



**STATE OF OKLAHOMA CONTRACT WITH PUBLIC CONSULTING GROUP LLC
(PCG)**

This State of Oklahoma Contract is entered into between the State of Oklahoma by and through the Health Care Authority and Public Consulting Group LLC (“Supplier”) and is effective as of October 1, 2025 (“Effective Date”). The initial term of the Contract shall be from the Effective Date until June 30, 2026, with five (5) one-year options to renew.

Purpose

The State is awarding this Contract to Supplier on behalf of the Oklahoma Healthcare Authority for the provision of Asset Verification Services (AVS), in compliance with the asset verification mandates stipulated by 42 U.S.C. 1396w, as is more particularly described in certain Contract Documents. Supplier requested confidential matters to be considered. This Contract memorializes the agreement of the parties with respect to negotiated 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 this 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. Attachment A, Solicitation EV00000638;
 - 2.2. Exhibit 1 - Specifications;
 - 2.3. Exhibit 2 - Technical Narrative;
 - 2.4. Exhibit 3 - Pricing;
 - 2.5. Exhibit 4 - Reference Sheet;
 - 2.6. Exhibit 5 - Third Party Supplier Info;
 - 2.7. Exhibit 6 - Post Award Requirements;
 - 2.8. Exhibit 7 – Executive Summary and Company Info
 - 2.9. Attachment B, General Terms;
 - 2.10. Attachment C, Agency Terms;
 - 2.11. Attachment D, Information Technology Terms;
 - 2.12. Attachment E-1, Pricing;
 - 2.13. Attachment E-2, Value Add;
 - 2.14. Attachment E-3, Statement of Work (SOW);
 - 2.15. Attachment E-4, Service Level Agreement (SLA); and
 - 2.16. Federal Funding, Attachment G.
3. The parties additionally agree:

- 3.2. 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.
 - 3.3. All representations made by Supplier in response to the Solicitation regarding specifications and requirements are incorporated herein by reference into this Contract.
 - 3.4. 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:
OHCA
4345 N Lincoln Blvd
Oklahoma City, Oklahoma 73105
United States
- E-mail: Contracts@okhca.org
5. The value-added offerings of 1) Quarterly Change in Circumstance Detection; 2) Ex Parte “In a Box”; 3) Applicant Nudging Service; 4) Concurrent Medicaid Enrollment Detection; 5) Point-of-Application TPL Identification; 6) Predictive Analytics, and 7) Eligibility Auditor are included in the scope of this Contract and may be utilized at a future date by the Oklahoma Healthcare Authority, subject to the following conditions: The Supplier and State shall engage in good faith negotiations to determine the pricing for such value-added offerings at the time the State elects to use them. Upon mutual agreement on the pricing, the parties shall execute a formal written Amendment to this Contract to incorporate the agreed-upon pricing and any additional relevant terms.
 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.
 7. The undersigned Agency hereby attests that any required terms and conditions based on a Federal Award applicable to this Contract are included herein.

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SIGNATURES

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

**STATE OF OKLAHOMA
by and through the HEALTH CARE
AUTHORITY**

**PUBLIC CONSULTING GROUP LLC
(PCG)**

By: 
SherriWhite(Oct16,202508:42:06CDT)

By: 
William Mosakowski (Oct 10, 202508:48:49 EDT)

Name: Sherri White

Name: William Mosakowski

Title: Chief Operating Officer• Executive

Title: Manager

Date: Oct 16, 2025

Date: Oct 10, 2025

The undersigned, on behalf of OKDHS, is not a party to this Contract and is signing solely to indicate approval of the technical and programmatic aspects. Neither the individual nor OKDHS assume any legal obligation under this Contract by virtue of this Approval.

**OKLAHOMA DEPARTMENT OF HUMAN
SERVICES**


By: 
Lindsey Kanaly (Oct 17, 2025 13:05:46 CDT)

Name: Lindsay Kanaly

Title: Deputy Director

Date: Oct 17, 2025

The Chief Information Officer is signing solely to approve the Contract pursuant to 62 O.S., § 34.11.1 concerning procurement of Information Technology and/or Telecommunications.

By: 
Dan Cronin (Oct 20, 2025 14:09:08 EDT)

Name: Dan Cronin

Title: Chief Information Officer/CI

Date: Oct 20, 2025

Attachment A

Solicitation No.EV00000638

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded on behalf of Oklahoma Healthcare Authority (OHCA) 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 Healthcare Authority (OHC) from potential Suppliers to provide a contract for the purchase of an Asset Verification Services (AVS) In compliance with the asset verification mandates stipulated by 42 USC 1396w, These asset reporting verification services are critical for confirming the assets of individuals who are aged, blind, and disabled applying or reapplying for SoonerCare. A Contract resulting from this Solicitation may be designated for use as a Statewide Contract.¹

The Contract is awarded on behalf of Oklahoma Healthcare Authority (OHC) for an Asset Verification Services (AVS).

II. BACKGROUND

Oklahoma Healthcare Authority (OHCA)

OHCA is the state agency that administers the Oklahoma Medicaid Program known as SoonerCare. Medicaid is a federal and state entitlement program that provides funding for medical benefits to low-income individuals who have inadequate or no health insurance coverage. Medicaid guarantees coverage for basic health and long-term care services based upon income and/or Resources. Created as Title XIX of the Social Security Act of 1965, Medicaid is administered at the federal level by the Centers for Medicare and Medicaid Services (CMS) within the Department of Health and Human Services (HHS). CMS establishes and monitors certain requirements concerning funding, eligibility standards, scope, and quality of medical services. States have the flexibility to determine some aspects of their own program, such as setting provider (an individual or entity contracted with OHCA to provide healthcare services to enrolled members), reimbursement rates and broadening of the eligibility requirements and benefits offered within certain federal parameters.

Oklahoma Human Services (OHS):

¹ 74 O.S. 85.5(G)(3)

Oklahoma Human services is the largest state agency in Oklahoma. OHS provides a wide range of assistance programs to help Oklahomans in need including food benefits (SNAP); temporary cash assistance (TANF); services for people with developmental disabilities and people who are aging; adult protective services; child welfare programs; child support services; and childcare assistance, licensing and monitoring. OHS also handles applications and eligibility for Sooner Care, the state's Medicaid program offering health care to families with low incomes.

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 five (5) 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 Capabilities
- iii. AVS service delivery
- iv. FI Network access and growth capabilities

2.2 Scope and Description:

- i. The Bid Response must reflect for each requirement on Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5, and Exhibit 6; whether the requirement is met by an out-of-the-box solution or whether the requirement necessitates customization to the Bidder's proposed solution.
- ii. The Bid Response shall show the ability of the Bidder to meet or exceed the mandatory specifications and functional specifications on exhibit 1.
- iii. Pricing shall be proposed using Exhibit 3 titled Pricing.
- iv. Executive Summary and Company Information are in Exhibit 1: Executive Summary and Company Information.
- v. All Technical responses are on Exhibit 2
- vi. The response to pricing shall be proposed using Exhibit 3: Price Template.
- vii. Value-added products and/or services within scope of the Acquisition are to be included in Exhibit 3.
- viii. Business References are to be on Exhibit 4: Bidder Reference Worksheet.
- ix. Third-party vendor information is included in Exhibit 5: Third Party Supplier Information.

2.3. The AVS Program shall verify the assets of aged, blind, and disabled individuals applying or reapplying for SoonerCare while reporting the assets of the above referenced population and maintain a collegial relationship with the various financial institutions (FI).

- i. Operate the program in accordance with the RFP objectives that functions on a 24/7/365 basis except during limited periods for maintenance and occurrences outside the control of the Contractor;
- ii. Establish a network of FIs within the State of Oklahoma and the other 49 states, US possessions, and territories depending on the banking laws in those various locations;
- iii. Develop a process for recruiting FI to participate in this AVS;
- iv. Send electronic requests to FIs requesting verification of the assets for a SoonerCare Member or applicant with an account or accounts at the FIs during the specified lookback period;
- v. May be required to send electronic requests to multiple FIs depending on the information received during the application process; multiple FI locations may be required based on the geographic location to the Member or applicant's residence or other reasonable factors including OHCA's designation of the FI;
- vi. The State estimates that it will send approximately 125,000 annual requests over the course of the contract.
- vii. Request shall allow for the specification of one or more variables within the same request such as:
 - a. Owner;
 - b. Type;
 - c. Branch Name and Address;
 - d. Balances;
 - e. Interest Earned;
 - f. Other items included in the comprehensive search provided.

2.4 The request shall include verification of assets contained in any of the following types of accounts:

- i. Checking.
- ii. Savings.
- iii. Investment accounts,
- iv. Individual retirement accounts (IRAs);
- v. Treasury notes;
- vi. Certificates of deposit;
- vii. Annuities; and
- viii. Other assets that may be held by the FI.

2.5. **Receive electronic verifications from the various FIs regarding accounts/assets on which the Member or applicant's name appeared as either a single or joint owner during the specified look-back period which shows one of the following:**

- i. The assets held or managed by the FI or;
- ii. Documentation that the search was conducted but no assets are held or managed by the FI; and
- iii. Provide comprehensive training and support to the staff of the OHCA, OKDHS, and FIs.
- iv. Provide detailed user guides and documentation.

2.6. OHCA RESPONSIBILITIES

OHCA shall:

- i. Designate an OHCA employee to serve as Program Monitor (PM);
- ii. Determine the date the turnover plan (referenced in Section A.9) must be submitted and provide written approval of the plan;
- iii. Six months prior to the end of this Contract shall withhold 10% of the total six month invoice amount; upon final receipt and approval of the turnover results report, payment of the final invoice plus the 10% withheld shall be paid to the Contractor upon receipt of a final invoice; and
- iv. Perform additional activities proposed by the Contractor and acceptable to OHCA.
- v. OHCA intends to perform AVS checks on a pre-enrollment basis

2.7 All ABD applications/redeterminations are currently processed electronically within the same eligibility system. The vendor will not have access to this system. The State will not be creating new AVS screens or systems in order to process returned information from the FI. The State requests that the vendor provide a response file with extractable data for other reporting purposes.

2.8 OHCA/OHS expects that the vendor will have dedicated staff to answer support or technical questions from the State or the FI. It expects that training manuals or sessions be provided to either the State or FIs during the implementation process.

2.9 OHS may request a verification for a single applicant or for multiple applicants at a time. OHS intends to send only one recipient per request. The State wants all responses for a single applicant in a single response.

Shall:

- i. Create electronic records requesting verification of the assets for a SoonerCare Member or applicant with an account or accounts at the FIs during the specified look-back period;
- ii. Store the response from the electronic records regarding the verification of the assets for a SoonerCare Member or applicant; and

- iii. Perform necessary case actions based on the electronic records regarding the verification of the assets for a SoonerCare Member or applicant.

2.11. STAFFING REQUIREMENTS

10.1 The Contractor shall provide:

- i. A Project Director (PD) with day-to-day responsibility for the services required under this RFP;
- ii. An Information Technology (IT)/Information Services (IS) Director; and
- iii. All staff necessary to perform the services required under this RFP.

2.12. SYSTEM REQUIREMENTS – OHCA and OHS would prefer the following types of configurations for the different types of communication required.

11.1 OHCA/ OHS to Vendor Asset Verification Requests:

- i. Implementation of web services capable of receiving electronic asset verification requests. The preferred format for these requests will be the cross-platform XML data exchange format;
- ii. A single web service request will potentially contain multiple requests for verification for distinct individuals (bundling or batching);
- iii. Transactions with the web service between OHCA/OHS and the Vendor will be conducted using secure SSL encryption technology to ensure protection of sensitive data; and
- iv. Upon receipt of a request, the web service will immediately return a response code or message indicating successful receipt of the request.

2.13 Vendor to FI Communication - The technologies and processes selected for communication between the Vendor and the various FI's should be selected and implemented with the following factors in mind:

- i. Compliance with federal, state, and local regulations related to the financial industry and consumer information;
- ii. Implementation of secure technologies and processes to protect the sensitive financial information being exchanged; and
- iii. Implementation of technologies that encourage the broadest participation of FI's in the vendor network.

2.14 Vendor to OHCA/OHS Asset Verification Responses:

- i. Upon aggregation of the asset information from the various FI's, the Vendor will send a response file to OHCA/OHS containing the requested information. The format and method of delivery of that response file will be negotiated between OHCA/OHS and the vendor; and

- ii. Response transactions between the Vendor and OHCA/OHS will be conducted using secure encryption technology to ensure protection of sensitive data.

2.15. Technical Integration:

- i. Support REST or SOAP API calls with JSON or XML payloads.
- ii. Accommodate batch file exchanges in various formats (flat files, CSV, Excel, text delimited).

2.16. System must indicate a "Download Statements" button for individual months.

2.17. Vendor to provide clearer designation of specific bank locations when there are multiple locations.

2.18. System to flag months to show actual statements.

2.19. System to display whether accounts are closed or just inactive.

2.20. Vendor to provide quicker turnaround on returned information, aiming for real-time or at least within 72 hours.

2.21. Vendor to offer ongoing technical support.

2.22. Vendor to maintain high availability (99% uptime) with minimal downtime for maintenance.

2.23. Vendor to ensure robust security measures compliant with relevant regulations (e.g., HIPAA, FERPA, FIPS 140-2).

2.24. REPORTING REQUIREMENTS

- i. The Contractor shall submit:
 - a. Weekly Risk Reports during implementation
 - b. OHCA/OKDHS does not anticipate integrating the AVS responses in their existing eligibility system. However, it would like the response file to extract data for other reporting purposes.
- iii. Monthly and annual summary of requests, responses, and assets (both disclosed and undisclosed) identified by Member or applicant from all FIs. These reports shall include at a minimum the following:
 - a. Response rate analysis; and
 - b. Report of period of ineligibility based on asset verification results.

2.25. DISASTER RECOVERY PLAN

The Contractor shall submit plan to provide an emergency back-up asset verification system and a disaster recovery plan to maintain business functions. Bidder must submit the plan to OHCA for approval by 6 months from date of award. The Contractor may include resources outside Oklahoma but within the United States as part of this plan.

2.26. TURNOVER PLAN

The Contractor shall submit:

- i. Six months prior to the end of this Contract and at no charge to the OHCA, a written turnover plan which details the following:
 - a. Tasks and subtasks necessary for the turnover;
 - b. Schedule for the turnover;
 - c. List of all SoonerCare documents in the Contractor's possession and the schedule for the delivery of these documents to the OHCA or its designated agent; and
 - d. All updated manuals, other documentation and records necessary for the continuity of the AVS.
- ii. Upon completion of the turnover submit to the OHCA a report detailing the results of the turnover including successful and unsuccessful portions of the turnover.

2.27 PAYMENT STRUCTURE

- i. In consideration for the satisfactory performance of the services under this Contract OHCA shall pay Contractor in accordance with the amounts shown on the Contractor's Price Proposal (See Exhibit 2). The budget for this RFP is not to exceed \$850,000.00 for the period April 1, 2025, through June 30, 2025, including any implementation payments proposed by the Contractor. Implementation payments are only allowable if they are specifically associated with a deliverable required during implementation. The budget for subsequent fiscal years shall not exceed \$750,000.00. Final approval of renewal amounts will be at the sole discretion of the OHCA. Increases or decreases at the time of renewal shall not require a modification in accordance with this RFP's amendment clause.

III.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

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.

Exhibit 1

MANDATORY SPECIFICATION INSTRUCTIONS

1	Attachment 4 contains three (3) spreadsheet tabs. The Bidder is required to respond to the first two (2) tabs. 1. Mandatory Specifications 2. Functional Specifications
2	Each spreadsheet tab contains a list of specifications organized by topic. The Bidder must enter a "Y" for Yes or an "N" for No on each requirement. If the Bidder can meet the specification at the time of response the Bidder enters a "Y" for a Yes response. If the Bidder cannot meet the specification at the time of response, the Bidder enters "N" for a No response. If the Bidder does not enter a response, it will be considered non-responsive and will receive a "N" score.
3	No other information may be entered on this spreadsheet.

Exhibit 2

TECHNICAL NARRATIVE QUESTIONS

The Technical Narrative Questions are designed to help OHCA learn about the technical capabilities of the proposed solution. The responses to each of the questions in this section will be evaluated and the score will be one component of the selection criteria.

Answer each narrative question clearly and completely. Any unclear or incomplete answers will be deemed non-responsive, disregarded, and will receive a zero score. Be sure that the response provides sufficient detail to objectively evaluate the response, while not providing irrelevant information. Use separate pages and clearly reference the question number. References to websites or other external materials in lieu of a response as defined above may be deemed non-responsive and accordingly receive a score of zero.

1. **Organizational Characteristics:**

- 1.1 Provide the date your organization was established.
- 1.2 State the current number of employees in your organization.
- 1.3 Detail specific projects of similar size and scope your organization has undertaken in the past five years. Include project outcomes, challenges, and lessons learned.
- 1.4 Explain your organization's approach to staying current with Federal and Oklahoma State laws, rules, and regulations that impact the proposed solution. Provide specific examples where this has been applied.
- 1.5 Describe how your organization will enhance the OHCA/OHS Asset Verification System, detailing your proposed improvements and their expected benefits.
- 1.6 Outline your organization's customer service model, including how issues are logged, tracked, and resolved. Provide key performance indicators (KPIs) used to measure success.
- 1.7 Describe your organization's quality control processes, including how defects or issues are identified, reported, and resolved.
- 1.8 Explain your change management approach for scope and system requirements. Include details on stakeholder communication, impact analysis, and implementation.
- 1.9 Provide an overview of your training model to ensure your staff performs with high efficiency and accuracy. Include methods, frequency, and performance evaluation.
- 1.10 Summarize how your organization will assist OHCA/OHS in meeting the goals in Attachment A. Include strategies, performance standards, and examples of similar initiatives.
- 1.11 Identify any limitations to the Project Director's availability during the project timeline and propose solutions to mitigate these.
- 1.12 If subcontractors or partners will be used, outline their roles, relevant experience, and how they will contribute to project success.
- 1.13 Explain how your organization ensures data security and regulatory compliance (e.g., HIPAA, FERPA, FIPS 140-2). Provide examples of audits or certifications.
- 1.14 Detail your disaster recovery and business continuity plans, including timeframes for system recovery and how critical operations will be maintained.

Exhibit 2

1.15 Discuss your organization's approach to innovation and continuous improvement, including how feedback is gathered and applied to enhance solutions.

2. Key Staff:

2.1 The Bidder must list the individuals who are proposed to perform the work under this RFP. The individuals listed in this section must be those who will actually do the work if the Contract is awarded to the Bidder. Substitutions after award will require notification to the OHCA/OHS within 30 days of the event, with OHCA/OHS having the option of requesting different staff members.

2.2 If the Bidder plans to use a major subcontractor's employee in one of the key positions, list the name of the subcontractor's employee on the line for the key position and provide a resume for the subcontractor's employee.

2.3 The entities/individuals whose names should be listed for this RFP are:

2.3.1 Bidder's Name:

2.3.2 Name of Project Director:

2.3.3 Name of Project Manager:

2.3.4 Name of Trainer:

2.3.5 Subcontractor Name (if any):

2.3.6 Subcontractor Manager (if any):

3 Value Add Services:

3.1 Describe any additional services or enhancements the Bidder can provide that add value to the project. Include specific examples and the associated benefits.

Additional Questions:

4 Technical Capabilities:

4.1 Explain the technical architecture of the proposed solution, including hardware and software components:

4.2 Describe the process for integrating the proposed solution with existing OHCA/OHS systems:

4.3 Provide an overview of your disaster recovery and business continuity plans, including recovery time objectives (RTO) and recovery point objectives (RPO).

4.4 Detail the measures in place to ensure the performance and scalability of your system. Include how your system handles high transaction volumes and peak loads.

5 User Experience:

5.1 Describe the user interface of the proposed solution and how it ensures ease of use:

5.2 Explain how the solution supports accessibility for users with disabilities:

5.3 Discuss the support provided for end-users, including help desk availability and response times:

5.4 Providing dedicated staff for answering support and technical questions from OHCA/OHS and FIs. Include expected response times and escalation procedures.

Exhibit 2

5.5 Describe your training plan for OHCA, OHS, and FI staff. Include methods (e.g., in-person, virtual), timelines, and the types of user guides or documentation provided.

Specific Requirements for Enhanced Features:

6. Enhanced Features:

- 6.1 Describe the implementation of a “Download Statements” button for individual months:
- 6.2 Explain how the solution will provide clearer designation of specific bank locations when there are multiple locations:
- 6.3 Describe how flagged months to show actual statements will be displayed:
- 6.4 Discuss how the solution will display whether accounts are closed or just inactive:
- 6.5 Provide a plan for ensuring expedited turnaround on returned information, ideally in real-time or within 72 hours:

**Oklahoma Health Care Authority
Asset Verification Services**

Exhibit 2 Pricing Instructions
Exhibit 3 contains two (2) spreadsheet tabs. The Contractor is required to respond to the first tab: Price Proposal.
The third (3) tab entitled Value-Add is required to be complete if responding to any optional value-add services requested in the RFP.
Not-to-Exceed: \$3,850,000.00
Initial Contract Year: 2025
Subsequent Renewals: 5
Describe the pricing requested here. Is it a fixed price contract based on deliverables? Is it hourly rate, etc? How is the contract to be priced?
Base year cost of \$850,000.00 and five (5) renewal options funded at \$600,000.00/year for a total not-to-exceed of \$3,850,000.00.
No other information may be entered on the spreadsheet.

Oklahoma Health Care Authority
 Asset Verification Services

Exhibit 3 Value-Add Price Propos		
<i>You may add additional detail lines to the table as needed.</i>		
ITEM NAME	DESCRIPTION	2025
Total FIRM FIXED PRICE		\$ -

Exhibit 4 Reference Sheet

EV00000638

Company Name: _____

Contact Email: _____

Company Contact Name: _____

Contact Phone: _____

Project Details

Project Description:

Project Date: _____

Project Budget: _____

Current Status: _____

1. What were you hoping to achieve by hiring the vendor's services? Do you feel you achieved them?
2. What would you wish had been different about your project or your relationship with the vendor?
3. How long did it take before you saw the results of the project?
4. Did the vendor stay on schedule?
5. How did you know when the vendor succeeded at what was promised?
6. How well did they understand your needs?
7. How did they handle conflict resolution?
8. What was their response time to your questions or requests?
9. Did the vendor exceed your expectations?
10. Would you hire this vendor again?

7.11 Section Eleven: Third Party Vendor Information EXHIBIT 5: 3rd Party Supplier Information				
Instructions -If a third-party vendor or subcontractor is included as part of a submitted Bid, the following information is required				
Third-party vendor or subcontractor name:	3rd Party Company Summary	Relationship to Bidder	Clients for which the two entities have worked together	Products and/or services proposed to be provided by the third-party vendor and how those products and/or services interface with the Bidder's solution
Name:				
Name:				
Name:				
Name:				
Name:				

EXHIBIT 6 – POST AWARD REQUIREMENTS

CONTRACT GOVERNANCE

OHCA and the Contractor have key roles for a successful Contract. OHCA takes an active role during Contract implementation. A Governance process that includes OHCA and the Contractor is the most successful.

1. **OHCA ROLES AND RESPONSIBILITIES:**

1.1. The Contract team will coordinate the overall project management responsibilities including availability of resources as required to support the Contract. During the entire lifecycle of the Contract, the state will:

- A. Define the goals and objectives of the Contract and services throughout implementation and ongoing operations;
- B. Communicate the goals, objectives, and ongoing status of the Contract to all stakeholders;
- C. Work with stakeholders to identify and monitor project and program risk and appropriate mitigation issues related to the Contract;
- D. Monitor the project management approach that will govern the Contract;
- E. Review the draft deliverables and final deliverables developed by the Contractor and provide feedback, request changes, and provide final review until the state is satisfied with the resulting deliverables;
- F. Review and approve or reject final deliverables developed and revised by the Contractor; and,
- G. Provide access to state management and Subject Matter Experts (SMEs) for the approval of the deliverables required to meet the goals and objectives of the project.

1.2. Table 1 describes the state's Key Staff and Roles and Responsibilities

EXHIBIT 6 – POST AWARD REQUIREMENTS

Table 1 Key Staff and Roles & Responsibilities

PROJECT TITLE	ROLES AND RESPONSIBILITIES
Program Monitor	<ul style="list-style-type: none">▪ Primary point of contact for Contract administration and first tier for disputes.
Contract Coordinator	<ul style="list-style-type: none">▪ Point of contact for Contract administration and first tier for disputes.
Professional Services Contracts Manager	<ul style="list-style-type: none">▪ Point of contact for second tier Contract dispute resolution.
Program Manager	<ul style="list-style-type: none">▪ Provides daily management of the project and serve as the chief liaison to the Program Monitor for design, development, and project implementation activities, as well as the project’s maintenance and operational phase;▪ Authorized to make day-to-day project decisions;▪ Responsible for managing the teamwork activities consistent with the approved work plan;▪ Responsible for identifying resource requirements, coordinating use of personnel resources, identifying issues and solving problems, and facilitating implementation of the System.

EXHIBIT 6 – POST AWARD REQUIREMENTS

2. **CONTRACTOR STAFFING, ROLES, AND RESPONSIBILITIES:**

2.1. The Contractor shall provide:

- A. All staff necessary to perform the services required under this RFP;
- B. The following Key Personnel:
 - a. A Project Director (PD) with day to day responsibility for the services required under this RFP.
 - b. A Project Manager
 - c. An information technology lead responsible for the Contractor's access to the Medicaid Management Information System (MMIS) or Person Integrated Client Information System (PICIS), and/or establishing and maintaining electronic file transfer with OHCA and ODMHSAS;
 - d. A trainer to learn policy and rules, and provide training to Contractor staff to be kept current on policy and rules; and
 - e. A Quality Assurance Officer (QAO).
- C. Contractor shall not change the designation of the Key Personnel without prior approval through formal correspondence from the state. (The Contractor may use its expertise and experience to propose other types of staff – the state at its sole discretion may decide to accept a proposed staff category.)
- D. Table 2 Contractor Key Personnel Roles and Responsibilities describes the key project positions, their corresponding roles project responsibilities, and minimum qualifications for each. Other positions may be proposed at the Contractor's discretion.

EXHIBIT 6 – POST AWARD REQUIREMENTS

Table 2 Contractor Key Roles and Responsibilities

TITLE	ROLES AND RESPONSIBILITIES	QUALIFICATIONS
Project Director	<ul style="list-style-type: none"> ▪ Primary point of contact with the OHCA’s Program Monitor and Contract Coordinator for activities related to contract administration, overall project management and scheduling, correspondence between the OHCA and the Contractor, dispute resolution, and status reporting to the OHCA for the duration of the contract. ▪ Authorized to commit the resources of the Contractor in matters about the implementation performance of the Contract. ▪ Responsible for ensuring all Contractor-required resources identified by project manager are staffed on time. ▪ Responsible for addressing any issues that cannot be resolved with the Contractor’s project manager. 	<ul style="list-style-type: none"> ▪ Minimum of 3 years of direct project oversight. ▪ Special consideration may be given to those who have Medicaid experience.
Project Manager	<ul style="list-style-type: none"> ▪ Provide onsite management of the project and serve as the chief liaison to the OHCA and ODMHSAS for design, development, and project implementation activities, as well as 	<ul style="list-style-type: none"> ▪ Minimum of 3 years of project management experience for a government or private sector health care payer, including experience in a

EXHIBIT 6 – POST AWARD REQUIREMENTS

TITLE	ROLES AND RESPONSIBILITIES	QUALIFICATIONS
	<p>the project’s maintenance and operational phase.</p> <ul style="list-style-type: none"> ▪ Authorized to make day-to-day project decisions. ▪ Responsible for facilitating the project by using the project management processes, organizing the project, and managing the teamwork activities consistent with the approved work plan. ▪ Responsible for scheduling and reporting project activities, identifying resource requirements well in advance, coordinating use of personnel resources, identifying issues and solving problems, and facilitating implementation of the services. ▪ Shall host bi-weekly status meetings, monthly milestone meetings, as well as interim meetings as needed. Will assign Contractor staff to those meetings as appropriate. Will provide an agenda and develop minutes for each meeting. ▪ Possess business expertise in behavioral population care management systems with a strong understanding of the Contractor’s business application. ▪ Provide expert guidance ensuring that behavioral health population care management policy and business rules as defined by the OHCA are correctly implemented in the Contractor’s solution. ▪ Advise the OHCA and ODMHSAS regarding best practices and recommends modifications to business processes to improve the overall program. 	<p>state similar in scope and size.</p> <ul style="list-style-type: none"> ▪ Possess current Project Management professional certification, e.g., Project Management Institute (PMI), etc.

EXHIBIT 6 – POST AWARD REQUIREMENTS

TITLE	ROLES AND RESPONSIBILITIES	QUALIFICATIONS
Information Technology Lead	<ul style="list-style-type: none"> ▪ Responsible for the Contractor’s access to the MMIS or PICIS, and/or establishing and maintaining electronic file transfer with OHCA and ODMHSAS. 	<ul style="list-style-type: none"> ▪ Minimum of 3 years of project management experience <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <ul style="list-style-type: none"> ▪ 35 hours of project management training/education or a Certified Associate in Project Management (CAPM) certification </div>
Trainer	<ul style="list-style-type: none"> ▪ Responsible for learning policy and rules, and ▪ Provide training to Contractor staff to be kept current on policy and rules ▪ Design training and materials to educate end users on navigating the population care management system 	<ul style="list-style-type: none"> ▪ Minimum of 3 years of project management experience as an end user trainer ▪ Certification in areas such as instructional design, training management, or program development
Quality Assurance Officer	<ul style="list-style-type: none"> ▪ Developing and implementing quality assurance policies and procedures ▪ Conducting audits, tests, and inspections to ensure compliance with standards and specifications ▪ Reviewing and evaluating quality data, records, and documentation ▪ Identifying and resolving quality issues and recommending improvements ▪ Providing advice and feedback to staff and stakeholders on quality matters 	<ul style="list-style-type: none"> ▪ Minimum of 3 years of quality assurance officer experience ▪ Professional certification such as Six Sigma, CQE, or CQA

EXHIBIT 6 – POST AWARD REQUIREMENTS

3. **REPORTING REQUIREMENTS:**

3.1 The Contractor shall submit:

- A. Weekly Implementation Report: During Contract Development, the State and Contractor shall agree on any revisions to the Milestone Schedule.
- B. Contractor shall submit a weekly implementation report in a mutually agreeable format identifying any changes from the original milestone dates and the reasons for the change and the status of the major implementation risks particularly those affecting the critical path.
- C. Maintain current specifications of all quality measures required of the CCBHCs as defined by the state and federal government.
- D. Collect the needed data and compile the measures required by the State for CCBHCs.
- E. Provide reports for State and providers to review throughout the measurement period.
- F. Develop an initial set of standard reports and provide ongoing support for ad hoc reporting, including two (2) complimentary ad hoc reports annually.
- G. Provide a robust list of standardized reports agreed upon by the state.
- H. Provide the ability for user creation of ad hoc reports.
- I. Provide reports at requested aggregate levels to include but not limited to:
 - a. Number and length of time in services;
 - b. Demographics;
 - c. Chronic disease prevalence among clients and co-occurrence of diseases, including but not limited to diabetes, asthma/COPD, tobacco use, obesity, dyslipidemia, and blood pressure;
 - d. Screening and assessment results of clients;
 - e. Metabolic screening rates;
 - f. Hospital and emergency department utilization;
 - g. Hospital and emergency department follow-up and medication reconciliation.
- J. Provide performance measures monitored in real time and noncompliant cases remediated prior to annual measurement.
- K. Provide periodic outcome analysis to demonstrate outcomes are being achieved or areas in need of improvement.
- L. Provide outcome measures that rank providers based on their adherence to evidence-based guidelines and performance on outcome measures.

EXHIBIT 6 – POST AWARD REQUIREMENTS

- M. Provide a dashboard of performance measurements aggregated at various levels, e.g., the provider and state level, approved by the State.
- N. Other reports as proposed by the Contractor and acceptable to the State.

Request for Proposals for
 Solicitation Number EV00000638
 Bidder Name:

Section Two: Executive Summary and Company Information EXHIBIT 7: 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	
7.2.a	Provide the length of time the Bidder has been in business	
7.2.b	Insert a brief description of the company	
7.2.c	Indicate Company size and organization structure (an Organizational chart is recommended)	
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)	
7.2.e	Describe the core competency of the company	
7.2.f	Estimated Number of clients	
7.2.g	Average client size (i.e., employee count)	

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 debaring 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:

- 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 \(oklahoma.gov\)](https://www.oklahoma.gov/information-security-policy-procedures-guidelines) Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 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.
- C. The Supplier shall indemnify, defend, and hold harmless the State and its officers, employees, and agents from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees and costs) arising out of or related to any action initiated due to the State's consent to the Supplier's request for exemption from disclosure under the Open Records Act for any trade secrets or confidential information. This indemnification specifically includes all costs incurred by the State in defending any such exemption or protecting such trade secrets from public disclosure if and when an action is filed to seek such disclosure. This indemnification does not apply to the State's response to a request for public disclosure that otherwise would be taken in the ordinary course, including but not limited to the correspondence with such requestor and the production of a redacted copy of the Supplier's contract (and proposal included therein)..

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.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- 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

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

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.

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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

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- 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 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.

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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 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

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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,
 - 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

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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. 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 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

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.

ATTACHMENT C – AGENCY

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 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;

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- 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);
 - 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 Federal Privacy Regulations and the Federal Security Regulations as contained in 45 C.F.R. Parts 160 through 164 that are applicable to such Party as mandated by the Health Insurance Portability and Accountability Act of 1996

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(HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH) (42 U.S.C. § 300jj *et seq.* and § 17921 *et seq.*);

- s. 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);
 - t. Vietnam Era Veterans’ Readjustment Assistance Act, 38 U.S.C. § 4212 and 41 C.F.R. Part 60-300;
 - u. Protective Services for Vulnerable Adults Act, 43A O.S. § 10-101 *et seq.*;
 - v. Non-procurement, debarment, and suspension, 2 C.F.R. Part 376;
 - w. 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);
 - x. Anti-Kickback Act of 1986, 41 U.S.C. § 8701 *et seq.*;
 - y. Oklahoma Anti-Kickback Act of 1974, 74 O.S. § 3401 *et seq.*;
 - z. Federal False Claims Act, 31 U.S.C. §§ 3729-3733 and § 3801 *et seq.*;
 - aa. Oklahoma Medicaid False Claims Act, 63 O.S. § 5053 *et seq.*; and
 - bb. 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
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ATTACHMENT C – AGENCY

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
Software & Ownership Rights, Federal Licenses, Information Safeguarding, Health Insurance Portability and Accountability Act of 1996 (HIPAA) Compliance, and Progress Reports	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
Information Safeguarding	42 C.F.R. § 433.112(b)(9) 45 C.F.R. § 205.50
Progress Reports	SMM Section 11267
Disaster Recovery Procedure	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.
IV&V	45 C.F.R. § 95.626

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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.
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 CONFIDENTIALITY AND SECURITY OF PROTECTED HEALTH INFORMATION

1. To the extent any provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including, but not limited to, the Privacy Rule and the Security Rule, or the Health Information Technology for Economic and Clinical Health Act (HITECH) and its implementing regulations, affect the duties and responsibilities of this Contract, both Parties agree to these terms. Supplier acknowledges that in its role as Supplier, it may have or obtain access to protected health information (PHI), including, but not limited to, individually identifiable health information, some of which may be electronic protected health information (ePHI), both as defined by HIPAA. PHI shall hereinafter refer collectively to both PHI and ePHI.
2. Definitions for the Purposes of this Section:
 - a. HIPAA shall mean the Health Insurance Portability and Accountability Act of

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1996, the Privacy Rule, and the Security Rule, and other administrative simplification provisions as contained in 45 C.F.R. § 160.103 and the HITECH Act of 2009.

- b. The following terms used in this Contract shall have the same meaning as those terms in HIPAA: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, and Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
 - c. Supplier is a “Business Associate” as defined by 45 C.F.R. § 160.103.
 - d. Discovery shall generally mean the first day a security incident or breach is known to Supplier or, by exercising reasonable diligence, would have been known to Supplier.
 - e. OHCA is a “Covered Entity” as defined by 45 C.F.R. § 160.103.
 - f. HIPAA Security and Privacy Rule shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - g. Security Event shall mean the attempted or successful unauthorized access, use, disclosure, modification, loss, theft, or destruction of information or interference with the Hosted environment used to perform the services.
 - h. Security Incident or Incident shall mean an occurrence that actually or imminently jeopardizes, without lawful authority, the confidentiality, integrity, or availability of information or an information system; or constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies. A Breach as defined by HIPAA and the HIPAA Security and Privacy Rule shall constitute a Security Incident. Security Incident shall include, but is not limited to, unwanted disruption or denial of service, unauthorized use of a system for processing or storing ePHI, or changes to system hardware, firmware, or software without Business Associate’s consent.
3. Obligations of Supplier:
- a. Supplier’s use of PHI is limited to the performance of duties and responsibilities under this Contract. Supplier acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Contract or as required by law. Specifically, Supplier agrees it will and will require its employees, agents, vendors, and subcontractor to:
 - i. Use or further disclose PHI only as permitted in this Contract or as required by law, including, but not limited to HIPAA.
 - ii. Ensure that Oklahoma Medicaid member information is confidential and is not to be released pursuant to 42 U.S.C §1396a(a)(7), 42 C.F.R. §§ 431.300- 431.306, and 63 O.S. § 5018. Supplier agrees not to release the information governed by these Oklahoma Medicaid member requirements to any other person or entity without the approval of OHCA, or as required by law or court order.
 - iii. Ensure that Oklahoma Medicaid member and provider information cannot be re- marketed, summarized, distributed, or sold to any other organization without the express written approval of OHCA.
 - iv. Implement and document appropriate technical, physical, and administrative safeguards and comply with 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of PHI other than as provided for by this Contract.
 - v. Protect the confidentiality, integrity, and availability of PHI that Supplier creates, receives, maintains, or transmits for or on behalf of OHCA in accordance with HIPAA and the terms of this

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Contract.

- vi. Prevent, detect, contain, and correct security violations in accordance with HIPAA and use only the OHCA encrypted email address assigned to Supplier for all electronic transmission of PHI and all other transmission of any information arising out of this Contract.
- vii. Not use, disclose, or otherwise make PHI available to any entity or individual who is not subject to the laws of the United States.
- viii. Not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of OHCA.
- ix. Report all suspected or known privacy and security incidents to designated Covered Entity contacts for incident response no longer than 48 hours of awareness of event, but immediately within 1 hour upon awareness of an incident that may constitute a reasonable concern to the privacy and security posture affecting Covered Entity, including its members, data, networks, or reputation. Business Associate shall seek to mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it in connection with all suspected or known privacy and security incidents. Covered Entity incident response contacts shall be kept aware of the progress of the incident through timely completion of a final report that is satisfactory to both parties. The initial notification of the event is understood likely to still be in discovery and is meant to ensure Covered Entity is aware as soon as possible in case there is any coordination or action needed on Covered Entity's side, particularly if Covered Entity is seeing related issues to which Covered Entity needs to respond or report. Notifications should be sent to the central inbox (securitygovernance@okhca.org) and include the designated OHCA Security and Privacy Officers. Business Associate will mark these emails as a High Priority and include "Partner Incident Breach Submission" in the subject.
- x. Report potential known violations of 21 O.S. § 1953 to designated Covered Entity contacts for incident response in the same manner and under the same timeframe as the one (1) hour reporting for privacy and security incidents listed in C.12.3(ix).
- xi. With the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. § 164.412, report to designated Covered Entity contacts any breach of PHI as required by 45 C.F.R. § 164.400 et seq, for incident response under the same timeframe and procedure as reporting privacy and security incidents as listed in C.12.3(ix). After the initial brief one (1) hour report, the full breach notification required by 45 C.F.R. § 164.410 is due to OHCA in writing no later than five (5) calendar days upon the discovery of a breach of unsecured PHI. Such notice shall include, to the extent possible, the name of each individual whose unsecured PHI has been, or is reasonably believed by Supplier to have been, accessed, acquired, or disclosed during such breach. Supplier shall also, to the extent possible, furnish OHCA with any other available information that OHCA is required to include in any notification to individuals under 45 C.F.R. § 164.404(c) at the time of Supplier's notification to OHCA or promptly thereafter as such information becomes available. Supplier shall cooperate in OHCA's breach analysis procedures, including risk assessment, if requested.
- xii. Mitigate, to the extent practicable, any harmful effect that is known to Supplier in connection with a use or disclosure of PHI by Supplier in violation of the requirements of this Contract.

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- xiii. Ensure that disclosure of OHCA data, including, but not limited to a designated record set, be approved in advance by OHCA and then disclosed only to individuals expressly authorized to review such information under applicable Federal or State laws. If Supplier, employees, or subcontractors disclose(s) or attempt to disclose OHCA data without the requisite prior approval, OHCA may take any available remedy to prevent or mitigate any further disclosure. Supplier shall provide written notice to OHCA of any use or disclosure of OHCA data not provided for by this Contract of which Supplier becomes aware within five (5) calendar days of its discovery.
- xiv. Notwithstanding anything to the contrary herein, promptly provide written notice to OHCA upon receipt of a subpoena or other legal process that seeks disclosure of OHCA data, so that OHCA may have the opportunity to seek a protective order or other means of limiting or preventing such disclosure. Supplier shall, to the extent allowed by law, fully cooperate with OHCA's efforts to limit or prevent such disclosure. Supplier shall withhold from production, to the extent allowed by law, any data before OHCA has had an opportunity to review and/or respond further.
- xv. To the extent Supplier is to carry out one (1) or more of OHCA's obligation(s) under 45 C.F.R. Part 164, Subpart E, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s).
- xvi. Supplier will make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
- xvii. To the extent allowed by law, indemnify and hold OHCA harmless from all claims, liabilities, costs, and damages arising out of or in any manner related to the unauthorized use or disclosure by Supplier, its employees, subcontractors, vendors, and agents of any PHI or breach by Supplier, its employees, subcontractors, vendors, and agents of any obligation related to PHI.
- xviii. Provide access in a timely manner to PHI maintained by Supplier in a designated record set to OHCA, or if directed by OHCA, to an individual in order to meet the requirements of 45 C.F.R. § 164.524. In the event that any individual requests access to PHI directly from Supplier, Supplier shall promptly forward such request to OHCA. Any denials of access to the PHI requested shall be the responsibility of OHCA.
- xix. Make PHI available in a timely manner to OHCA for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.
- xx. Document disclosure of PHI and information related to such disclosure as would be required for OHCA to respond to a request by an individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. § 164.528, and within five (5) calendar days of receiving a request from OHCA, make such disclosure documentation and information available to OHCA. In the event the request for an accounting is delivered directly to Supplier, Supplier shall promptly forward such request to OHCA.
- xxi. Make its internal policies, procedures, practices, books, and records related to the use and disclosure of PHI received from or created or received by Supplier on behalf of OHCA available to the Secretary of HHS, authorized governmental officials, and OHCA for the purpose of

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determining Supplier's compliance with HIPAA. Supplier shall give OHCA advance written notice of requests from DHHS or government officials and provide OHCA with a copy of all documents it makes available.

- xxii. Respond to OHCA's request for confirmation and certification of Supplier's ongoing compliance with HIPAA, including but not limited to conducting regular security audits and assessments as necessary to evaluate its Security and Privacy practices.

4. Permitted Uses by Supplier:

- a. Except as otherwise provided in this Contract, Supplier may use or disclose PHI on behalf of or to provide services to OHCA for the purposes specified in this Contract, only if such use or disclosure of PHI would not violate HIPAA and related rules and regulations if performed by OHCA and is consistent with the minimum necessary standards. Supplier may:
 - i. Use PHI for its proper management and administration as necessary to perform the services set forth in this Contract, or to fulfill any present or future legal responsibilities of Supplier;
 - ii. Use PHI to de-identify the information in accordance with 45 C.F.R. § 164.514(a)-(c).
 - iii. Use or disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Supplier, provided that (i) the disclosure is required by law; or (ii) Supplier obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as required by law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Supplier of any instances of which it is aware in which the confidentiality of the PHI has been breached;
 - iv. Disclose PHI to report violations of law as legally required to appropriate Federal and State authorities; or
 - v. Make uses, disclosures, and requests for PHI consistent with the minimum necessary standards.

5. OHCA Obligations:

- a. OHCA shall notify Supplier of any limitation(s) in OHCA's Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Supplier's use or disclosure of PHI.
- b. OHCA shall notify Supplier of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such changes may affect Supplier's use or disclosure of PHI.
- c. OHCA shall notify Supplier of any restriction on the use or disclosure of PHI that OHCA has agreed to or is required to abide by under 45 C.F.R. § 164.522, or as mandated pursuant to Section 13405(c) of the HITECH Act, to the extent that such restriction may affect Supplier's use or disclosure of PHI.
- d. OHCA shall not request Supplier to use or disclose PHI in any manner that would violate the Privacy Rule if completed by OHCA.

6. Obligations of Supplier upon Termination:

Upon termination of this Contract for any reason, Supplier, with respect to PHI received from OHCA, or created, maintained, or received by Supplier on behalf of OHCA, shall:

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- a. Retain only that PHI that is necessary for Supplier to continue its proper management and administration or to carry out its legal responsibilities pursuant to this Contract;
- b. Comply with the data transition requirements in the Turnover Plan as described in C.25 Turnover, including:
 - i. Transmit PHI that Supplier still maintains in any form to OHCA or another Contractor of OHCA at termination;
 - ii. After transmission to OHCA, securely destroy any remaining copies of PHI created, received, or maintained by subcontractors;
 - iii. Destroy the PHI that Supplier maintains in any form by an agreed upon date in the Turnover Plan; this date shall be known as the Retention Date;
 - iv. Dispose of all electronic storage media in accordance with the media sanitation procedures outlined in the State of Oklahoma Information Security Policy, Procedures, Guidelines, Appendix E, Section 3 that can be accessed at the following url:
<https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>
 - v. Supplier shall send written certification of the destruction of the files to OHCA within 30 calendar days of the destruction.
- c. If Supplier could not return or destroy PHI for any reason, Supplier will extend the protections of this contract to the PHI for so long as supplier maintains the PHI and will continue to use appropriate safeguards and comply with 45 C.F.R. Part 164, Subpart C with respect to PHI to prevent use or disclosure of PHI, other than as provided for in this Section, for as long as Supplier retains any PHI, but not less than seven (7) years;
- d. Not use or disclose PHI retained by Supplier other than for the purposes for which such PHI was retained and subject to the same conditions set out above at Subsection C.12.4 “Permitted Uses by Supplier” that applied prior to termination.

7. Survival

The obligations of Supplier under this Contract shall survive the termination of this Contract.

8. Miscellaneous

- a. If Supplier maintains a designated record set in an electronic format on behalf of OHCA, then Supplier agrees that within thirty (30) days of written request, Supplier shall provide to OHCA a complete report of all disclosures from the designated record set covering the ten (10) years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures, description of what was disclosed, purpose of disclosure, name of individual who received the information, and, if available, what action was taken within the designated record set.
- b. Supplier shall provide encrypted e-mail communication when PHI is transmitted to OHCA. No direct connection or Virtual Private Network (VPN) to OHCA will be used for this purpose nor will OHCA use individual e-mail certificates for its staff. Such encrypted e-mail will require a X.509 certificate that can be collected by the existing OHCA e-mail encryption system, so that e-mails can be decrypted automatically by OHCA. OHCA shall provide no additional hardware/software to Supplier for this purpose nor accept any Supplier provided

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hardware/software.

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. Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of the Supplier's computer systems that results in the unauthorized access to data with limits \$10,000,00.00 per occurrence.
- d. Supplier shall provide the OHCA with evidence of such insurance and renewals.
- e. 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 SOCIAL SECURITY ADMINISTRATION DATA

1. Supplier understands that the use or disclosure of Social Security Administration (SSA) data in a manner or purpose not authorized by OHCA's agreement with the SSA (hereafter referred to as the "Agreement") may be subject to both civil and criminal sanctions pursuant to applicable Federal statutes.
2. Supplier agrees to abide by all relevant Federal laws, restrictions on access, use, disclosure, and the security requirements contained within the OHCA's Agreement with SSA. Supplier will use this access only as needed for the purposes stated in this Contract. Any other use is a violation of this Contract unless the additional use is specifically identified in a mutually accepted amendment to this Contract.
3. For the purposes of this subsection, a Security Incident shall mean, but is not limited to, unwanted disruption or denial of service, unauthorized use of a system for processing or storing SSA data, or changes to system hardware, firmware, or software without Supplier's consent. Supplier shall report to OHCA and the SSA any security incident involving SSA data upon discovery within one (1) hour of knowledge of the incident. Reports shall include successful and attempted security incidents. The report to OHCA should follow the incident reporting procedure laid out in C.12.3(ix).
4. Supplier understands that OHCA is required by the SSA to conduct ongoing security compliance reviews that must meet SSA standards. The OHCA will conduct compliance reviews at least triennially commencing fiscal year 2019.
5. The compliance reviews will be structured to ensure that Supplier meets SSA's requirements in the following areas:
 - a. Safeguards for sensitive information;
 - b. Computer system safeguards;
 - c. Security controls and measures to prevent, detect, and resolve unauthorized access to, use of, and redisclosure of SSA-provided information; and
 - d. Continuous monitoring of Supplier's systems network use.

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C.15 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.16 MEDIA OWNERSHIP (DISK DRIVE AND/OR MEMORY CHIP OWNERSHIP)

In accordance with the State of Oklahoma Information Security Policy, Procedures, Guidelines set forth online at <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>.

(“Electronic Media Retention Requirements”), any disk drives and memory cards purchased with, or included for use in, leased or purchased equipment under this Contract remain the property of OHCA.

Personal Identification Information and Protected Health Information may be retained within electronic media devices and components; therefore, OHCA shall not allow the release of electronic media either between State Entities or for the resale of refurbished equipment that has been in use by State Entities, by the Supplier to the general public or other entities. Electronic Media Retention Requirements shall also be applied to replacement devices and components, whether purchased or leased, the Supplier may supply during the downtime (repair) of equipment purchased or leased through this Contract. If a device has to be removed from a location for repairs, OHCA shall have sole discretion, prior to removal, to determine and enforce sufficient safeguards (such as a record of hard drive serial numbers) to protect Personal Identification Information and Protected Health Information that may be stored within the hard drive or memory of the device.

C.17 INFORMATION TECHNOLOGY ACCESS CLAUSE

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.
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.

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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.18 SYSTEM SECURITY

1. 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.
3. 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 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

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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.

4. This paragraph applies to contractors that are performing services that do not include management of OHCA systems or data. 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.
5. For systems containing OHCA data and managed on behalf of OHCA, this paragraph defines expectations and deliverables. The Supplier shall notify OHCA Security of new security assessment certification results within sixty (60) Days of receipt, and prior to start of new contract, and make the original raw unredacted report, penetration test, and automated security scan of systems within scope of this agreement available upon request. Limited redaction requests may be allowed in special situations at OHCA's discretion and must be approved by OHCA Security in advance of submission. Any findings deemed High or above shall be notified to OHCA along with a status and anticipated completion date at the end of each calendar quarter until remediated. A full independent security control assessment or certification evaluation of controls shall be performed in a regular cycle, not to exceed a three (3) year period and include at least an annual attestation of controls being in place by the Chief Security Official over the scoped systems for years not incorporating an independent evaluation. Penetration testing shall be performed annually (every 365 days) on a Production-like environment by an Independent and fully qualified third party. Testing shall minimally include, but not limited to, credentialed and uncredentialed application and Network tests, OWASP Top 10 validations, Automated and Manual testing techniques.
6. 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

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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).

7. 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.
8. 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.
9. The Supplier shall provide OHCA with a list of all staff with access to identifying Enrollee data upon request from OHCA.
10. The Supplier shall make available identifying Enrollee data to authorized and designated State and Federal employees and designees.
11. The Supplier shall report all suspected or known privacy and security incidents to designated OHCA contacts for incident response according to the incident reporting timeframes and procedures laid out in C.12.3(ix).
12. 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 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.
13. The Supplier shall maintain audit trails on individual Enrollee documentation and have the ability to determine who has accessed or viewed an Enrollee's personal medical information.
14. 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.
15. 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.
16. The Supplier shall require Multi-Factor-Authentication (MFA) for all privileged

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users, defined as those users that have access to PHI, across all of the Supplier's systems in support of this agreement.

17. 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.
18. 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.
19. Supplier shall maintain a Security and Privacy Program in accordance with the Contract, associated requirements, and industry best practices at all times.

C.19 DISASTER PREPARATION AND DATA RECOVERY

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 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

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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.
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

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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 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

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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.20 DISASTER RECOVERY PLAN

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.21 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.22 OWNERSHIP OF MATERIALS

1. Materials developed and/or produced by Supplier for which OHCA pays Supplier are owned by OHCA. This includes 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

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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.23 PUBLICATIONS RIGHTS/SCHOLARY WORK

1. Supplier may publish the results generated through this Contract. Authorship will be determined by mutual agreement of both parties. Publications shall reference sponsor funding. Confidential information will not be included in the manuscript(s). Publication may be delayed for a reasonable period of time not to exceed ninety (90) days to protect proprietary interests of OHCA and Supplier.
2. If Supplier wishes to publish results of the studies, Supplier will furnish OHCA with a copy of the manuscript or abstract disclosing Supplier's desire to publish the results ninety (90) days prior to submission to any publisher in order to ensure that confidential information of OHCA is not inadvertently disclosed. Supplier will provide appropriate acknowledgement of the source of the data in all publication of results.
3. OHCA shall provide final approval or disapproval within ninety (90) days of submission of the manuscript or abstract. OHCA's determination regarding proprietary or intellectual property is determinative.

C.24 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.25 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;

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- 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 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.26 DISCLOSURE OF OWNERSHIP

1. Supplier shall submit, within thirty-five (35) days of a request by OHCA, MFCU, or the Secretary, all documents, as defined by 12 O.S. § 3234, in its possession, custody, or control concerning (i) the ownership of any subcontractor with whom Supplier has had business transactions totaling more than \$25,000.00 during the twelve (12) months preceding the date of the request, or (ii) any significant business transactions between Supplier and any wholly owned supplier or between Supplier and any subcontractor during the five years preceding the date of the request.
2. Supplier shall provide OHCA with information concerning Supplier's ownership in accordance with 42 C.F.R. § 455.100 *et seq.* This Contract shall not be effective until OHCA receives the ownership information requested in the Disclosure of Ownership and Controlling Interest Form which is attached to and made part of this Contract. Ownership information shall be provided to OHCA at each Contract renewal and within 20 twenty days of any change in ownership. Ownership information is critical for determining whether a person with an ownership interest has been convicted of a program- crime under Titles V, XVIII, XIX, XX and XXI of the federal Social Security Act, 42 U.S.C. § 301 *et seq.* Supplier shall also furnish ownership information to OHCA upon further request.

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STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act (“The Act” or “Act”), OMES- Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

1 DEFINITIONS

- 1.1 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier. Customer Data includes both Non-Public Data and Personal Data.
- 1.2 **Data Breach** means the unauthorized access or the reasonable suspicion of unauthorized access, by an unauthorized person that results in the use, destruction, loss, alteration, disclosure, or theft of Customer Data.
- 1.3 **Host** includes the terms Hosted or Hosting and means the accessing, processing or storing of Customer Data.
- 1.4 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.5 **Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.
- 1.6 **Personal Data** means Customer Data that contains 1) any combination of an individual’s name, social security numbers, driver’s license, state/federal identification number,

account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.

- 1.7 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, loss, theft, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.8 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. A Supplier with whom the State enters into an awarded Contract shall also be known as a Contractor.
- 1.9 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by 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.
- 1.10 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.

2 TERMINATION OF MAINTENANCE AND SUPPORT SERVICES

Customer may terminate maintenance or support services without an adjustment charge, provided any of the following circumstances occur:

- 2.1** Customer removes the product for which the services are provided, from productive use; or,
- 2.2** The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).
- 2.3** If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 COMPLIANCE AND ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY

- 3.1** 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 [Information and Communication Technology Accessibility Standards \(oklahoma.gov\)](http://Information_and_Communication_Technology_Accessibility_Standards(oklahoma.gov)). 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. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.

4 MEDIA OWNERSHIP (Disk Drive and/or Memory Chip Ownership)

- 4.1** Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the sole and exclusive property of the Customer.
- 4.2** Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime (repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 OFFSHORE SERVICES

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State’s sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 COMPLIANCE WITH TECHNOLOGY POLICIES

- 6.1** The Supplier agrees to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>.

Supplier’s employees and subcontractors shall adhere to the applicable State IT

Standards, policies, procedures and architectures as set forth at <https://oklahoma.gov/omes/services/information-services.html> or as otherwise provided by the State.

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

7 EMERGING TECHNOLOGIES

The State reserves the right to enter into an Addendum to the Contract at any time to allow for emerging technologies not identified elsewhere in the Contract Documents if there are repeated requests for such emerging technology or the State determines it is warranted to add such technology.

8 EXTENSION RIGHT

In addition to extension rights of the State set forth in the Contract, the State Chief Information Officer reserves the right to extend any Contract at his or her sole option if the State Chief Information Officer determine such extension to be in the best interest of the State.

9 SOURCE CODE ESCROW

Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third-party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- 9.4** The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5** The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6** The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7** Supplier's ceasing of maintenance and support of the software; or

9.8 Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 COMMERCIAL OFF THE SHELF SOFTWARE OR SUPPLIER TERMS

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement, including via a hyperlink or uniform resource locator address to a site on the internet, that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail. Further, no such terms and conditions or clauses shall expand the State's or Customer's liability or reduce the rights of Customer or the State.

11 OWNERSHIP RIGHTS

Any software developed, modified, or customized by the Supplier in accordance with a mutually negotiated statement of work pursuant to this Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. The parties mutually agree the State as a licensee of the Supplier does not make a claim of ownership to the existing Intellectual Property of Supplier. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as "Work for Hire", Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State when made in accordance with a mutually negotiated statement of work pursuant to this Contract. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 INTELLECTUAL PROPERTY OWNERSHIP TO WORK PRODUCT

The following terms apply to ownership and rights related to Intellectual Property:

- 12.1** As to the Intellectual Property Rights to Work Product between Supplier and Customer, Customer shall be the exclusive owner and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is effectively transferred, granted, conveyed, assigned, and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third-Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.
- 12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier’s signature due to the dissolution of Supplier or Supplier’s failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier’s agent and Supplier’s attorney-in-fact to act for and in Supplier’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer’s sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work

Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

12.9 Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.

12.10 To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

12.11 If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 HOSTING SERVICES

A Supplier shall be responsible for the obligations set forth in in this Contract, including those obligations related to breach reporting and associated costs when a Supplier Hosting Customer Data or providing products or services pursuant to an Acquisition, contributes to, or directly causes a Data Breach or a Security Incident. Likewise, Supplier shall be responsible for the obligations set forth in in this Contract, including those obligations related to breach reporting and associated costs when a Supplier's affiliate or subcontractor contributes to, or directly causes a Data Breach or a Security Incident.

14 CHANGE MANAGEMENT

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon

renewal or if future bids submitted by Supplier are evaluated by the State.

15 SERVICE LEVEL DEFICIENCY

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

16 OWNERSHIP OF IT AND TELECOMMUNICATION ASSETS

Notwithstanding any other provision in the Contract and pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, all information technology and telecommunication assets and contracts on behalf of appropriated agencies of the State belong to OMES-IS. OMES-IS allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier.

17 CUSTOMER DATA

17.1 The parties agree to the following provisions in connection with any Customer Data accessed, processed transmitted, or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract.

17.2 Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of rights, title, and interest in Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).

17.3 Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

17.4 Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at

the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

18 DATA SECURITY

- 18.1** Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
- 18.2** All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data. All Personal Data and Non-Public Data shall be subject to controlled access. Any stipulation of responsibilities shall be included in a Statement of Work and will identify specific roles and responsibilities.
- 18.3** Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
- 18.4** At no time shall any Customer Data or processes – that either belong to or are intended for the use of the State - be copied, disclosed, or retained by Supplier or any party related to Supplier for subsequent use in any transaction that does not include the State unless otherwise agreed to by the State.
- 18.5** Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
- 18.6** Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.

- 18.7** Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
- 18.8** Any remedies provided are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

19 SECURITY ASSESSMENT

- 19.1** The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.
- 19.2** Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

20 SECURITY INCIDENT OR DATA BREACH NOTIFICATION

- 20.1** Supplier shall inform Customer of any Security Incident or Data Breach.
- 20.2** Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
- 20.3** Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice

period required by applicable law or regulation (i.e., HIPAA requires notice to be provided within 24 hours).

- 20.4** Supplier shall maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.
- 20.5** If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

21 DATA BREACH NOTIFICATION AND RESPONSIBILITIES

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

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

22 SUPPLIER REPRESENTATIONS AND WARRANTIES

Supplier represents and warrants the following:

- 22.1** The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
- 22.2** Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect

its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.

22.3 The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.

22.4 Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any “copy-protected” devices, or any other harmful or disruptive program.

23 INDEMNITY

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys’ fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier’s breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party’s patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier’s expense and pay all related costs, damages, and attorney’s fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third-party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section, but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier’s opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

24 TERMINATION, EXPIRATION AND SUSPENSION OF SERVICE

24.1 During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.

24.2 In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

- a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;
- b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or
- c. a combination of the two immediately preceding options.

24.3 Supplier shall not take any action to intentionally erase any Customer Data for a period of:

- a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;
- b. 30 days after the effective date of termination, if the termination is for convenience; or
- c. 60 days after the effective date of termination if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

24.4 The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

24.5 Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

25 GENERAL INFORMATION SECURITY REQUIREMENTS

25.1 No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.

25.2 Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.

25.3 Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.

- 25.4** Contractor or its subcontractors agree to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

26 HIPAA REQUIREMENTS

- 26.1** Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).

- 26.2** If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor’s security compliance as it pertains to this contract.

26.3 Business Associate Terms Definitions:

- a. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that “PHI” and “ePHI” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business Associate’s workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.
- b. Business Associate. “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
- c. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 C.F.R. 160.103.
- d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
- e. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of

Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.

26.4 Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, “PHI”) solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:

- a. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
- b. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- c. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
- d. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
- e. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA’s compliance and the Secretary of the Department of Health and Human Services (HHS);
- f. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
- g. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;
- h. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- i. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- j. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without

unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;

- k. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
- l. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
- m. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
- n. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- o. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and

- p. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.

26.5 Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:

- a. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
- b. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
- c. disclose PHI to report violations of law to appropriate federal and state authorities; or
- d. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;
- e. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
- f. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § 164.502(d)].

26.6 Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

- c. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
- d. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
- e. Covered Entity shall provide the minimum necessary PHI to Business Associate.

26.7 Term and Termination:

- a. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
 - i. retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
 - iii. continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - iv. not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under “Permitted Uses and Disclosures By Business Associate” that applied prior to termination; and
 - v. return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- b. All other applicable obligations of Business Associate under this Agreement shall survive termination.
- c. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such

time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)-(iii) & 164.314 (a)(2)(i)(C).

26.8 Miscellaneous Provisions:

- a. No Third-Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- b. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
- c. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
- d. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
- e. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
- f. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
- g. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

27 **42 C.F.R. PART 2 RELATED PROVISIONS**

- 27.1** Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure

compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:

- 27.2** Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
- 27.3** Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of any kind;
- 27.4** Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
- 27.5** Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).
- 27.6** Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
- 27.7** Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
- 27.8** Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
- 27.9** Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the

State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;

- 27.10** Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.

28 DATA SECURITY

The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.

- 28.1** Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.

- 28.2** Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.

- 28.3** Redisclosure of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

29 FEDERAL TAX INFORMATION REQUIREMENTS IRS PUBLICATION 1075

- 29.1** PERFORMANCE: If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

- 29.2** All work will be performed under the supervision of the State of Oklahoma.

- 29.3** The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.

- 29.4** FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.

- 29.5** FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- 29.6** The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- 29.7** Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- 29.8** All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- 29.9** No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- 29.10** Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- 29.11** To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.
- 29.12** In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- 29.13** For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- 29.14** The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

30 CRIMINAL/CIVIL SANCTIONS

- 30.1** Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- 30.2** Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- 30.3** Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 30.4** Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 30.5** Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or

electronic signature, a confidentiality statement certifying their understanding of the security requirements.

31 INSPECTION

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

32 SSA REQUIREMENTS

- 32.1** PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
- 32.2** All work will be done under the supervision of the State of Oklahoma.
- 32.3** Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- 32.4** All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- 32.5** No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- 32.6** The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- 32.7** Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- 32.8** Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful access and/or disclosure.

- 32.9** Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.
- 32.10** The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- 32.11** Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- 32.12** SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- 32.13** SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.
- 32.14** If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
- 32.15** In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
- 32.16** The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.

33 CRIMINAL/CIVIL SANCTIONS

The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.

33.1 Civil Remedies

- a. In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of
- b. actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
- c. the costs of the action together with reasonable attorney fees as determined by the court.
- d. An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

33.2 Criminal Penalties

- a. Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).

- b. Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- c. Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

34 CHILD SUPPORT FPLS REQUIREMENTS

- 34.1** Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.
- 34.2** This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- 34.3** This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

35 FERPA REQUIREMENTS

35.1 If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

36 CJIS REQUIREMENTS

36.1 INTRODUCTION - This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

36.2 The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.

36.3 CJIS SECURITY POLICY REQUIREMENTS GENERALLY - The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information ("CJI"). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency ("CJA") and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. Per Appendix "A" to said Security Policy, "access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI."

36.4 DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI AND CERTIFICATION- The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

36.5 This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy plus all data

transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.

36.6 In order to have access to CJIS or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

- a. the Definitions and Acronyms in §3 & Appendices “A” & “B”;
- b. the general policies in §4;
- c. the Policies in §5;
- d. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
- e. the Supplemental Guidance in Appendices “J”.

36.7 This FBI Security Policy is located and may be downloaded at:

- a. https://le.fbi.gov/file-repository/cjis_security_policy_v5-9-2_20221207-5.pdf
- b. By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

37 NOTICES

37.1 In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

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

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

OMES Deputy General Counsel
3115 North Lincoln Blvd
Oklahoma City, Oklahoma 73105

ATTACHMENT E2

OFFER OF VALUE-ADDED PRODUCTS AND/OR SERVICES

PCG is proposing a number of value-adding solutions to further support OHCA's mission. Pricing for these value-added services is in several cases contingent on which combination of data sources are employed, and therefore, these solutions would require additional discussion before final pricing could be established, as noted in the table below.

Opportunity	Description	Impact	Pricing
<i>Quarterly Change in Circumstance Detection</i>	PCGOne can instantly compare the most useful third-party data to the specific Medicaid eligibility policy associated with every member's type of assistance + household size to detect changes in circumstance representing ineligibility on a quarterly or monthly basis, allowing agencies to cost avoid unnecessary capitation or fee for service payments in the months prior to each member's scheduled renewal date.	5% ineligibility detected per quarter, resulting in savings of <u>\$68.5M per check</u> .	PCG provides these services on a contingency basis, taking a percentage of actual State savings, eliminating the risk of adoption. The exact definition of this savings and PCG's percentage of savings is contingent on which mix of data sources OHCA directs PCG to employ on your behalf.
<i>Ex Parte "in a Box"</i>	A number of states leveraged PCGOne to either replace or supplement their ex parte processes, improving their Medicaid renewal ineligibility detection and automation rates at the same time. Because PCGOne is fully built with a configurable rules engine, PCG can go-live with a fully optimized ex parte solution within 30 days of a contract.	Dramatically improved ex parte rates, 5-8% additional ineligibility discovery (i.e., 30,000 - 48,000 additional ineligibles), and hundreds of FTEs saved based on improved automation rates = <u>\$220M+/year</u> in cost savings.	Alternatively, PCG can work with OHCA to establish a fixed implementation and maintenance fee for each service should you prefer.
<i>Applicant Nudging Service</i>	PCGOne uses third-party data to instantly verify application attestations and provide real-time feedback to applicants requesting assistance online, "nudging" them to provide additional information, clarification, and/or documentation (without pending their application), automating initial applicant feedback and ensuring all information and documentation has been received by the time a worker touches a case.	Dramatic improvements in one-touch eligibility determination rates, resulting in significant timeliness improvements.	PCG's pricing is contingent on which mix of data sources OHCA directs PCG to employ on your behalf.

Opportunity	Description	Impact	Pricing
<i>Concurrent Medicaid Enrollment Detection</i>	PCGOne is connected to a national clearinghouse of enrollment data from all 50 states' Medicaid managed care plans. As a result, PCG is the country's only vendor who can instantly verify whether any of your members are enrolled in another state's Medicaid managed care program (via verified 270/271 transactions with the carriers) at application and renewal and during any month in between. PCG recently discovered 4.5% of one state's Medicaid membership was concurrently enrolled in another state's Medicaid program.	2.0% of enrollees disenrolled due to concurrent enrollment = 12,000 ineligible = <u>\$55M/year</u> in cost avoidance.	For any member PCG flags as concurrently enrolled who is subsequently disenrolled from Oklahoma's Medicaid program, PCG's fee is 5% of the total savings for any consecutive months in which the member stays disenrolled prior to their previously scheduled renewal date.
<i>Point-of-Application TPL Identification</i>	PCG can flag eligibility for commercial coverage, Medicare, and/or TRICARE before an application decision (as opposed to ~90 days after a decision, requiring inefficient pay and chase recoveries).	15% of enrollees = 90,000 with Medicaid as a secondary payer x 3 months avg to identify TPL through traditional means x \$400 avg PMPM x 80% avg non-recovered rate = <u>\$86M/year</u> in cost avoidance.	\$1.15 per request
<i>Predictive Analytics</i>	PCG can employ any of the above data sources and/or any other sources and automatically predict eligibility for every configured assistance program in the same instant. PCG can update your data broker report with this information at application and renewal.	Recent predictive analytics deployments resulted in 7.9% of SNAP and 5.9% of Medicaid eligibility decisions being overturned = <u>\$180M</u> in annual cost savings.	PCG provides this service on a contingency basis, taking a percentage of actual State savings, eliminating the risk of adoption. The exact definition of this savings and PCG's percentage of savings is contingent on which mix of data sources OHCA directs PCG to employ on your behalf. Alternatively, PCG can work with OHCA to establish a fixed

Opportunity	Description	Impact	Pricing
			implementation and maintenance fee for each service should you prefer.
<i>Eligibility Auditor™</i>	PCG maintains a fully configurable, SaaS application, Eligibility Auditor™, which automates the workflow, management, case sharing, productivity monitoring, and reporting processes associated with ongoing Medicaid eligibility quality assurance, MEQC, PERM, and presumptive eligibility functions. This configurable solution included more than sixty workflows and 125 audit tools, ensuring every variation of quality assurance and audit functions are supported within a single application.	OHCA will be able to transfer legacy data into PCG's system and forego the use of spreadsheets and disparate, legacy applications which are used to accomplish your ongoing eligibility quality assurance and audit functions and transition to a centralized and fully configurable eligibility quality assurance and auditing application.	Implementation: \$639,420 Annual Maintenance and Operation \$268,000

Figure 27 – Oklahoma can benefit from innovations PCG has deployed on behalf of other states around the country.

ATTACHMENT E-3 STATEMENT OF WORK (SOW)

Services and Scope

PCG will implement and maintain an Asset Verification System on behalf of the Oklahoma Health Care Authority (OK HCA) which complies with 42 U.S. Code §1396w. To do so, PCG will execute the following tasks:

1. PCG will operate a financial institution (FI) network that gives OK HCA electronic access to financial institutions in Oklahoma and throughout the United States and territories. PCG will work to both recruit Oklahoma-based financial institutions into this network and to expedite the request and response mechanisms (e.g., API, batch, etc.) employed by already participating financial institutions to ensure successful participation in the State's AVS program. PCG's FI recruiting approach includes communicating directly with FIs, as follows:

- Inform FIs that PCG will be providing asset verification services for OK HCA.
- Review procedures and options for accessing the HCA-specific asset verification requests.
- Confirm the current information stored in Accuity's Financial Institution Database and make necessary revisions.
- Encourage each FI to register for Accuity's automated web service in order to expedite response times.
- Provide ongoing FI education and support.

Additionally, for those FIs already participating, PCG will:

- Continue to maintain a centralized processing workflow for all branch and subsidiary locations associated with the financial institutions or processing centers.
- Continue to maintain relationships with FI decision-makers and primary/secondary contacts at financial institutions in order to expeditiously solve problems during implementation and ongoing operations.
- Continue to encourage FI conversion to web-based, automated AVS request and response processing.
- Continue to review FI procedures for accessing the PCG asset verification requests and for submitting asset verification responses, as needed.
- Continue to encourage FI participation via the head office or processing center,

rather than via individual branches.

PCG will provide a monthly financial institution participation file listing all participating FIs – including the name, address, and Financial Institution ID of each. PCG will submit this file to OK HCA by the 20th calendar day of each month and will include contact information with this submission in the event OK HCA has any questions or concerns.

2. PCG will support OK HCA's use of our AVS Web Portal, which will allow OK HCA workers to independently access AVS via the Internet. PCG will:
 - Provide Portal access to an unlimited number of OK HCA users and support the ongoing credentialing and user role designations of new and existing users.
 - Maintain and operate the Portal to ensure ongoing performance and reliability.
 - Provide ad hoc Portal user trainings, upon request.
 - Provide Portal technical and user support via phone and email.
3. PCG will implement our AVS multiplexer API into OK HCA's E&E system, if and when directed by OK HCA.
4. PCG will provide live support during all normal business hours, as follows:
 - **Bug/Technical Support:** PCG will offer live technical support available via phone and email. All reported technical issues are tracked within PCG's Team Foundation Server (TFS) issue resolution software, which can be accessible to OK HCA upon request. PCG offers a dedicated support email address and phone number to allow OK HCA workers to report system and/or data transmission errors. PCG technical support professionals can coordinate with OK HCA call center staff, as necessary, to ensure timely and satisfactory resolutions to worker issues and/or concerns.
 - **AVS Financial Institution Support:** PCG will continue to offer live FI phone and email support related to OK HCA financial institution concerns and/or discrepancies, available to all OK HCA workers and supervisors during all normal business hours.
 - **Project Management Support:** PCG's project manager and associate project manager are available via phone and email at any time should Agency management have questions or concerns. These project managers are also available for in-person and/or remote consultations at any time with reasonable notice.
 - **Financial Institution Technical Support:** PCG will provide live technical support to financial institutions either enrolled in or being recruited for AVS participation. This support will be available via phone and email during normal

business hours. PCG financial institution support professionals can coordinate with Agency call center staff, as necessary, to ensure timely and satisfactory resolutions to worker issues and/or concerns.

5. PCG will provide regularly scheduled and ad hoc reporting. PCG agrees to create and submit any regularly scheduled, ad hoc and/or additional reports requested by OK HCA for the duration of this engagement. PCG will generate reports upon request and will provide these reports to the Agency in the format of your choosing.
6. PCG will process all OK HCA AVS requests through our financial institution network via the following methods to obtain up to 60 months' worth of account balances belonging to OK HCA clients:
 - **National Account Search:** PCG will continue to process all AVS requests through the Early Warning national database of accounts held at the nation's largest financial institutions (FIs) to identify any account maintained by a consumer at any of the nation's largest FIs anywhere in the United States. These financial institutions represent approximately 50 percent of the depository accounts in the United States and allow PCG to quickly verify the existence of any applicant/beneficiary account at any of the financial institutions in the United States. One hundred percent of all PCG AVS cases are processed through this national network of financial institutions in order to ensure PCG's coverage is as comprehensive as possible.
 - **Local Account Search:** At the same time, PCG will also continue to utilize a geographic search application to identify local and regional FIs most likely to maintain an applicant and/or beneficiary account based on logic such as geographic proximity to the applicant or beneficiary address. PCG utilizes Accuity's Geographic Undisclosed Account Radial Detection component, or GUARD, as the mechanism that determines logic by which asset verification requests are to be distributed to local and regional FIs. GUARD utilizes various FI databases and proprietary logic to optimize the probability of identifying financial institutions specific to a search for financial assets owned by an individual benefits applicant/beneficiary.
 - **Directed Account Search:** In addition to our national and local account searches, PCG's AVS will allow OK HCA to request account look-ups at any specific FIs anywhere in the United States. Combined with our national and local search, this functionality ensures that PCG's AVS clients can verify known accounts maintained by the consumer while also identifying significant previously undisclosed assets potentially impacting eligibility.
 - **Monthly Bank File:** Upon request, PCG will also provide OK HCA with a monthly

bank file detailing all of the active financial institutions in the State's AVS network.

7. PCG will apply any available AVS analytics OK HCA requests to the returned data and will append our results with these analytics.
8. PCG will return all AVS results within our AVS Portal and/or directly to Oklahoma's E&E system, as directed by OK HCA.
9. PCG will return a list of Searched FIs nightly, either directly within the AVS Web Portal or via an SFTP batch file return.
10. PCG will alert OK HCA of any system issues, outages, and/or maintenance windows, as needed, for the duration of the engagement.

Costs

PCG will complete this work for the following fees:

- Implementation and Integration: \$300,000
- Maintenance & Operations: \$30,000 per calendar year (except 8/1/25-12/31/25 which is \$12,500)
- Annual Transaction Fee: 8/1/25-12/31/25 – \$237,500, CY2026 - \$570,000, CY2027 - \$570,000, CY2028 - \$570,000, CY2029 - \$570,000, CY2030 - \$570,000

Subcontractors

PCG will engage data providers Accuity (now a subsidiary of LexisNexis Risk Solutions) to provide financial institution data. This provider's participation represents more than 25% of the contract, although PCG does not technically consider them to be a subcontractor as they are a core component of our asset verification system.

Technology

PCG's AVS is maintained in an Amazon Web Services (AWS) virtual private cloud. The cost of this is included in PCG's fees.

System Maintenance

PCG's AVS occasionally requires system maintenance in order to implement and maintain the best and most secure product possible. Planned system maintenances are communicated, scheduled and coordinated with OK HCA and with rare exceptions, conducted outside of OK HCA normal working business hours.

ATTACHMENT E-4

Service Level Agreement (SLA)

PCG agrees to provide services under the SLAs specified below:

ID	Description	Service Level Expectation	Calculation	Document Proof
SLA-1	Meet State and Federal Requirements related to eligibility timelines	<p>The service must respond to the participating states as per the following timelines to ensure the State can process eligibility determinations within State and Federal timeliness standards:</p> <ul style="list-style-type: none"> -The service must provide eighty-five percent (85%) of AVS FI responses within 5 calendar days. -The service must provide ninety percent (90%) of AVS FI responses within 10 calendar days. 	<p># of Responses received within 5 days or less divided by Total # of Responses received</p> <p># of Responses received within 10 days or less divided by Total # of Responses received</p>	Process Time Analysis / SLA Calculations document
SLA-2	Help Desk Availability	The service must provide support in the following methods: live support, help desk support, call documenting, after hours inquiries, remote support, web support, bug/technical support, FI support including FI technical support, project management support, system performance support, and disaster recovery	Count of any PCG or client reported incidents where SLA-2 expectations were not met	Document detailing any/all instances of client or PCG reported incidents where expectations were not met

SLA-3	Portal Availability	The web-based portal is accessible to the participating state staff 24 hours per day, seven days a week, except during regularly scheduled off-hours maintenance periods, and has an uptime of 99%.	System uptime up 24 hours per day, seven days a week with uptime of 99%	System Uptime Report
SLA-4	Application Response Time (ART)	The service will (upon receiving a request on the service contractor's web server) generate a response page on average within 2 seconds with the exception of the reporting dashboard.	Average response rate from click to click (excluding reporting) within AVS portal	Average Response Time Report
SLA-5	Firewall Changes	Firewall change request must be fulfilled within 5 business days of submission.	Firewall change completion date – firewall change request date	Document of any/all firewall changes with associated request date and completion date
SLA-6	Modifying an existing environment (capacity, storage)	Requests for modifying an existing environment (e.g. capacity, storage) must be fulfilled within 5 business days of submission.	PCG's response email to original client request confirming modification Date/Time of modification - Date/Time of	Document of any/all modifications of existing environment and associated client request

			request from client	date/time and response to original request
SLA-7	Restore a file, file system, directory or folder, including records and documents (non-incident related)	Requests for restoring a file, file system, directory or folder, including records and documents (non-incident related) must be fulfilled with 4 hours from onsite backup and 4 business days from off-site backup.	PCG's response email to original client request confirming restoration Onsite backup = Date/Time of restoration items - Date/Time of request from client Off-site backup = Date/Time of restoration items - Date/Time of request from client	Document of any/all system restoration requests and date/time associated with onsite backup and off-site backup
SLA-8	Incident Notification and Response Time	99% of incidents will be reported within 30 minutes of discovery. 100% of incidents will be reported within 60 minutes of discovery.	After Incident Report(s) Timeliness Calculation = Time the Incident was first reported to the client – time the incident was first discovered by PCG	Document of any/all incidents and associated discovery and time when reported to client

<p>SLA-9</p>	<p>Environment t Failure</p> <p>RTO – 10 Minutes RPO – 0 Data Loss</p>	<p>Environmental failure = RTO > 10 minutes</p> <p>Environmental failure (RPO) = Any data loss</p>	<p>RTO > 10 minutes = 0 instances</p> <p>RPO – Data loss = 0 instances</p>
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ATTACHMENT G

FEDERAL FUNDING TERMS

This State of Oklahoma Federal Funding Terms is a Contract document in connection with a Contract awarded by and through the State of Oklahoma, Office of Management and Enterprise Services, with a vendor, supplier, or contractor ("Supplier"). Supplier acknowledges that acquisitions under this Contract may use federal assistance for purposes of funding the acquisition. When procuring property and services using Federal financial assistance, the State must follow the same policies it uses for procurements from its non-Federal funds along with all other requirements of the Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). In addition, the State and Supplier ("Parties") must agree to the standards identified in Federal Regulations 2 CFR Sections 200.321 through 200.323 and ensure purchase orders, contracts, or subcontracts include clauses required by 2 CFR Section 200.327.

The terms and conditions provided in this Attachment are general Federal award requirements. Additional terms, conditions, or exceptions may be required that are specific to the Federal financial assistance used in each procurement transaction. Any additional terms, conditions, or exceptions shall be incorporated into a purchase order, contract, or subcontract to ensure compliance with the Federal financial assistance attached to this Contract.

In addition to the terms contained in applicable Contract documents and the requirements mentioned above, the Parties agree to the following Federal Funding Terms.

1 AFFIRMATIVE STEPS FOR CONTRACTING.

- 1.1 Parties acknowledge that any non-Federal entity included in this Contract must take affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. In addition to and in conjunction with 74 O.S. Sections 85.45 through 85.45i., those affirmative steps must include:
- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a.) through (e.) of this section.

2 INFORMATION SUBMITTED.

Supplier acknowledges that all information, reports, and other documents and data submitted to the State and its representatives in connection with this Contract were, at the time they were (or will be) furnished, and are, as of the date hereof (or will be as of the date they are furnished), true, correct, and complete in all material respects.

3 COMPETITIVE BIDDING.

All funds received by the Supplier herein are subject to the State Purchasing Act and the procurement standards found in 2 CFR Sections 200.321 through 200.323, and 2 CFR Section 200.327. The Supplier acknowledges and agrees that these funds were to the best of Supplier's knowledge competitively bid or covered by an exemption as described therein.

4 AUDITING AND MONITORING REQUIREMENTS.

Supplier acknowledges that the funds used in this transaction are subject to the requirements found in Sections 2 CFR Sections 200.500 through 2 CFR § 200.520; and therefore, the State is subject to audit by Federal and State entities.

- 4.1** The Supplier agrees to provide the State of Oklahoma, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Supplier which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Supplier agrees to permit any of the foregoing parties to copy or reproduce, by any means, excerpts and transcriptions as reasonably needed, and agrees to cooperate with all such requests. All records related to this transaction must be kept for five years after the completion of this Contract.
- 4.2** If applicable, the Supplier agrees to provide the Treasury Department or authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.
- 4.3** No language in this Contract is intended to prohibit audits or internal reviews by the Treasury Department or the Comptroller General of the United States.
- 4.4** The Supplier further agrees to include a provision requiring such compliance in its lower tier covered transactions.

5 BUYING PREFERENCES.

5.1 Domestic Preferences, 2 CFR Section 200.322. Supplier should, to the greatest extent practicable under the scope of this Contract, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this Contract. For purposes of this section:

- a. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber; and
- c. Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth below.

5.2 Buy America Preference, 2 CFR Part 184. Applies to Federal awards where funds are appropriated or otherwise made available for infrastructure projects in the United States, regardless of whether infrastructure is the primary purpose of the Federal award. Must be included in all subawards, contracts, and purchase orders for the work performed, or products supplied under the Federal award. Infrastructure encompasses public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

6 STATUTES AND REGULATIONS PROHIBITING DISCRIMINATION.

6.1 Executive Order 11246, "Equal Employment Opportunity," as amended by EO 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor. Applies to any construction work and subcontract work, or modification thereof, which is paid for in whole or in part with funds obtained from the Federal Government, unless otherwise exempted.

Construction Contracts 41 CFR Section 60-1.4(b). During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- b. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. which includes that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The contractor will not discharge or discriminate against any employee or applicant for employment because they inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This does not apply to instances in which an employee who has access to the compensation as part of the employee's essential job function discloses the compensation to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The contractor will send to each labor union or representative of workers with which a collective bargaining agreement is in place or other contract or understanding, a notice to be provided advising the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.2 Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d, *et seq.*) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibits discrimination on the basis of race, color, or national origin under programs or activities receiving Federal financial assistance.

6.3 Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601, *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

- 6.4 Section 504 of the Rehabilitation Act of 1973**, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
- 6.5 Age Discrimination Act of 1975**, as amended (42 U.S.C. §§ 6101, *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.
- 6.6 Title II of the Americans with Disabilities Act of 1990**, as amended (42 U.S.C. §§ 12101, *et seq.*), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- 6.7 Protections for Whistleblowers.** In accordance with 41 U.S.C. § 4712, the Parties may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. The list of persons and entities referenced includes the following:
- a. A member of Congress or a representative of a committee of Congress;
 - b. An Inspector General;
 - c. The Government Accountability Office;
 - d. A Treasury employee responsible for contract or grant oversight or management;
 - e. An authorized official of the Department of Justice or other law enforcement agency;
 - f. A court or grand jury; or
 - g. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

7 CONTRACT AND SUBCONTRACT LEVEL REQUIREMENTS.

In addition to State procurement regulations, the following Federal regulations apply.

- 7.1 Contracts and Purchases in Excess of \$2,000.** The following applies to contractors and subcontractors performing on Federal funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works, and requires that Supplier must comply with two sets of regulations:

- a. **The Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148)** as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). When applicable, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- b. **Copeland "Anti-Kickback" Act (40 U.S.C. § 3145)**, as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

7.2 Contracts and Purchases in Excess of \$10,000.

- a. **Recovered Materials.** Any state agency or agency of a political subdivision of a state and its suppliers or contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

7.3 Contracts and Subcontracts for \$25,000 and Above

- a. **Suspension and Debarment.** Restricts awards, subawards, contracts, and subcontracts with Suppliers that are debarred, suspended, or otherwise excluded, or declared ineligible for participation in federal assistance programs and activities. This Contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Supplier is required to verify that none of Supplier's principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935). The Supplier must comply with 2

CFR part 180, subpart C and 2 CFR part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the State of Oklahoma. If it is later determined that the Supplier did not comply with 2 CFR part 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the State, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

7.4 Contracts and Purchases \$100,000 and Above

- a. **The Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701-3708.** Applies to all contracts and subcontracts of more than \$100,000 that involve the employment of mechanics or laborers. Under Section 3702 of the Act, contractors and subcontractors shall be required to compute the wages of every mechanic and laborer (including guards and watchmen) on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. *These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.*
- b. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended.** Supplier certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. This Supplier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award and require any entities receiving subawards or contracts to do the same. Such disclosures are forwarded from tier-to-tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
** Contractors must sign the attached certification.*

7.5 Contracts and Purchases \$150,000 and Above

- a. **Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.** Supplier agrees to comply with, and require all subcontractors to comply with, all applicable standards, orders, or regulations issued pursuant to these Acts. Supplier agrees to report each violation to the State entity that is party to this Contract and understands and agrees that the State entity will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection

Agency.

7.6 Contracts and Purchases \$250,000 and Above

- a. **Remedies.** Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

8 OTHER APPLICABLE LAWS

- 8.1 **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Supplier is encouraged to adopt and enforce on-the-job seat belt policies and programs for employees when operating company owned, rented or personally owned vehicles.
- 8.2 **Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Supplier is encouraged to adopt and enforce policies that ban text messaging while driving and establish workplace safety policies to decrease accidents caused by distracted drivers.
- 8.3 **Publications.** Any publications produced with funds from a Federal award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
- 8.4 **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

The term *funding agreement* means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

8.5 Prohibition of Certain Telecommunications and Video Surveillance Services or Equipment.

- a. Parties agree that no Federal funds may be obligated or expended in any contract or subcontract that includes obtaining any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system.

As described in Public Law 115-232, section 889, *Covered telecommunications equipment* is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- b. This prohibition does not prevent parties to this Contract or subcontractors from using covered telecommunications equipment and services for their own purposes, provided the covered telecommunications equipment or services are not procured with Federal funds.
- c. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

8.6 Termination for Cause and Convenience - Provisions under Contract Attachment B apply.

This form is required for purchases of \$100,000 and above

**CERTIFICATION REGARDING LOBBYING
Required by 31 CFR Part 21**

The undersigned certifies, to the best of their knowledge and belief, that:

- I. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- II. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- III. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subawards, and contracts under grants, loans, and cooperative agreements) and that all Suppliers shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Supplier certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Supplier understands and agrees that the remedies found in Title 31, Chapter 38 of the U.S. Code applies to this certification and disclosure.

Signature of Supplier's Authorized Official

Name Date

Title