

ATTACHMENT C

AGENCY TERMS

SOLICIATION NO. 0900000534

A. RECORDS

The Supplier shall maintain records, according to Federal laws relating to the services it is performing under this contract. OMES/CP and EGID shall have the right at any time to review and copy such records upon request. OMES/CP and EGID understands the Supplier will not release confidential protected member information. The Supplier agrees to provide OMES/CP and EGID, upon request, de-identified summary health information, information related to the member's enrollment or disenrollment, or records regarding compliance and policy matters. This is in addition to Section 10 of the State General Terms.

B. CONFIDENTIALITY AND HIPAA COMPLIANCE

- B.1. Supplier agrees to comply with HIPAA regulations and assumes the responsibilities of a "Covered Entity" as defined by HIPAA with regard to the State of Oklahoma and all the employees and dependents who enroll and participate in Supplier's insurance plan(s).
- B.2. Supplier is solely responsible for the consequences of any act or omission on its part not in compliance with HIPAA.
- B.3. Supplier shall dedicate an experienced networking specialist to serve as a liaison to EGID for network related issues.
- B.4. Electronic Protected Health Information (EPHI) which could include eligibility files, reports, pre-edits and other transactional data shall be encrypted when transmitted in any manner outside of the EGID protected (trusted) network.
- B.5. EGID utilizes Pretty Good Privacy (PGP) as its standard data file encryption methodology with both public and private keys. Data file transmissions will be performed utilizing the SFTP (FTP over SSH) protocol. Transmissions can occur over ports that are either standard or non-standard.
- B.6. Data files prepared for transmission to and from EGID must remain encrypted at rest. This includes files stored on FTP servers and portable media (ex: flash drives, CD, and DVD media).
- B.7. All email shall be encrypted using the TLS protocol between email servers unless an encrypted VPN tunnel has been established.

C. OWNERSHIP OF DATA

- C.1. Although EGID is subject to the Oklahoma Open Records Act, 51 O.S. (2011) § 24A.1, EGID maintains documents and information that are considered confidential by law, 74 O.S. (2011) §§ 1322 and 3113.1. In connection with this Contract, the Supplier will have access to information that is considered confidential.
- C.2. The Supplier warrants and represents that such confidential information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by the Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assignees, subcontractors, independent contractors, successors, or any other persons or entities without EGID's express written permission. The Supplier shall instruct its agents, representatives, subcontractors and/or independent contractors that they shall not use or disclose such confidential information to any other person or entity without the express written permission of EGID, except as absolutely necessary for Supplier to render services under this Contract or as required by law. The Supplier warrants and represents that it has a tested and proven system in effect to protect all confidential information as defined herein.
- C.3. The Supplier agrees that EGID possesses exclusive property rights to the records and data designated herein as confidential information on behalf of EGID members. EGID "Confidential Information" includes the records and resulting data generated from the confidential information of all EGID members, retirees, and beneficiaries in any plan administered by EGID and all other related information that is subject to protection from disclosure pursuant to Oklahoma or federal law, including, without limitation all privacy protections as provided in and in the "Privacy Rule" adopted pursuant to HIPAA.
- C.4. The Supplier shall immediately report to EGID any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of

any confidential information of which it or its 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 EGID full details of the unauthorized use, appropriate, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist EGID in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with EGID in connection with any litigation and investigation deemed necessary by EGID to protect any confidential information and shall bear all costs associated with the investigation, response and recovery in connection with any breach of confidential information 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. The 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 confidential information.

- C.5. The Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any confidential information to others may cause immediate and irreparable harm to EGID and/or HealthChoice members and may violate state or federal laws and regulations. If the Supplier or its affiliates, 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, EGID will immediately be entitled to injunctive relief and/or any other rights or remedies available to EGID under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.
- C.6. During the term of this Contract, the Supplier agrees that EGID is granted access to all EGID Confidential Information in the possession of the Supplier and upon EGID request, the Supplier shall deliver to EGID a copy of any specified EGID confidential information and data that the Supplier prepared, developed and/or stored by the Supplier as part of this contract.
- C.7. Prior to the expiration, or upon the earlier termination of this Contract, the Supplier shall provide EGID all confidential information and data as defined herein within the Supplier's possession in the form of hard copy and/or electronic storage media. This paragraph does not apply to the Supplier's proprietary formats or systems that contain the confidential information or proprietary documents pertaining to the operation of the Supplier's business. The Supplier may retain copies of those records or documents that it considers necessary for proof of performance.
- C.8. This entire Section shall survive any termination, renewal, extension or amendment of this Contract.

D. FIDUCIARY

The Supplier shall become a fiduciary to EGID as defined at 74 O. S. (2011) §1305.2.

E. HOLD HARMLESS

The Supplier shall be responsible for the work, direction, and compensation of Supplier employees, agents and subcontractors. Neither the Supplier nor the State of Oklahoma shall be liable, directly or indirectly, for the work and direction of the Supplier employees, agents or subcontractors. The Supplier agrees to indemnify and hold harmless EGID, its employees and agents, and the State of Oklahoma from damages, loss, or liability to persons or property arising from claims of any kind, including, but not limited to compensation by the Supplier employees, agents, and subcontractors of the Supplier against the Supplier; negligent or willful acts of the Supplier its employees or agents in performance of this contract; acts, omissions or liabilities of the Supplier acting in any capacity that relate to the contract; and damages, costs, fines or penalties arising from HIPAA violations committed by the Supplier employees, agents or subcontractors. The State of Oklahoma does not waive, compromise, concede, surrender, or relinquish any rights, privileges, immunities, or remedies that the State of Oklahoma and its employees possess under State or Federal law.

F. CONTRACT OBLIGATIONS AND ENFORCEMENT

The Supplier understands that by bidding on the RFP, it assumes a legal obligation to perform in good faith according to the terms specified in this RFP during the entire contract period. Suppliers who fail to so perform are hereby notified that EGID reserves the right to undertake all measures, including legal proceedings, to

protect the interests of the parties to and the beneficiaries under this agreement.

G. EGID DESIGNATION OF PERSONNEL

EGID may designate EGID personnel to administer any of the terms or conditions of this contract and any and all duties or acts required of EGID.

H. NOTICES REQUIRED BY CONTRACT

- H.1.** Any notice required by the terms of this Contract, shall be provided in writing and (1) mailed by the United States Postal Service (USPS), postage prepaid, certified mail, return receipt requested; or, (2) delivered by an overnight delivery company with written delivery confirmation, or, (3) hand delivered with written delivery confirmation. Notices shall be addressed to EGID Director of Benefits Contracting, 2401 Lincoln Blvd., Suite 300, Oklahoma City, OK 73105 or the Supplier at the address listed on the purchase order.
- H.2.** Such notices shall become effective on the date of delivery or the date specified within the notice, whichever comes later. Either party may change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

I. FEDERAL EXCLUSION LIST

The Supplier currently complies with the federal statutes and regulations concerning persons who are listed on the Excluded Parties List System maintained by the General Services Administration or excluded from receiving payment from federal government programs by the Department of Health and Human Services, Office of Inspector General. Supplier will comply with this requirement for the duration of the contract with the State.

J. NOTICE FOR CHANGES THAT IMPACT SHARED BUSINESS PROCESSES

For the duration of the contract, the Supplier shall provide no less than thirty (30) day notice to EGID prior to performing changes, fixes, modifications and enhancements that may impact the exchange of eligibility or any other shared business processes. The Supplier must also include a test plan and provide resources to EGID to verify changes are valid and will not disrupt business processes. Changes will not be implemented until both parties mutually agree the changes are ready to be put into production.

K. NO COMMISSIONS

The Supplier shall agree that absolutely no commissions or finder's fees shall be paid to anyone or any organization resulting from the State of Oklahoma's contract, either arising from an agreement to pay a commission or finder's fee prior to or during the term of this Contract.

L. FRAUD, WASTE & ABUSE COMPLIANCE PROGRAM

The Supplier acknowledges EGID's Fraud, Waste & Abuse Compliance Program. The compliance program can be viewed at <https://oklahoma.gov/omes/services/employees-group-insurance-division/about-egid/fraud-waste-and-abuse-compliance.html>. The Supplier must include in its Fraud, Waste & Abuse training efforts at least one hour annually of training for applicable Supplier employees.

M. SUPREMACY OF STATE STATUTES

This Contract is subject to all applicable Oklahoma State Statutes, EGID Rules and Administrative Directives. The Supplier shall comply with the American Disabilities Act. Any provision of this Contract that is not in conformity with existing or future legislation shall be considered amended to comply with such legislation. Federal laws, regulations and rules applicable to the OEIBA Program preempt all State laws and regulations, except for State licensing laws and State laws relating to plan solvency.

N. INFORMATION FROM ONE SUPPLIER CONCERNING ANOTHER IS PROHIBITED

Suppliers are advised that EGID is not interested in, nor shall it consider, allegations of lack of qualification or of impropriety made or initiated by any Supplier concerning another Supplier at any point during the solicitation process. Inclusion of such information in the RFP response or communication of such information to any state officials, state staff or its Suppliers after RFP submission may be grounds for disqualification. This clause in

no way limits the right to file a protest or appeal under the laws or rules governing the State of Oklahoma.