Table 3

Year 3: July 1, 2027 to June 30, 2028. Cost for a subscription to an online database for medical research to support medical and dental decisions for coverage.	
One Time Cost	\$52,504 *3% escalation applied to Year 2 pricing. -

Table 4

Year 4: July 1, 2028 to June 30, 2029. Cost for a subscription to an online database for medical research to support medical and dental decisions for coverage.	
One Time Cost	\$54,085 *3% escalation applied to Year 3 pricing. -

Table 5

Year 5: July 1, 2029 to June 30, 2030. Cost for a subscription to an online database for medical research to support medical and dental decisions for coverage.	
One Time Cost	\$55,707 *3% escalation applied to Year 2 pricing. -

Renewal Options						
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	\$ 43,745 -	\$50,980 -	\$ 52,504 -	\$ 54,085 -	\$ 55,707 -	\$257,026 -

Table 6

Grand Total	
\$ 257,026	-



5200 Butler Pike
 Plymouth Meeting, PA 19462
 (610) 825-6000
<https://www.ecri.org>
 DUNS: 06-904-2950; FIN: 231662091

MEMBERSHIP ORDER FORM

Date: []

ECRI Salesperson: []

Member Contact Information

Member Name: [] (“Member”)
 Member Number: []
 Member Primary Contact: []
 Primary Contact Title: []
 Telephone Number: []
 E-mail: []

Member Billing Information

Billing Contact: []
 Billing E-mail: []
 Billing Phone: []
 Billing Address: []

PURCHASE SUMMARY				
Product:	Start Date:	Renewal Date:	Annual Charge:	Grand Total:
[]	[]	[]	\$ []	[]*

* All prices are in US Dollars. This is not an invoice. Taxes are not included. Payment by credit card will incur a 3.5% service fee.



5200 Butler Pike
Plymouth Meeting, PA 19462
(610) 825-6000
<https://www.ecri.org>
DUNS: 06-904-2950; FIN: 231662091

MASTER MEMBERSHIP AGREEMENT

This Master Membership Agreement (together with the Order Form, exhibits, and any amendments, this “Agreement”) is between Emergency Care Research Institute (“ECRI”) and the entity identified as “Member” in the Order Form. ECRI will provide access to the membership product(s) identified in the Order Form (“Membership”) in exchange for the parties’ agreement to the following terms:

Term and Automatic Renewal:	Memberships start on the Start Date identified in the Order Form and continue until the End Date.
Amount Due:	Member will pay ECRI the amount identified in the Order Form. Member is responsible for any applicable sales and use taxes in addition to the amount identified in the Order Form unless Member provides ECRI with reasonably satisfactory proof of Member’s tax-exempt status. Past due amounts will accrue interest at the rate established in Title 62 O.S. §34.72. .
Payment Terms:	Member will pay ECRI the Annual Charge for the first year of Membership within 45 days of a valid invoice. Subsequent Annual Charges will be paid within fifteen days of each annual anniversary after the Start Date. If ECRI receives Member’s payment prior to the Start Date, ECRI will provide access to the Membership within twenty-four hours (subject to a maximum of three weeks’ early access).
Payment Method:	ECRI’s preferred payment method is via ACH. ACH account information and payment instructions will be provided on Member’s invoice. Payment by credit card will incur a 3.5% service fee.
Purchase Orders:	Any terms or conditions included in a purchase order that conflict with the terms of this Agreement, or that are not expressly agreed to in writing by Supplier, shall be null and void and of no force or effect.
Authorized Users:	Only Authorized Users shall access the membership product(s). An “Authorized User” is an employee of Member who works at or for a facility identified on Exhibit A (an “Authorized Facility”), and who is designated by Member as a user under this Agreement. Member is responsible for use of and access to the membership



5200 Butler Pike
 Plymouth Meeting, PA 19462
 (610) 825-6000
<https://www.ecri.org>
 DUNS: 06-904-2950; FIN: 231662091

	product(s) by anyone using a username or password issued to its Authorized Users.
General Terms and Conditions:	The general terms and conditions in Exhibit B are expressly incorporated as part of this Agreement.

Intending to be legally bound, the parties' authorized representatives execute this Agreement:

EMERGENCY CARE RESEARCH INSTITUTE 

 Signature
 Name:
 Title:
 Date:

 Signature
 Name:
 Title:
 Date:

CONFIDENTIAL



5200 Butler Pike
Plymouth Meeting, PA 19462
(610) 825-6000
<https://www.ecri.org>
DUNS: 06-904-2950; FIN: 231662091

EXHIBIT A
Authorized Facilities

CONFIDENTIAL



5200 Butler Pike
Plymouth Meeting, PA 19462
(610) 825-6000
<https://www.ecri.org>
DUNS: 06-904-2950; FIN: 231662091

EXHIBIT B

General Terms and Conditions

1. **Proprietary Material.** ECRI's Memberships and the material produced as part of any Membership are proprietary (the "Proprietary Material") and provided solely for Member's use. Member is prohibited from the following without ECRI's express written consent: (a) selling, sublicensing, distributing, displaying, storing, copying, modifying, decompiling or disassembling, reverse engineering, translating or transferring the Proprietary Material, in whole or in part, or as a component of any other product, service, or material; (b) using the Proprietary Material to create any derivative works or competitive products; (c) allowing any third party to access, use, or benefit from the Proprietary Material; and (d) using the Proprietary Material, including ECRI's name, logo, or the names of any Memberships, for commercial purposes.
2. **Future Functionality.** Member's purchase is not contingent on the delivery of any future functionality or features, or dependent on any verbal or written statements by ECRI regarding future functionality or features.
3. **Agreement Compliance.** In the ordinary course of Member's business and for Member's internal business purposes only, Authorized Users may view, use, download and print data from the Memberships for the Authorized User's use and may on an infrequent, irregular, and ad hoc basis, distribute limited extracts from the Membership. The extracts or downloaded or printed material shall not reach such quantity as to have independent commercial value. ECRI may review Member's compliance with the Agreement throughout its term. If the review reveals that Member has exceeded the authorized use permitted by the Agreement, ECRI reserves the right to take such action as it deems necessary, including, but not limited to immediate suspension or termination of the Membership, or the imposition of additional Membership fees commensurate with the level of use.
4. **Password protection.** Member's access to the Proprietary Material is password protected. Member is responsible for assigning passwords and ensuring that passwords are kept confidential. Sharing passwords is strictly prohibited.
5. **Reserved**
6. **Limited Remedy for Membership Access.** If, because of the actions or omissions of ECRI or a party under its control, a Membership remains unavailable for more than ten consecutive business days after Member notifies ECRI of the unavailability, Member may elect to: (a) terminate this Agreement and receive a pro-rata refund of fees paid to ECRI; or (b) extend its access to the impacted Memberships by a period equal to the length of time that the Memberships were unavailable at no additional charge. This constitutes Member's sole and exclusive remedy for any inability to access a Membership.
7. **Protected Health Information.** Member will not disclose any Protected Health Information ("PHI") to ECRI.
8. **WARRANTIES AND DISCLAIMERS. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, MEMBERSHIPS ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY, CONDITION, OR ANY OTHER TERM OF ANY KIND. ALL WARRANTIES, CONDITIONS, AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW INCLUDING, WITHOUT LIMITATION, WARRANTIES OR OTHER TERMS AS TO SUITABILITY, MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. UNLESS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, ECRI DOES NOT WARRANT OR REPRESENT THAT THE MEMBERSHIPS WILL BE DELIVERED FREE OF ANY INACCURACIES, INTERRUPTIONS, DELAYS, OMISSIONS OR ERRORS, OR THAT ANY OF THESE WILL BE CORRECTED AND ECRI WILL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM THESE FAULTS. ECRI IS NOT PROVIDING FINANCIAL, TAX AND ACCOUNTING, LEGAL, MEDICAL, COMPLIANCE, OR ANY OTHER PROFESSIONAL ADVICE BY ALLOWING MEMBER TO ACCESS AND USE ITS MEMBERSHIPS, SERVICES, OR DATA. ECRI IS NOT RESPONSIBLE FOR ANY**



5200 Butler Pike
 Plymouth Meeting, PA 19462
 (610) 825-6000
<https://www.ecri.org>
 DUNS: 06-904-2950; FIN: 231662091

DAMAGES RESULTING FROM ANY DECISION BY MEMBER OR ANY THIRD PARTY ACCESSING THE MEMBERSHIP THROUGH MEMBER IN RELIANCE ON THE MEMBERSHIP. MEMBER AGREES TO USE THE MEMBERSHIP AT ITS OWN RISK.

- 9. **LIMITATION ON LIABILITY. EACH PARTY'S ENTIRE LIABILITY IN ANY CALENDAR YEAR FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT WILL NOT EXCEED THE AMOUNT PAYABLE IN THE PRIOR 12 MONTHS FOR THE MEMBERSHIP THAT IS THE SUBJECT OF THE CLAIM FOR DAMAGES. ECRI SHALL NOT BE LIABLE FOR ANY PENALTIES, INTEREST, TAXES OR OTHER AMOUNTS IMPOSED BY ANY GOVERNMENTAL OR REGULATORY AUTHORITY. NEITHER PARTY IS LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, FOR LOSS OF DATA, OR LOSS OF PROFITS (IN EITHER CASE, WHETHER DIRECT OR INDIRECT) EVEN IF THE DAMAGES OR LOSSES COULD HAVE BEEN FORESEEN OR PREVENTED.**
- 10. **Unlimited Liability.** Section 9 does not limit either party's liability for: (a) fraud, fraudulent misrepresentation, willful misconduct, or conduct that demonstrates reckless disregard for the rights of others; or (b) infringement of intellectual property rights. Section 9 does not limit Member's liability and indemnification obligations for breach of any of the representations and warranties listed in Section 5 (**Member Data**), Section 7 (**Protected Health Information**), or as outlined in Section 11 (**Third-party Liability**). Section 9 does not limit Member's obligation to pay the fees on the Order Form and all amounts for use of the Membership that exceeds the usage permissions and restrictions granted to Member.
- 11. **Reserved.**
- 12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma.
- 13. **No Assignment.** Member may not assign, delegate, or otherwise transfer this Agreement (including any of Member's rights or remedies) to anyone else without ECRI's prior written consent. ECRI may assign or otherwise transfer this

Agreement (including any of ECRI's rights or remedies) in whole or in part to an affiliate or any entity that succeeds to all or substantially all the assets or business associated with one or more products or services and will notify you of any such assignment or transfer. Any assignment, delegation, or other transfer in breach of this section is void.

- 14. **Amendment.** This Agreement may not be amended except by a written agreement signed by the parties.
- 15. **Entire Agreement.** This Agreement is interred in pursuant to the Solicitation contract. This Agreement prevails over any conflicting or additional terms in any subsequent quote, purchase order, invoice, or other communication provided by Member after the execution of this Agreement. However, the negotiated state terms and the negotiated agency term prevail over this Agreement.
- 16. **Material Breach.** Either party may terminate this Agreement immediately upon written notice if the other commits a material breach and fails to cure the material breach within 30 days of being notified to do so.
- 17. **Notices.** Any notice or other communication required under this Agreement shall be in writing and shall be: (a) delivered personally; (b) mailed by registered or certified mail, postage prepaid, return receipt requested; (c) sent via a reputable overnight or express courier service; or (d) sent via e-mail, with confirmed receipt, as follows:

To Member:	
To ECRI:	Emergency Care Research Institute 5200 Butler Pike Plymouth Meeting, PA 19462 United States of America Attention: Client Operations cecooperations@ecri.org
With a copy (which shall not constitute notice) to:	Emergency Care Research Institute 5200 Butler Pike Plymouth Meeting, PA 19462 United States of America Attention: Chief Legal Officer clo@ecri.org

- 18. **Termination for Insolvency/Bankruptcy.** Either party may terminate this Agreement without liability upon 30 calendar days' written notice of the following: (a) the other party files a voluntary



5200 Butler Pike
Plymouth Meeting, PA 19462
(610) 825-6000
<https://www.ecri.org>
DUNS: 06-904-2950; FIN: 231662091

petition in bankruptcy or an involuntary petition is filed against the other party, (b) the other party is adjudged as bankrupt, (c) a court assumes jurisdiction of the assets of the other party under the Federal Reorganization Act, (d) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other party, (e) the other party becomes insolvent, or (f) the other party makes an assignment of its assets for the benefit of its creditors.

19. **Alerts AutoMatch.** Members with an Alerts AutoMatch membership must submit a purchase order history for supplies and capital (as applicable) on a regular basis.
20. **Alerts Workflow.** Members with an Alerts Workflow membership can elect to receive their Client Data in either .xml or .csv formats upon the conclusion of the membership. "Client Data" means all status, action taken, action notes and comments, and data recorded by Member's Authorized Users via the Alerts Workflow system. Client Data will be referenced by corresponding ECRI Alert accession numbers and headlines but shall not include the full details of the Alert.
21. **Clinical Evidence Assessment.** Members with a membership that includes access to ECRI's Custom Request service are subject to terms and conditions found here: [Clinical Evidence Assessment Custom Request Service Terms](#). A "Custom Request" is a request to research a single topic or product.

22. **Genetic Test Assessment.** Members with a membership that includes Custom Genetic Test Assessments are subject to terms and conditions found here: [Custom Genetic Test Assessment Terms](#).

CONFIDENTIAL