

**ATTACHMENT B-1: OSDH GENERAL TERMS**

**1 Scope and Contract Renewal**

- 1.1 Subrecipient may not add products or services to its offerings under the Contract without OSDH'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, Subrecipient shall contact OSDH.
- 1.2 At no time during the performance of the Contract shall the Subrecipient have the authority to obligate OSDH 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, Subrecipient is not entitled to compensation for a product or service provided by or on behalf of Subrecipient that is neither requested nor accepted as satisfactory.
- 1.3 If applicable, prior to any Contract renewal, OSDH shall subjectively consider the value of the Contract to OSDH, the Subrecipient'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 Subrecipient; and c) current products, services and support offered by Subrecipient. If OSDH determines changes to the Contract are required as a condition precedent to renewal, OSDH and Subrecipient will cooperate in good faith to evidence such required changes in an Addendum. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Subrecipient providing appropriate documentation supporting the request.
- 1.4 OSDH may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the OSDH exercises such option to extend ninety (90) days, the OSDH shall notify the Subrecipient in writing prior to Contract end date. The OSDH, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Subrecipient.
- 1.5 Subrecipient understands that Subrecipient registration expires annually and, pursuant to OAC 260:115-3-3, Subrecipient shall maintain its Subrecipient registration with OSDH as a precondition to a renewal of the Contract.

**2 Contract Effectiveness and Order of Priority**

- 2.1 Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Subrecipient shall not commence work, commit funds, incur costs, or in any way act to obligate OSDH until the Date of Award, which is the date the OSDH has in its possession a copy of the Contract executed by both parties and a purchase order has been issued.
- 2.2 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 Addendum;
  - B. any applicable Solicitation;
  - C. any Contract-specific OSDH 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. the terms contained in this Contract Document;
  - E. any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation or applicable law;
  - F. any Subrecipient-supplied documents, including a statement of work, work order, or other similar ordering document as applicable; and
  - G. other mutually agreed Contract Documents.
- 2.3 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 Subrecipient including but not limited to linked or supplemental documents which alter or diminish the rights of OSDH, the conflicting terms provided by Subrecipient 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 Addendum.
- 2.4 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. This document may be executed in counterparts, with each such copy considered an original. Facsimile/scanned and PDF signatures shall be accepted as original. Electronic signatures must be an authorized copy of the hand-written signature or created using a technology that allows the process of signature authentication to be validated. In all cases, the name of the authorized signatory shall be identified as visible on the document. Each party will be responsible for

maintaining the security of its electronic signature technology and represents through submission of the signed document that the individual's signature is authorized and valid to bind the organization.

### **3 Modification of Contract Terms and Contract Documents**

- 3.1 The Contract may only be modified, amended, or expanded by an Addendum. 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 Subrecipient, 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 Subrecipient 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 Subrecipient are of no effect and are void unless mutually executed. OSDH bears no liability for performance, payment or failure thereof by the Subrecipient in connection with an Acquisition.

### **4 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:

- 4.1 **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.
- 4.2 **Addendum** means a mutually executed, written modification to a Contract Document.
- 4.3 **Amendment** means a written change, addition, correction or revision to the Solicitation.
- 4.4 **Bid** means an offer a Bidder submits in response to the Solicitation.
- 4.5 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.6 **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.

- 4.7 **Contract Document** means this document; any master or enterprise agreement terms entered into between the parties that are mutually agreed to be applicable to the Contract; any Solicitation; any Contract-specific terms; any Subrecipient's Bid as may be negotiated; any statement of work, work order, or other similar mutually executed ordering document; other mutually executed documents and any Addendum.
- 4.8 **Debarment** means action taken by a debaring official under federal or state law or regulations to exclude any business entity from inclusion on the Subrecipient list; bidding; offering to bid; providing a quote; receiving an award of contract with OSDH and may also result in cancellation of existing contracts with OSDH.
- 4.9 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.
- 4.10 **Indemnified Parties** means OSDH and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 4.11 **Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.12 **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.
- 4.13 **OAC** means the Oklahoma Administrative Code.
- 4.14 **OMES** means the Office of Management and Enterprise Services.
- 4.15 **OSDH** means the entity receiving goods or services contemplated by the Contract.
- 4.16 **Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.17 **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.
- 4.18 **Subrecipient** means the Bidder with whom OSDH enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with OSDH.

- 4.19 **Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Subrecipient from inclusion on the Subrecipient list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 4.20 **Subrecipient Confidential Information** means certain confidential and proprietary information of Subrecipient that is clearly marked as confidential and agreed by the State Purchasing Director or OSDH, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 4.21 **Work Product** means any and all deliverables produced by Subrecipient 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 Subrecipient 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 OSDH in connection with this Contract or with funds appropriated by or for OSDH or OSDH's benefit (a) by any Subrecipient personnel or OSDH personnel or (b) any OSDH personnel who then became personnel to Subrecipient or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Subrecipient or its personnel, any portion of same was created, invented or conceived by such person while affiliated with OSDH.

## 5 Pricing

- 5.1 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 Subrecipient shall not be reimbursed.

- 5.2 Pursuant to 74 O.S. §85.40, all travel expenses of Subrecipient must be included in the total Acquisition price.
- 5.3 The price of a product offered under the Contract shall include and Subrecipient shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board OSDH's Destination. No additional fees shall be charged by Subrecipient for standard shipping and handling. If OSDH requests expedited or special delivery, OSDH may be responsible for any charges for expedited or special delivery.

## **6 Ordering, Inspection, and Acceptance**

- 6.1 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.
- 6.2 Services will be performed in accordance with industry best practices and are subject to acceptance by the OSDH. 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.

Subrecipient warrants and represents that a product or deliverable furnished by or through the Subrecipient shall individually, and where specified by Subrecipient 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 Subrecipient shall be repaired or replaced by Subrecipient at no additional cost or expense to the OSDH 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 OSDH at Destination. The OSDH assumes no responsibility for a product until accepted by the OSDH. Title and risk of loss or damage to a product shall be the responsibility of the Subrecipient until accepted. The Subrecipient shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-5, 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 Subrecipient shall be notified as soon as is reasonably practicable. The Subrecipient shall retrieve and replace the Acquisition at Subrecipient's expense or, if unable to replace, shall issue a refund to OSDH. Refund under this section shall not be an exclusive remedy.

- 6.3 Subrecipient 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 OSDH. 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, Subrecipient shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Subrecipient in connection with termination or expiration of the Contract.
- 6.4 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 a like product for others similarly situated.

## **7 Invoices and Payment**

- 7.1 A properly completed invoice must be submitted to the designated OSDH Contract Monitor identified in Section 0.6 within 30 days of the end of the month in which services were delivered or products provided and include the following items:
- a. name, address, and FEI number of the Subrecipient;
  - b. invoice date;
  - c. period covered by invoice;
  - d. purchase order number;
  - e. any other data, reports, information or documentation required by other conditions of the contract;
  - f. detail of the services provided and be in accordance with the terms and conditions of this agreement; and
  - g. For invoices involving payment for the Subrecipient's time, the Subrecipient and any approved subcontractor shall maintain Personnel Activity Reports (PARs) on all employees reimbursed in whole or in part by this contract. PARs must be completed in accordance with the Federal Cost Principles applicable to the Subrecipient's specific entity type found at 2 CFR Part 200.430, 45 CFR Part 75, and 7 CFR Part 3016, among others. The invoice must be signed and contain the following statement:

**“By my signature I attest that this invoice is an accurate and true representation of my time in relation to the services provided to OSDH.”**

- 7.2 OSDH may withhold or delay payment to any Subrecipient failing to provide required programmatic documentation and/or requested financial documentation. OSDH reserves the right not to process invoices submitted by the Subrecipient to OSDH more than 30 days after the month in which services were delivered. OSDH will not pay invoices received more than sixty (60) days after the end of the applicable contract period.
- 7.3 Subrecipient 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. Advance payments are allowed only under the circumstances outlined in the Statewide Accounting Manual, Section 8.34.1.
- 7.4 The following terms additionally apply:
- A. 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.
  - B. Payment of all fees under the Contract shall be due NET 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.
  - C. 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.
  - D. If an overpayment or underpayment has been made to Subrecipient any subsequent payments to Subrecipient under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Subrecipient.
  - E. Subrecipient shall have no right of setoff.

## **8. Maintenance of Insurance, Payment of Taxes, and Workers’ Compensation**

- 8.1 Subrecipient shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Subrecipient or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Subrecipient 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

OSDH nor the State shall be liable to the Subrecipient, 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 OSDH employee.

- 8.2 If the Subrecipient does not carry workers' compensation insurance because it considers their business to be that of an Independent Contractor, as defined by the Workers Compensation Act (85A O.S. § 1 et. seq.), the Subrecipient must complete the Affidavit of Exempt Status under the Administrative Workers' Compensation Act (CC-FORM-36A) through the Oklahoma Worker's Compensation Commission and provide proof of completion to the OSDH before any contractual services are provided.
- 8.3 Subrecipient agrees to indemnify OSDH, 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.

## **9 Compliance with Applicable Laws**

- 9.1 As long as Subrecipient has an obligation under the terms of the Contract and in connection with performance of its obligations, the Subrecipient 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 [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify); and
  - 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.
- 9.2 Subrecipient certifies that it is registered as a business entity licensed to do business in the State, has obtained a sales tax permit, and is current on franchise tax payments to the State, as applicable.
- 9.3 The Subrecipient's employees, agents and subcontractors shall adhere to applicable OSDH 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 Subrecipient shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at [https://omes.ok.gov/sites/g/files/gmc316/f/InfoSecPPG\\_0.pdf](https://omes.ok.gov/sites/g/files/gmc316/f/InfoSecPPG_0.pdf). Subrecipient is responsible for reviewing and relaying such policies covering the above to the Subrecipient's employees, agents and subcontractors.
- 9.4 At no additional cost to OSDH, the Subrecipient shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.5 In addition to compliance under subsection 9.1 above, Subrecipient shall have a continuing obligation to comply with applicable OSDH-specific mandatory contract provisions required in connection with the receipt of federal funds or other funding source.

- 9.6 The Subrecipient is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Subrecipient's obligations under the Contract and Subrecipient certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the OSDH or the State, Subrecipient 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.
- 9.7 As applicable, Subrecipient 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.
- 9.8 The execution, delivery and performance of the Contract and any ancillary documents by Subrecipient will not, to the best of Subrecipient'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 Subrecipient and any third party.
- 9.9 Subrecipient 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.
- 9.10 Subrecipient represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Subrecipient has been disclosed in writing to the State and OSDH and Subrecipient is not aware of any other litigation, claim or threat thereof.
- 9.11 If services provided by Subrecipient include delivery of an electronic communication, Subrecipient 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, Subrecipient shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Subrecipient 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.

## **10 Audits and Records Clause**

- 10.1 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. Subrecipient agrees any pertinent federal or State agency or governing entity of a OSDH shall have the right to examine and audit, at no additional cost to OSDH, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Subrecipient that comprise pricing under the Contract.
- 10.2 The Subrecipient 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.
- 10.3 Pursuant to 74 O.S. § 85.41, if professional services are provided hereunder, all items of the Subrecipient that relate to the professional services are subject to examination by OSDH, the State Auditor and Inspector and the State Purchasing Director.
- 10.4 As applicable, Subrecipient agrees to comply with all record retention requirements of 2 CFR §§ 200.334 - 200.338.

## **11 Confidentiality**

- 11.1 The Subrecipient shall maintain strict security of all State and citizen data and records entrusted to it or to which the Subrecipient 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 Subrecipient to perform its obligations under the Contract. The Subrecipient further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Subrecipient warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Subrecipient, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without OSDH’s prior express written permission. Subrecipient shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the OSDH’s prior express written approval except as necessary for Subrecipient to render services under the Contract. The Subrecipient further warrants that it has a tested and proven system in effect designed to protect all confidential information.

- 11.2 Subrecipient shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Subrecipient'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 OSDH.
- 11.3 Subrecipient shall immediately report to the OSDH 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 Subrecipient shall also promptly furnish to OSDH 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 OSDH in investigating or preventing the reoccurrence of such event in the future. The Subrecipient shall cooperate with the OSDH in connection with any litigation and investigation deemed necessary by the OSDH 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.
- 11.4 Subrecipient 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.
- 11.5 Subrecipient 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 OSDH and certain beneficiaries and may violate state or federal laws and regulations. If the Subrecipient 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 OSDH 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.
- 11.6 The Subrecipient shall immediately forward to the OSDH, 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 Subrecipient or any subcontractor or to which the

Subrecipient or subcontractor has access and Subrecipient shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third-party request.

- 11.7 OSDH may be provided access to Subrecipient Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Subrecipient 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, Subrecipient 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 Subrecipient Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) résumé, pricing or marketing materials 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 Subrecipient Confidential Information, provided that the OSDH provides reasonable written notice, pursuant to Contract notice provisions, to the Subrecipient so that the Subrecipient may promptly seek a protective order or other appropriate remedy.

## **12 Conflict of Interest and Non-Collusion**

- 12.1 In addition to any requirement of law or of a professional code of ethics or conduct, the Subrecipient, its employees, agents and subcontractors 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 Subrecipient 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.
- 12.2 Subrecipient attests to the following:
- a. I am the duly authorized agent of the above-named Subrecipient submitting the documentation herewith, for the purpose of certifying the facts pertaining to the

existence of collusion between the Subrecipient and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract;

- b. I am fully aware of the facts and circumstances surrounding the making of this contract to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such contract; and
- c. Neither the Subrecipient nor anyone subject to the Subrecipient's direction or control has been a party:
  - i. to any collusion among Subrecipients in restraint of freedom of competition by agreement to contract at a fixed price or to refrain from submitting Subrecipient contract information; nor
  - ii. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract; nor
  - iii. in any discussions between the awarded Subrecipient and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract; nor
  - iv. to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to Section 85.45j.1. of this title.
- d. Neither Subrecipient nor anyone subject to the Subrecipient's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract.

### **13 Assignment and Permitted Subcontractors**

- 13.1 Subrecipient's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of OSDH which may be withheld at OSDH's sole discretion. Should Subrecipient assign its rights to payment, in whole or in part, under the Contract, Subrecipient shall provide OSDH and all affected parties with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected OSDHs to perform payment obligations without any delay caused by the assignment. Sole Source contracts shall not be assigned or delegated.
- 13.2 Notwithstanding the foregoing, the Contract may be assigned by Subrecipient to any corporation or other entity in connection with a merger, consolidation, sale of all equity

interests of the Subrecipient, or a sale of all or substantially all of the assets of the Subrecipient 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 Subrecipient as fully as if it had been originally made a party to the Contract. Subrecipient shall give OSDH and all affected parties prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

- 13.3 If the Subrecipient is permitted to utilize subcontractors in support of the Contract, the Subrecipient 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 Subrecipient, the Subrecipient shall obtain written approval of OSDH of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Subrecipient. Such approval is within the sole discretion of OSDH. 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 Subrecipient shall provide a copy of a written agreement executed by the Subrecipient 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 Subrecipient under the terms of all applicable Contract Documents. Subrecipient agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by OSDH of any subcontractor and associated employees shall be a continuing obligation. OSDH 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.
- 13.4 All payments under the Contract shall be made directly to the Subrecipient, except in the case of the Subrecipient's assignment of payment. No payment shall be made to the Subrecipient for performance by unapproved or disapproved employees of the Subrecipient or a subcontractor.
- 13.5 Rights and obligations of OSDH under the terms of this Contract may be assigned or transferred, at no additional cost, to other State entities.

#### **14 Background Checks and Criminal History Investigations**

Prior to the commencement of any services, background checks and criminal history investigations of the Subrecipient's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to OSDH in a timely manner. Subrecipient's access to facilities, data and information may be withheld prior to completion of background verification acceptable to OSDH. The costs of additional

background checks beyond Subrecipient's normal hiring practices shall be the responsibility of the OSDH unless such additional background checks are required solely because Subrecipient will not provide results of its otherwise acceptable normal background checks; in such an instance, Subrecipient shall pay for the additional background checks. Subrecipient will coordinate with OSDH and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Subrecipient who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the OSDH 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.

## **15 Patents and Copyrights**

Without exception, a product or deliverable price shall include all royalties or costs owed by the Subrecipient 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 Subrecipient under the Contract infringes that party's patent, intellectual property, copyright or other property right, Subrecipient shall enable each affected user 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. Subrecipient'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 Subrecipient determines that none of these alternatives are reasonably available, OSDH shall return such portion of the product or deliverable at issue to the Subrecipient, 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 Subrecipient.

## **16 Indemnification**

### **16.1 Acts or Omissions**

- a. Subrecipient 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 Subrecipient or its agents, employees, or subcontractors in the execution or performance of the Contract.

- b. To the extent Subrecipient is found liable for loss, damage, or destruction of any property of OSDH due to negligence, misconduct, wrongful act, or omission on the part of the Subrecipient, its employees, agents, representatives, or subcontractors, the Subrecipient and OSDH 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, Subrecipient sixty (60) calendar days after the date of Subrecipient's receipt of an invoice for the negotiated settlement amount.

## 16.2 Infringement

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

## 16.3 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 OSDH affected by the claim will reasonably cooperate with Subrecipient and defense of the claim to the extent its interests are aligned with Subrecipient. Subrecipient 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, 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.

#### 16.4 Coordination of Defense

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 Subrecipient to control the defense and any related settlement negotiations; provided, however, Subrecipient 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 Subrecipient, Subrecipient 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.

#### 16.5 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 OSDH shall be liable to Subrecipient 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 Subrecipient 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 Subrecipient or its employees, agents or subcontractors.
- c. The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether OSDH has accepted a product or service. The parties agree that Subrecipient 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.

### 17 Termination for Funding Insufficiency

- 17.1 Notwithstanding anything to the contrary in any Contract Document, OSDH 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, Subrecipient 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 OSDH of insufficient funding shall be accepted by, and shall be final and binding on, the Subrecipient.

- 17.2 Upon receipt of notice of a termination, Subrecipient 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 Subrecipient in the form of prepaid fees that are unused when the Subrecipient certain obligations are terminated shall be refunded.
- 17.3 OSDH'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 Subrecipient of any liability for claims arising under the Contract.

## **18 Termination for Cause**

- 18.1 Subrecipient may terminate the Contract if (i) it has provided OSDH with written notice of material breach and (ii) OSDH fails to cure such material breach within thirty (30) days of receipt of written notice. OSDH may terminate the Contract in whole or in part if (i) it has provided Subrecipient with written notice of material breach, and (ii) Subrecipient 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.
- 18.2 OSDH may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Subrecipient if (i) Subrecipient fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Subrecipient's performance or obligations under the Contract; (ii) Subrecipient's material breach is reasonably determined to be an impediment to the function of OSDH and detrimental to OSDH or to cause a condition precluding the thirty (30) day notice or (iii) when OSDH determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.

- 18.3 Upon receipt of notice of a termination, Subrecipient 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 Subrecipient 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 Subrecipient of liability for claims arising under the Contract.
- 18.4 The Subrecipient's repeated failure to provide an acceptable product or service; Subrecipient's unilateral revision of linked or supplemental terms that have a materially adverse impact on a OSDH's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Subrecipient to perform its obligations under the Contract; Subrecipient's inability to pay its debts when due; assignment for the benefit of Subrecipient's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Subrecipient shall constitute a material breach of the Subrecipient'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 260:115-9-9 is an example.

## **19 Termination for Convenience**

- 19.1 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, Subrecipient 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.
- 19.2 Upon receipt of notice of such termination, Subrecipient 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 Subrecipient 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 Subrecipient of liability for claims arising under the Contract.

## **20 Suspension of Subrecipient**

- 20.1 Subrecipient may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Subrecipient fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Subrecipient's performance or obligations under the Contract.
- 20.2 Upon receipt of a notice pursuant to this section, Subrecipient 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 Subrecipient, 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 Subrecipient in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.
- 20.3 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.

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

By signing the contract, the Subrecipient attests and assures that no employee or any of its principals performing hereunder:

- a. are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

- b. have, within a three year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- c. have, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal, State or local entity; nor,
- d. are presently indicted for, or otherwise criminally indicted, or charged by a governmental entity with any of the offenses enumerated above in this section.

The certification made by Subrecipient 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 Subrecipient knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Subrecipient's default. Additionally, Subrecipient shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

## **22. Certification Regarding State Employees Prohibition From Fulfilling Services**

Pursuant to 74 O.S. § 85.42, the Subrecipient 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.

## **23. Force Majeure**

- a. 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.

- b. 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 Subrecipient cannot cause delivery of a product or service in a timely manner to meet the business needs of OSDH. Subrecipient is not entitled to payment for products or services not received and, therefore, amounts payable to Subrecipient during the force majeure event shall be equitably adjusted downward.
- c. 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 Subrecipient's system or any of Subrecipient's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Subrecipient's systems or (b) the delay or failure of Subrecipient or subcontractor personnel to perform any obligation of Subrecipient 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 Subrecipient's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

## **24. Security of Property and Personnel**

In connection with Subrecipient's performance under the Contract, Subrecipient may have access to OSDH personnel, premises, data, records, equipment and other property. Subrecipient shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of OSDH. Subrecipient 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 OSDH property in its possession, regardless of cause. If Subrecipient fails to comply with OSDH's security requirements, Subrecipient is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

## **25. Miscellaneous**

### **a. 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 without regard to application of choice of law principles. Pursuant to 74 O.S. §85.14, where federal granted funds are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute,

or litigation relating in any way to the Contract Documents, shall be in Oklahoma County, Oklahoma.

**b. No Guarantee of Products or Services Required**

The State shall not guarantee any minimum or maximum amount of Subrecipient products or services required under the Contract.

**c. Employment Relationship**

The Contract does not create an employment relationship. The Subrecipient is in all respects an Independent Contractor and is neither an agent nor an employee of the OSDH. Neither the Subrecipient nor any of its officers, employees, agents, or members shall have authority to bind the OSDH nor are they entitled to any of the benefits or worker's compensation provided by the OSDH to its employees. In the event the independent contractor relationship ends in any way, this contract shall automatically terminate without notice. The Subrecipient shall notify the OSDH Contract Monitor of the change in relationship.

**d. Transition Services**

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

**e. Publicity**

The existence of the Contract or any Acquisition is in no way an endorsement of Subrecipient, the products or services and shall not be so construed by Subrecipient in any advertising or publicity materials. Subrecipient agrees to submit to OSDH all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of OSDH or any OSDH is mentioned or language used from which, in OSDH's judgment, an endorsement may be inferred or implied. Subrecipient 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 OSDH.

**f. Open Records Act**

Subrecipient acknowledges that all State agencies and certain other state entities are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 *et seq.* Subrecipient also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required.

**g. Failure to Enforce**

Failure by OSDH 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 OSDH 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.

**h. Mutual Responsibilities**

- i. 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.
- ii. The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- iii. The OSDH and Subrecipient each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- iv. The OSDH and Subrecipient shall reasonably cooperate with each other and any Subrecipient to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- v. 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.

**i. 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.

**j. 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.

**k. Section Headings**

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

**l. 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.

**m. 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.

**n. Entire Agreement**

The Contract Documents taken together as a whole constitute the entire agreement between the parties. 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 Subrecipient's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

**o. Gratuities**

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Subrecipient, its employee, agent, or another representative 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 Subrecipient may result from such a violation.

**p. 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.

**26. Limited English Proficiency**

Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program needs service or information in a language other than English in order to effectively be informed of or participate in the program, the Subrecipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide the information in appropriate languages to such persons.

An inability by the Subrecipient to provide the information in the appropriate language to a significant number or proportion of the population eligible to be served or likely to be directly affected by the program may result in termination of the contract.

**27. Charitable Choice Providers**

Providers who are members of the faith community are eligible to compete for contracts with the State of Oklahoma on the same basis as any other provider. Such providers shall not be required to alter their forms of internal governance, their religious character or remove religious art, icons, scripture, or other symbols. Such providers may not, however, discriminate against clients on the basis of their religion, religious beliefs, or clients' refusal to participate in religious practices (45 CFR Part 87.1c). Organizations that receive direct financial assistance from the OSDH under any OSDH program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the OSDH. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the

OSDH, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

## **28. Procurement Integrity**

Subrecipient certifies that it has not entered into this contract with this or any other Oklahoma state agency that would result in a substantial duplication of the services or duplication of the end product rendered by the Subrecipient or its employees.

SAMPLE

## **Attachment B-2 – Additional Terms and Conditions for Subrecipient Contracts**

### **1. Audit Requirements**

Subrecipients expending federal funds from all funding sources in excess of the threshold established in 2 CFR Part 200.501 shall be required to have a single audit or a program-specific audit conducted in accordance with 2 CFR Part 200, Subpart F. Audit costs may not be charged to any OSDH contracts when no audit has been performed, or has not been prepared in accordance with this requirement.

Subrecipients that are required to have an audit conducted for compliance with 2 CFR Part 200.501 shall submit to the Federal clearinghouse (FAC) a single copy of the data collection form and the reporting package as required by 2 CFR Part 200.512 within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period. If an independent audit is not posted in the required time, or there have been findings, the OSDH will have the option to consider taking action under the Failure To Comply clause of this contract.

If the Subrecipient is a tribal entity, and has chosen to opt out of audit report submission pursuant to 2 CFR §200.512, the Subrecipient shall submit a copy of the audit report in paper or electronic form to:

Oklahoma State Department of Health  
ATTN: Internal Audit Unit  
123 Robert S. Kerr Ave, Suite 1702  
Oklahoma City, OK 73102

### **2. Contract Monitoring Plan**

This contract will be monitored by the OSDH Contract Monitor for this Contract and will be based on the completion of a Risk Assessment process. Information related to programmatic requirements, the contract specifications, and responses to the Subrecipient's Subrecipient Questionnaire will be utilized to complete a Risk Assessment Tool. The Risk Assessment Tool will be used to determine the level of risk associated with the Contract. A Contract Monitoring Plan and a Contract Administration Plan will be developed to define the activities and level of monitoring and administration that will be required during the contract period. Typical monitoring activities include Subrecipient site visits, review of contractually required reports, invoice review, invoice validation, and verification of licensure and/or insurance requirements, etc. The level of risk assigned to the contract shall determine the frequency and type of activity within a Contract Monitoring Plan and/or a Contract Administration Plan. The Contract Monitoring and/or Contract Administration Plan may be updated periodically as determined by the OSDH throughout

the contract period. Upon development of the Contract Monitoring Plan and Contract Administration Plan, the OSDH will provide a copy of each to the Subrecipient.

### **3. Federal Funding Accountability and Transparency Act of 2006 (FFATA)**

Subrecipients shall comply with the requirements of the Federal Funding Accountability and Transparency Act of 2006 (FFATA) as set forth in 2 CFR Part 170. A UEI number (Unique Entity Identifier) is a requirement for all contracts of \$30,000 or more. Subrecipients may be required to submit additional information to satisfy FFATA compliance.

### **4. Indirect Costs**

The Subrecipient may request reimbursement of indirect costs (IDC) not to exceed the total amount approved for IDC in the current approved line-item budget. Indirect Costs are expenses that are not directly related and billed 100% to a particular funding source. The IDC line-item amount must be based on one of: the federally approved IDC rate; or the rate approved by the Subrecipient's cognizant agency; or the 10% de minimus rate provided for in 2 CFR Part 200; or a Cost Allocation Plan submitted to OSDH and included the required certification outlined in 2 CFR Part 200.415(b) explaining the allocation methods.

### **5. Invoicing**

To comply with 2 CFR § 200.415 (Required Certifications), invoices requesting payment must include a certification, signed by an official who is authorized to legally bind the Subrecipient, which reads as follows:

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

The Subrecipient assures that all costs billed will be supported by documentation that will include, but not be limited to, copies of paid invoices, payroll records and time reports as required by the cost principles applicable to their organization. The Subrecipient further assures that all billings will be based on actual costs incurred and paid.

If the Subrecipient is unable to support any part of their claim to the OSDH and it is determined that such inability is attributed to misrepresentation of fact or fraud on the part

of the Subrecipient, the Subrecipient shall be liable to OSDH for an amount equal to such unsupported part of the claim in addition to all costs, including legal, attributable to the reviewing and discovery of said part of claim. Liability under this paragraph shall be determined within two years of the discovery of such misrepresentation of fact or fraud by the Subrecipient.

In addition, Subrecipients shall request reimbursement of costs from OSDH only when those costs comply with the applicable Federal Cost Principles 2 CFR Part 200, FAR 31.2, or as determined by the applicable Federal program guidance to the Subrecipient's entity type. Any request for reimbursement of cost not allowable under the above Federal regulations must be specifically approved in the special conditions of the contract language and be supported by a specific line item within the Subrecipient's approved budget.

## **6. Travel and Related Expenses**

If travel costs and related expenses are a part of the contract, such expenses must be compliant with 2 CFR Part 200.474. The Subrecipient's request for reimbursement shall be based on the organization's written travel policies. OSDH will monitor the travel-related expenses based on reasonableness (2 CFR Part 200.404) as compared to those rates authorized by the Federal Conus Rates published at the GSA Website located at <http://www.gsa.gov/portal/category/100000>. All out-of-state travel where reimbursement is requested must be pre-approved in writing by the OSDH. In addition, OSDH allowable travel costs must be directly related to the activities of the contract and therefore may require allocation of those costs to all programs benefitted based on an equitable allocation methodology.

## **7. Promotional Items**

Per 2 CFR Part 200.421, costs of promotional items and memorabilia, including models, gifts, and souvenirs are unallowable. Advertising costs for the purpose of program outreach and other specific purposes necessary to meet the requirements of the Federal award are allowable.

## **8. Compliance with Grant Requirements**

Subrecipient agrees that should it be in noncompliance, OSDH may impose additional conditions as provided in 2 CFR §200.207; or, as provided in 2 CFR § 200.338, temporarily hold cash payments pending correction of the deficiency, disallow all or part of the cost of the activity or action not in compliance, suspend or terminate the contract in part or in whole, withhold further awards for the project or program, or take other remedies legally available. Compliance with the requirements shall be the responsibility of the Subrecipient, without

reliance on or direction by the OSDH.

## 9. Equipment and Other Purchases

**\*\*\*\*\*Allowed if in line-item budget\*\*\*\*\*** It is understood that no items of equipment, property or other capital purchases will be reimbursed under the provisions of this contract unless specifically allowed in the attached line-item budget. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the Subrecipient for financial statement purposes, or \$5000, pursuant to 2 CFR Part 200.439. If equipment is allowed to be purchased by the Subrecipient, each purchase must be pre-approved by the OSDH, and the Subrecipient must have an established inventory system compliant with 2 CFR Part 200.313. If the purchase of equipment is approved, requests to OSDH for reimbursement of equipment purchased by Subrecipient under this Contract must be accompanied by copies of paid invoices, the Subrecipient's depreciation policy, and a list of the purchased equipment, including the serial #(s) and Subrecipient's inventory control #(s). The annual reimbursement amount may be determined by the applicable depreciation schedule on a case-by-case basis.

The Subrecipient will use, manage, and dispose of the equipment in accordance with 2 CFR 200 Parts 313 (3), (c), (d), (e).

**\*\*\*\*\*Equipment not allowed but OSDH loaning to Subrecipient for use\*\*\*\*\*** It is understood that no items of equipment, property or other capital purchases will be reimbursed under the provisions of this contract. It is further understood that ownership shall be retained by the OSDH of any items of equipment, property or other capital assets purchased by the OSDH and placed with the Subrecipient pursuant to this contract. All inventory, maintenance and repair of items on loan to the Subrecipient by the OSDH shall be the responsibility of the Subrecipient. The Subrecipient shall be financially responsible for all OSDH-loaned property. Within 30 days of the termination date of this contract, all such items must be returned, FOB destination, to the OSDH by the Subrecipient in as good working order as when placed with the Subrecipient except for reasonable wear and tear and subject to consideration of a reasonable adjustment for any obsolescence. Failure to return the equipment in such working order will result in deletion of the value of the equipment or the reasonable cost of restoring the equipment to such order or condition, whichever is more reasonable, from the final payment to the Subrecipient. OSDH Equipment is defined as an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals \$2,500 or more, except for telecommunications and electronic information technology applications. For these items the acquisition cost is \$500.00.

**\*\*\*\*Equipment not allowed, no equipment issues at all\*\*\*\*** It is understood that no items of equipment, property or other capital purchases shall be reimbursed under the provisions of this contract. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the Subrecipient for financial statement purposes, or \$5,000.

#### **10. Subrecipient Systems, Policies, and Procedures**

Subrecipients are expected to have systems, policies, and procedures in place by which they manage grant funds and grant-supported activities. Organizational policies should be consistently applied regardless of the source of funds. Subrecipient systems must meet the standards and requirements set forth in 2 CFR Part 200, 45 CFR Part 75, or 7 CFR Part 3016, or as determined by the applicable Federal program guidance.