

ATTACHMENT C

AGENCY TERMS

SOLICITATION NO. 8070000051

A. DEFINITIONS

1. **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
2. **Addendum** means a mutually executed, written modification to a Contract Document.
3. **“Amendment”** means a written change, addition, correction or revision to the Solicitation.
4. **“Betterments”** means offerings proposed by the Bidder which fall within the outlined specifications and are more current or upgraded version than requested.
5. **“Bid”** means an offer a Bidder submits in response to the Solicitation.
6. **“Bidder”** means an individual or Business Entity that submits a Bid in response to the Solicitation.
7. **“Center for Medicare and Medicaid Services (CMS)”** means the federal agency responsible to provide health coverage to more than 100 million people through Medicare, Medicaid, the Children’s Health Insurance Program, and the Health Insurance Marketplace. CMS provides federal oversight to the Oklahoma Health Care Authority.
8. **“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.
9. **“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 Supplier’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.
10. **“Contractor”** means the Bidder with whom the State enters the Contract awarded pursuant to this RFP.
11. **“COTS”** means software that is commercial off the shelf.
12. **“Closing Date and Time”** means 3:00 P.M. Central Time on the date this RFP closes.
13. **“Deliverable”** means specific tangible or intangible products or services produced as a result of the Project Order. Deliverables may be a project, a report, a document, a test, a meeting, and other relevant outputs. Deliverables may be a single output completed within a month or may be composed of multiple smaller deliverables that are completed within specified timeframe that extends beyond a month.
14. **Customer** means the entity receiving goods or services contemplated by the Contract.
15. **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the

Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.

16. Destination means delivered to the receiving dock or other point specified in the applicable Contract Document.
17. **“Eligibility and Enrollment (E&E)”** means the electronic system OHCA uses to determine eligibility for Oklahoma’s Medicaid program SoonerCare. To participate in Medicaid, federal law requires states to cover certain groups of individuals. Low-income families, qualified pregnant women and children, and individuals receiving Supplemental Security Income (SSI) are examples of mandatory eligibility groups. States have additional options for coverage and may choose to cover other groups, such as individuals receiving home and community-based services and children in foster care who are not otherwise eligible.
18. **“Fiscal Agent”** means an organization, such as a bank or trust company that acts on behalf of another party performing various financial duties. A fiscal agent may assist in the redemption of bonds or coupons, handle tax issues, replace lost or damaged securities and perform various other finance-related tasks.
19. **“Governance”** means the established policies, and continuous monitoring of their proper implementation, by members of the governing body of this contract. It includes the mechanisms required to balance the powers of the members (with the associated accountability), and their primary duty of enhancing the effectiveness and viability of the contract related to OHCA’s goals and objectives.
20. **“Health Information Technology (HIT)”** means the CMS initiative to provide the foundation for Medicaid health system transformation and administration that enables care coordination among clinicians, contains costs through the sharing of medical information useful in diagnosis and treatment decision making, facilitates patient registries, enables unified quality reporting, and empowers Medicaid beneficiaries to participate in their overall wellness and health.
21. **Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
22. **“Independent Verification and Validation (IV&V)”** means an independent contractor who performs planning, management, and other programmatic activities in conformance with the term’s usage in federal regulations at 45 CFR § 95.626.
23. **Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
24. **“Medicaid Management Information System (MMIS)”** means an integrated group of procedures and computer processing operations (subsystems) developed at the general design level to meet principal objectives. For the purposes of this RFP, "systems mechanization" and "mechanized claims processing and information retrieval systems" is identified in section 1903(a)(3) of the Act and defined in regulation at 42 CFR 433.111.
25. **“Milestone”** means specific progress point(s) or task(s) that must be reached to achieve progress on the Project. The milestone is a measurement of progress toward the deliverable.

26. **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.
27. **OAC** means the Oklahoma Administrative Code.
28. **“Oklahoma Health Care Authority (OHCA)”** means the State of Oklahoma Agency responsible to administer the Medicaid program.
29. **OMES** means the Office of Management and Enterprise Services.
30. **“Option to renew”** means the optional contract years that may be authorized to continue contracted services resulting from this RFP. The State of Oklahoma law requires State agencies to contract by State Fiscal Year.
31. **“Project”** means the temporary endeavor authorized in a Project Order undertaken to create a unique product, service, or result. This may include a project to deliver one or more business products according to a specified business case.
32. **“Project Orders”** means the formal contract document OHCA uses to request services from one or more contractor attained through the Contract. Project Orders may be awarded to one or more contractors and shall be signed by both OHCA and the awarded contractor(s) prior to work being performed. Project Order may be authorized for one or more State Fiscal Year(s).
33. **“Request for Proposal (RFP)”** means this document inviting Bids.
34. **Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
35. **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.
36. **Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
37. **Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
38. **Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
39. **“State Fiscal Year (SFY)”** means the annual financial year established by the State of Oklahoma which is July 1 through June 30.
40. **Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract Document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material,

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

B. AGENCY SPECIFIC TERMS AND CONDITIONS

1. In consideration of satisfactory performance of the services enumerated in Section A of this Contract, OHCA shall make payments to Contractor at the rate specified.
2. Final approval of renewal amounts will be at the sole discretion of OHCA. Payment shall be inclusive of all costs (*e.g.*, salaries, fringe benefits, supplies, equipment, travel, long distance, copying, etc.) required to provide the services detailed in this Contract. Billable time shall include time spent working at OHCA or time spent working on assigned OHCA business. No additional payments shall be made under this Contract.
3. It is understood and agreed to by the Parties hereto that all obligations of OHCA, including the continuation of payments, are contingent upon the availability and continued appropriation of State and Federal funds, and in no event shall OHCA be liable for any payments in excess of such available appropriated funds.
4. Contractor shall submit a proper invoice for services rendered in order to receive payment. A proper invoice is one which contains, at a minimum, the following information:
 - 4.1. Contractor name;
 - 4.2. FEI or vendor number;
 - 4.3. Invoice number;
 - 4.4. Purchase order number (where applicable);
 - 4.5. Description of service(s);
 - 4.6. Date(s) of service;

- 4.7.Detail of amount(s) billed; and,
- 4.8.Detailed attachments to support work and travel being billed.
- 5. Contractor shall maintain documentation of all billed charges and shall make such documentation available to OHCA upon request or as otherwise stated in this Contract.
- 6. All invoices for services rendered under this Contract shall be received by OHCA within 90 calendar days after date of service or when goods are provided. OHCA will not be held responsible for payment of invoices submitted beyond the deadline established by this paragraph.
- 7. OHCA shall have 45 calendar days within which to pay a proper invoice. If OHCA fails to pay an invoice within that time, Contractor shall have the right to interest thereon pursuant to 62 O.S. §§ 34.71 and 34.72.

C. AVAILABILITY OF FUNDING

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

D. HOLD HARMLESS

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

E. FORCE MAJEURE

1. Neither Contractor nor OHCA shall be liable for any damages or excess costs for failure to perform their Contract responsibilities if such failure arises from causes beyond the reasonable control of and without fault or negligence by Contractor or OHCA. Such causes may include, but are not limited to, catastrophic events or acts of God. In all such cases, the failure to perform must be beyond the reasonable control of, and without fault or negligence of, either Party.
2. Within 72 hours of the occurrence of such an event, Contractor shall initiate disaster recovery and/or back up procedures to provide alternate services. Contractor shall notify OHCA prior to initiation of alternate services as to the extent of the disaster and/or emergency and the expected duration of alternate services within this same 72 hour period.

F. CONTRACT COMPLIANCE AND PENALTIES

1. Substantial elements of this Contract are performance-based and require Contractor to meet specific standards and/or metrics. Contractor's performance may be assessed by such means as written reports, oral communication, onsite visits, audit, and data analysis.
2. Contractor shall be required to complete deliverables as offered on or before the required date. Deviations, substitutions, or changes in the deliverables shall not be made unless expressly authorized in writing by OHCA, as applicable.
3. OHCA and Contractor shall establish performance standards for this Contract based on the scope. All products and services are subject to inspection, testing and acceptance by OHCA. Any products and services that do not meet or exceed the specifications may be rejected. If Contractor fails to meet these standards or fails to meet any other Contract requirements, OHCA will email Contractor to discuss the issues. OHCA may request Contractor to prepare and submit for approval a Corrective Action Plan (CAP) for identified issues.
4. The CAP shall clearly specify which paragraphs in this Contract describe the affected work, the performance deficiencies, and identify specific actions to be performed by Contractor to correct the performance. Contractor shall implement the CAP to correct the product/services deficiencies within the timeframe specified by OHCA.
5. OHCA shall have a period of one hundred and twenty (120) business days, or no less than the time period agreed upon by OHCA in the project work plan, from the system delivery to the User Acceptance Testing (UAT) environment or product delivery. This 120-day period will be used to test, evaluation and accept materials, software and services (collectively, the deliverables) delivered or furnished under this Contract. If the go-live date or deliverable due dates fall on a State of Oklahoma recognize holiday, the go-live date or deliverable due date shall occur the second business day following the holiday.
6. If the Contractor's product or services fail to meet the specifications, then the products or services may be rejected and returned to the Contractor with a Notice stating the reasons for non-acceptance. Such rejection will exempt OHCA from all related costs incurred by

the Contractor. The Contractor shall be given thirty (30) business days to cure the nonconforming products or services and resubmit the deliverable(s) to OHCA, with a letter explaining the corrections made, for inspection, retesting, and reevaluation, OHCA shall be given up to one hundred and twenty (120) business days or no less than the original time period established for the product or service agreed upon by OHCA in the project a written notice of acceptance or rejection of the deliverables. If the deliverables submitted fail to pass acceptance within one hundred and twenty business days, OHCA may, at its sole discretion, continue with the Contractor or terminate the agreement.

7. OHCA shall accept deliverables through a Notice before title shall pass to OHCA or payment shall be authorized to the Contractor. However, acceptance by OHCA following testing and evaluation shall not be conclusive that the deliverable(s) conform in all respects to the specifications. In the event that OHCA discovers nonconformance after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever corrective action necessary so that the deliverable(s) conform to the specifications, including but not limited to, modification or replacement of nonconforming products or services.
8. Contractor warrants that, upon receipt of written Notice by OHCA of a latent defect in design, material, or workmanship, or a latent nonconformity of the software or services to the specifications, which would have constituted a basis for rejection if discovered prior to acceptance, it will repair or replace or otherwise correct the defect to the level of performance specified in this RFP within ten (10) calendar days of the date the Contractor was notified by OHCA of latent defect. If the Contractor fails to correct the latent defect(s) within ten (10) calendar days, OHCA may, at its sole discretion, continue with the Contractor or terminate the agreement.
9. Suspension of Work During Implementation
 - a. At any time during the Contract period, OHCA may order the Contractor by written notice to suspend all or any part of the work for such period of time as OHCA may determine to be necessary for the continuance of OHCA's mission. If, without any fault or negligence of the Contractor, the performance of all or any part of the work under Contract is, for a period of time in excess of thirty (30) State of Oklahoma business days, suspended, delayed or interrupted by an act of OHCA, or by their failure to act within the time specified in the Contract (or if no time is specified, within an agreed upon time), OHCA shall make an adjustment for any increase in the cost of performance of the Contract or in the schedule necessarily caused by the period of such suspension, delay, or interruption, subject to the Contractor's right to appeal OHCA's determination of the adjustment. No adjustment shall be made to the extent that performance by Contractor would have been prevented by other cause.
 - b. No claim for suspension, delay or interruption under this subsection shall be allowed for any costs incurred unless the Contractor makes a request in writing. Any such request must be made before the 31st day after the delay. Damages may not be received for more than twenty (20) days prior to the Notice from the Contractor.

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

G. TERMINATION

1. Either Party may terminate this contract in whole or in part for cause with a 30 day written notice to the other Party. Either Party may terminate this contract in whole or in part without cause with a 60 day written notice to the other Party. In the event of termination, payments will be made for all work satisfactorily performed up to the date of termination.
2. OHCA may terminate this Contract immediately, in whole or in part, with a written notice to Contractor when one of the following applies:
 - a. Funding of the Medicaid Program from the State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract;
 - b. Violations are found to be an impediment to the function of OHCA;
 - c. Conditions preclude the 30 day notice;
 - d. OHCA determines that an administrative error occurred prior to Contract performance; or,
 - e. Both Parties agree to terminate this Contract immediately without cause.
3. Upon termination of this Contract, Contractor or its estate shall return to OHCA all items belonging to OHCA. This may include, but is not limited, to computers, equipment, badges, and electronic documents or files.

H. RIGHT TO RENEGOTIATE

Prior to exercising the State's right to cancel a Contract, the State may renegotiate an existing Contract with a Contractor for the purpose of obtaining more favorable terms for OHCA, provided that the final contract effective date is not modified.

I. LAWS APPLICABLE

1. The Parties to this Contract acknowledge and expect that changes may occur over the term of this Contract regarding Federal and State Medicaid statutes and regulations, and other statutes and regulations governing the practice of health care professions. The Parties shall be mutually bound by such changes.
2. As applicable, Contractor shall comply with and certify compliance with:
 - a. Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*;
 - b. Rehabilitation Act, 29 U.S.C. § 701 *et seq.*;
 - c. Drug-Free Workplace Act, 41 U.S.C. § 8101 *et seq.*;
 - d. Title XIX and Title XXI of the Social Security Act, 42 U.S.C. § 1396 *et seq.* and § 2101 *et seq.*;
 - e. Civil Rights Act, 42 U.S.C. § 2000d *et seq.* and § 2000e *et seq.*;
 - f. Age Discrimination Act, 42 U.S.C. § 6101 *et seq.*;
 - g. Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*;

- h. Oklahoma Anti-Discrimination Act, 25 O.S. § 1101 *et seq.*;
- i. Oklahoma Worker’s Compensation Act, 85A O.S. § 1 *et seq.*;
- j. Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*;
- k. Equal Pay Act, 29 U.S.C. § 206(d);
- l. 31 U.S.C. § 1352 and 45 C.F.R. § 93.100 *et seq.*, which
 - i. Prohibit the use of Federal funds paid under this Contract to lobby Congress or any Federal official to enhance or protect the monies paid under this Contract; and,
 - ii. Require disclosures to be made if other monies are used for such lobbying;
- m. Presidential Executive Orders 11141, 11246, 11375, and 11478, and Amendments thereto, and 5 U.S.C. § 3501, and as supplemented in the Department of Labor regulations at 41 C.F.R. Subtitle B, Chapter 60, which together require certain Federal contractors and subcontractors to institute affirmative action plans to ensure absence of discrimination for employment because of age, race, color, religion, sex, sexual orientation, gender identity, disability, or national origin;
- n. The Federal Privacy Regulations and the Federal Security Regulations as contained in 45 C.F.R. Parts 160 through 164 that are applicable to such Party as mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH) (42 U.S.C. § 300jj *et seq.* and § 17921 *et seq.*);
- o. The American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), pursuant to Title XIII Of Division A and Title IV of Division B, called the “Health Information Technology for Economic and Clinical Health” (HITECH) Act, provides modifications to the HIPAA Security and Privacy Rule (hereinafter, all references to the “HIPAA Security and Privacy Rule” are deemed to include all amendments to such rule contained in the HITECH Act and any accompanying regulations, and any other subsequently adopted amendments or regulations);
- p. Vietnam Era Veterans’ Readjustment Assistance Act, 38 U.S.C. § 4212 and 41 C.F.R. Part 60-300;
- q. Protective Services for Vulnerable Adults Act, 43A O.S. § 10-101 *et seq.*;
- r. Non-procurement, debarment, and suspension, 2 C.F.R. Part 376;
- s. 74 O.S. § 85.44(B) and (C) and 45 C.F.R. §§ 75.320, 75.439, and 75.465 (as defined by 45 C.F.R. § 75.2);
- t. Anti-Kickback Act of 1986, 41 U.S.C. § 8701 *et seq.*;
- u. Oklahoma Anti-Kickback Act of 1974, 74 O.S. § 3401 *et seq.*;
- v. Federal False Claims Act, 31 U.S.C. §§ 3729-3733 and § 3801 *et seq.*;
- w. Oklahoma Medicaid False Claims Act, 63 O.S. § 5053 *et seq.*; and
- x. Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1313 and participation in the Status Verification System. The Status Verification System is defined at 25 O.S. § 1312 and includes, but is not limited to, the free Employment Verification Program (e-Verify) available at www.dhs.gov/E-Verify.

3. The explicit inclusion of some statutory and regulatory duties in this Contract is not intended to, and shall not be construed to, exclude other statutory or regulatory duties under applicable federal and/or State law.
4. All questions pertaining to validity, interpretation, and administration of this Contract shall be determined in accordance with the laws of the State of Oklahoma, regardless of where any service is performed.
5. The venue for civil actions arising from this Contract shall be in the District Court of Oklahoma County, Oklahoma. For the purpose of Federal jurisdiction, in any action in which the State of Oklahoma is a party, venue shall be in the United States District Court for the Western District of Oklahoma.
6. If any portion of this Contract is found to be in violation of State or Federal statutes, that portion shall be struck from this Contract and the remainder of this Contract shall remain in full force and effect.

J. FEDERAL REGULATIONS

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

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

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

K. AUDIT AND INSPECTION

1. As used in this Contract, “records” includes books, documents, accounting procedures and practices, and other data regardless of type and regardless of whether such items are in written or electronic form, in the form of computer data, or in any other form.
2. Contractor shall keep records as are necessary to fully disclose the extent of service provided under this Contract, and shall furnish records and information regarding any claim for providing such service to OHCA, the State Auditor & Inspector (SA&I), the Office of Management and Enterprise Services Central Purchasing Division (CPD), the U.S. General Accounting Office (GAO), the Oklahoma Attorney General’s Medicaid

Fraud Control Unit (MFCU), and the U.S. Secretary of the Department of Health and Human Services (hereinafter, referred to as "Secretary"). Contractor is required to retain records relating to this Contract for the duration of this Contract and for a period of seven (7) years following completion and/or termination of the Contract. If an audit, review, litigation, or other action involving such records is started before the end of this seven (7) 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.

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

L. CONFIDENTIALITY AND SECURITY OF PROTECTED HEALTH INFORMATION

1. To the extent any provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including, but not limited to, the Privacy Rule and the Security Rule, or the Health Information Technology for Economic and Clinical Health Act (HITECH) and its implementing regulations, affect the duties and responsibilities of this Contract, both Parties agree to these terms. Contractor acknowledges that in its role as Contractor, it may have or obtain access to protected health information (PHI), including, but not limited to, individually identifiable health information, some of which may be electronic protected health information (ePHI), both as defined by HIPAA. PHI shall hereinafter refer collectively to both PHI and ePHI.
2. Definitions for the Purposes of this Section:
 - a. HIPAA shall mean the Health Insurance Portability and Accountability Act of 1996, the Privacy Rule, and the Security Rule, and other administrative simplification provisions as contained in 45 C.F.R. § 160.103 and the HITECH Act of 2009.
 - b. The following terms used in this Contract shall have the same meaning as those terms in HIPAA: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, and Protected Health Information, Required by Law, Secretary,

Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

- c. Contractor is a “Business Associate” as defined by 45 C.F.R. § 160.103.
 - d. Discovery shall generally mean the first day a security incident or breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.
 - e. OHCA is a “Covered Entity” as defined by 45 C.F.R. § 160.103.
3. Obligations of Contractor:
- a. Contractor’s use of PHI is limited to the performance of duties and responsibilities under this Contract. Contractor acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Contract or as required by law. Specifically, Contractor agrees it will and will require its employees, agents, vendors, and subcontractor to:
 - i. Use or further disclose PHI only as permitted in this Contract or as required by law, including, but not limited to HIPAA.
 - ii. Ensure that SoonerCare member information is confidential and is not to be released pursuant to 42 U.S.C §1396a(a)(7), 42 C.F.R. §§ 431.300-431.306, and 63 O.S. § 5018. Contractor agrees not to release the information governed by these SoonerCare member requirements to any other person or entity without the approval of OHCA, or as required by law or court order.
 - iii. Ensure that SoonerCare member and provider information cannot be re-marketed, summarized, distributed, or sold to any other organization without the express written approval of OHCA.
 - iv. Implement and document appropriate technical, physical, and administrative safeguards and comply with 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of PHI other than as provided for by this Contract.
 - v. Protect the confidentiality, integrity, and availability of PHI that Contractor creates, receives, maintains, or transmits for or on behalf of OHCA in accordance with HIPAA and the terms of this Contract.
 - vi. Prevent, detect, contain, and correct security violations in accordance with HIPAA and use only the OHCA encrypted email address assigned to Contractor for all electronic transmission of PHI and all other transmission of any information arising out of this Contract.
 - vii. Not use, disclose, or otherwise make PHI available to any entity or individual who is not subject to the laws of the United States.
 - viii. Not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of OHCA.
 - ix. Report to OHCA any use or disclosure of PHI that is not permitted under this Contract as soon as reasonably practicable upon discovery, but not later than five (5) calendar days from discovery, and mitigate, to the extent

practicable and in cooperation with OHCA, any harmful effects known in connection with a use or disclosure made in violation of this Contract.

- x. Report potential known violations of 21 O.S. § 1953 to the OHCA Legal Division without delay and in no event later than five (5) calendar days after discovery of an unauthorized act. In general, this statute makes it a crime to willfully and without authorization gain access to, alter, modify, disrupt, or threaten a computer system.
- xi. Report to OHCA any security incident upon discovery within five (5) calendar days of knowledge of the incident, as defined in the Security Rule, with respect to PHI as required by 45 C.F.R. § 164.400 et seq. A security incident shall include, but is not limited to, unwanted disruption or denial of service, unauthorized use of a system for processing or storing PHI, or changes to system hardware, firmware, or software without Contractor's consent. Reports shall include successful security incidents.
- xii. With the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. § 164.412, notify OHCA in writing no later than five (5) calendar days upon the discovery of a breach of unsecured PHI as required in the HITECH Act, pursuant to the terms of 45 C.F.R. § 164.410. Such notice shall include, to the extent possible, the name of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, or disclosed during such breach. Contractor shall also, to the extent possible, furnish OHCA with any other available information that OHCA is required to include in any notification to individuals under 45 C.F.R. § 164.404(c) at the time of Contractor's notification to OHCA or promptly thereafter as such information becomes available. Contractor shall cooperate in OHCA's breach analysis procedures, including risk assessment, if requested.
- xiii. Mitigate, to the extent practicable, any harmful effect that is known to Contractor in connection with a use or disclosure of PHI by Contractor in violation of the requirements of this Contract.
- xiv. Ensure that disclosure of OHCA data, including, but not limited to a designated record set, be approved in advance by OHCA and then disclosed only to individuals expressly authorized to review such information under applicable Federal or State laws. If Contractor, employees, or subcontractors disclose(s) or attempt to disclose OHCA data without the requisite prior approval, OHCA may take any available remedy to prevent or mitigate any further disclosure. Contractor shall provide written notice to OHCA of any use or disclosure of OHCA data not provided for by this Contract of which Contractor becomes aware within five (5) calendar days of its discovery.
- xv. Notwithstanding anything to the contrary herein, promptly provide written notice to OHCA upon receipt of a subpoena or other legal process that seeks disclosure of OHCA data, so that OHCA may have the opportunity

to seek a protective order or other means of limiting or preventing such disclosure. Contractor shall, to the extent allowed by law, fully cooperate with OHCA's efforts to limit or prevent such disclosure. Contractor shall withhold from production, to the extent allowed by law, any data before OHCA has had an opportunity to review and/or respond further.

- xvi. To the extent Contractor is to carry out one (1) or more of OHCA's obligation(s) under 45 C.F.R. Part 164, Subpart E, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s).
- xvii. Contractor will make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
- xviii. To the extent allowed by law, indemnify and hold OHCA harmless from all claims, liabilities, costs, and damages arising out of or in any manner related to the unauthorized use or disclosure by Contractor, its employees, subcontractors, vendors, and agents of any PHI or breach by Contractor, its employees, subcontractors, vendors, and agents of any obligation related to PHI.
- xix. Provide access in a timely manner to PHI maintained by Contractor in a designated record set to OHCA, or if directed by OHCA, to an individual in order to meet the requirements of 45 C.F.R. § 164.524. In the event that any individual requests access to PHI directly from Contractor, Contractor shall promptly forward such request to OHCA. Any denials of access to the PHI requested shall be the responsibility of OHCA.
- xx. Make PHI available in a timely manner to OHCA for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.
- xxi. Document disclosure of PHI and information related to such disclosure as would be required for OHCA to respond to a request by an individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. § 164.528, and within five (5) calendar days of receiving a request from OHCA, make such disclosure documentation and information available to OHCA. In the event the request for an accounting is delivered directly to Contractor, Contractor shall promptly forward such request to OHCA.
- xxii. Make its internal policies, procedures, practices, books, and records related to the use and disclosure of PHI received from or created or received by Contractor on behalf of OHCA available to the Secretary of HHS, authorized governmental officials, and OHCA for the purpose of determining Contractor's compliance with HIPAA. Contractor shall give OHCA advance written notice of requests from DHHS or government officials and provide OHCA with a copy of all documents it makes available.

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

4. Permitted Uses by Contractor:

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

5. OHCA Obligations:

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

6. Obligations of Contractor upon Termination:

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

- a. Retain only that PHI that is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities pursuant to this Contract;
- b. Comply with the data transition requirements in the Turnover Plan as described in W: Turnover, including:
 - i. Transmit PHI that Contractor still maintains in any form to OHCA or another Contractor of OHCA at termination;
 - ii. After transmission to OHCA, securely destroy any remaining copies of PHI created, received, or maintained by subcontractors;
 - iii. Destroy the PHI that Contractor maintains in any form by an agreed upon date in the Turnover Plan; this date shall be known as the Retention Date;
 - iv. Dispose of all electronic storage media in accordance with the media sanitation procedures outlined in the State of Oklahoma Information Security Policy, Procedures, Guidelines, Appendix E, Section 3 that can be accessed at the following link:
<https://ok.gov/cio/documents/InfoSecPPG.pdf>;
 - v. Contractor shall send written certification of the destruction of the files to OHCA within 30 calendar days of the destruction.
- c. Continue to use appropriate safeguards and comply with 45 C.F.R. Part 164, Subpart C with respect to PHI to prevent use or disclosure of PHI, other than as provided for in this Section, for as long as Contractor retains any PHI;
- d. Not use or disclose PHI retained by Contractor other than for the purposes for which such PHI was retained and subject to the same conditions set out above at Subsection B.11.4 "Permitted uses and disclosures by Contractor" that applied prior to termination.

7. Survival

The obligations of Contractor under this Contract shall survive the termination of this Contract pursuant to the terms in Subsection 6.

8. Miscellaneous

- a. If Contractor maintains a designated record set in an electronic format on behalf of OHCA, then Contractor agrees that within thirty (30) days of written request, Contractor shall provide to OHCA a complete report of all disclosures from the designated record set covering the seven (7) years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures, description of what was disclosed, purpose of disclosure, name of individual who received the information, and, if available, what action was taken within the designated record set.
- b. Contractor shall provide encrypted e-mail communication when PHI is transmitted to OHCA. No direct connection or Virtual Private Network (VPN) to

OHCA will be used for this purpose nor will OHCA use individual e-mail certificates for its staff. Such encrypted e-mail will require a X.509 certificate that can be collected by the existing OHCA e-mail encryption system, so that e-mails can be decrypted automatically by OHCA. OHCA shall provide no additional hardware/software to Contractor for this purpose nor accept any Contractor provided hardware/software.

9. Security Controls

Media Controls - In the event that data is exchanged via the Internet or File Transfer Protocol (FTP) reasonable encryption and the employment of authentication/identification techniques are required for use in safeguarding data. Furthermore, OHCA reserves the right to audit any organization's implementation of, and/or adherence to the requirements, as stated in this Contract upon thirty (30) calendar days' notice during reasonable business hours. This includes the right to require that any organization utilizing the Internet or FTP for transmission of data submit documentation to demonstrate that it meet the requirements contained in this Contract

M. SOCIAL SECURITY ADMINISTRATION DATA (if applicable)

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

N. CONFIDENTIALITY AND SECURITY AWARENESS TRAINING

When Contractor staff access the OHCA network, Contractor shall annually complete the OHCA security awareness training on the OHCA Learning Management System (LMS).

O. DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES

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

P. INFORMATION SECURITY

1. The Contractor must sign Acceptable Use, Confidentiality, and Non-Disclosure agreements, and User Logon Authorization. The Contractor shall comply with information security auditing and compliance.
2. In the event that data is exchanged via the Internet or File Transfer Protocol (FTP) reasonable encryption and the employment of authentication/identification techniques are required for use in safeguarding data. Furthermore, OHCA reserves the right to audit any organization's implementation of, and/or adherence to the requirements, as stated in this Contract upon thirty (30) calendar days' notice during reasonable business hours. This includes the right to require that any organization utilizing the Internet or FTP for transmission of data submit documentation to demonstrate that it meet the requirements contained in this Contract.
3. MARS-E Compliance - Contractor agrees to comply with the latest version of the suite of documents entitled the Minimum Acceptable Risk Standards for Exchanges or "MARS-E." Alternatively, Contractor agrees to implement and maintain standards that at all times meet or exceed the latest MARS-E requirements, for example NIST 800-53 rev 4 (moderate system) would meet the requirements of the current MARS-E. Contractor further agrees to maintain a level of security that is commensurate with the risk and magnitude of the harm that could result from the loss, misuse, disclosure, or modification of the information contained on the system with the highest security levels.
4. Secure Transmission - Contractor will only transmit Personally Identifiable Information, Protected Health Information, and other confidential or sensitive data by secure transmission that must implement encryption products that have been validated under the Cryptographic Module Validation Program (see <http://csrc.nist.gov/groups/STM/cmvp/validation.html>) to confirm compliance with current and successor FIPS cryptology requirements as they are made final, in accordance with applicable federal laws, directives, policies, regulations, and standards. For example, FIPS 140-2 Level 4 is the current requirement and Contractor will comply with its successor publications when made final. OHCA will not provide additional hardware or software to Contractor for this purpose, nor will Covered Entity accept any Contractor provided hardware/software.

5. The Contractor will comply with Federal Information Processing Standards – FIPS 200 which promotes the development, implementation, and operation of secure information systems within governmental agencies by establishing minimum levels of due diligence for information security controls for information systems.

Q. INFORMATION TECHNOLOGY ACCESS CLAUSE (if applicable)

1. Contractor shall comply with federal and state laws, rules, and regulations related to information technology accessibility, as applicable, including but not limited to Oklahoma Information Technology Accessibility Standards set forth at http://www.ok.gov/cio/documents/isd_itas.pdf and Contractor shall provide a Voluntary Product Accessibility Template (VPAT) describing such compliance, which may be provided via a URP linking to the VPAT.
2. If the products will require development or customization, additional requirements and documentation may be required and compliance shall be necessary by the Contractor. Such requirements may be stated in appropriate documents including but not limited to state bids, request for proposals, statements of work, riders, agreements, purchase orders and amendments. Accordingly, in each statement of work or similar document issued pursuant to this Contract, Contractor shall describe compliance and identify, if and as applicable, 1 which exception to the Standards applies or 2 a description of the tasks and estimated costs to make the proposed products and/or services compliant with applicable Standards.
3. All representations contained in the VPAT provided will be relied upon by the State for accessibility compliance purposes.
4. Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the product, system or application developed and/or customized by Contractor from any claim arising out of Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

R. STATE AGENCY ACQUISITION OF CUSTOMIZED COMPUTER SOFTWARE [62 O.S. §34.31], if applicable

1. No State agency, as defined by 75 O.S. §250.3, nor OMES, unless otherwise provided by federal law, shall enter into a contract for the acquisition of customized computer software developed or modified exclusively for the agency or the state, unless Contractor agrees to place into escrow with an independent third party the source code for the software and/or modifications.
2. Contractor shall place the source code for the software and any upgrades supplied to an agency in escrow with a third party acceptable to OHCA and to enter into a customary source code escrow agreement which includes a provision that entitles OHCA to receive everything held in escrow upon the occurrence of any of the following:

- a. A bona fide material default of the obligations of Contractor under this Contract with OHCA;
 - b. An assignment by Contractor for the benefit of its creditors;
 - c. A failure by Contractor to pay, or an admission by Contractor of its inability to pay, its debts as they mature;
 - d. The filing of a petition in bankruptcy by or against Contractor when such petition is not dismissed within sixty (60) days of the filing date;
 - e. The appointment of a receiver, liquidator or trustee appointed for any substantial part of Contractor's property;
 - f. The inability or unwillingness of Contractor to provide the maintenance and support services in accordance with this Contract; or,
 - g. The ceasing of maintenance and support of the software;
3. The fees of any third-party escrow agent subject to this Section shall be borne by Contractor.

S. DISASTER RECOVERY PLAN

1. Contractor shall submit a plan that addresses business continuity and disaster recovery related to emergency situations to OHCA for approval before starting operations; the submission deadline date shall be agreed upon by both parties. The plan shall include at least the following aspects of disaster recovery: communications, and the following if Contractor performs services for this Contract offsite from OHCA's premises:
 - a. Physical plant security;
 - b. Data security;
 - c. Data recovery; and,
 - d. Fire/disaster prevention and recovery procedures.
2. Each aspect included within the disaster recovery plan shall describe both Contractor and OHCA responsibilities.
3. Contractor may include resources outside Oklahoma but within the continental United States as part of this plan. If applicable, the plan shall satisfy all requirements for Federal certification.
4. The plan shall be maintained and updated by Contractor throughout the term of the Contract, and shall be available for review by State or Federal officials on request.

T. OFFSHORING

1. Contractor shall not enter into any subcontract which uses any public funds within its control to purchase services which will be provided outside the United States. This reflects prohibition on the purchase of offshore services. The service provider shall:
 - a. Disclose the location(s) where all services will be performed by Contractor and subcontractor(s);

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

U. OWNERSHIP OF MATERIALS

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

V. PUBLICITY

The award of this Contract to Contractor is not in any way an endorsement by OHCA of Contractor the products, and shall not be so construed by the Contractor in any advertising or publicity materials. The Contractor agree to submit to OHCA all advertising, sales, promotion, and other publicity matters relating to this Contract wherein OHCA's name is mention or language used from which the connection of OHCA's name therewith may, in OHCA's judgment, be inferred or implied as an endorsement. Contractor further agrees not to publish, or use such advertising, sales promotion, or publicity matter, or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Contract without obtaining the prior written approval of OHCA.

W. TURNOVER

1. At a timeframe specified by the State prior to the conclusion of this Contract, or in the event Contractor ceases to do business, Contractor shall provide, at no extra charge, assistance in turning over the operations to OHCA or its agent. Contractor shall provide a draft Turnover Plan which includes at least the following:
 - a. Proposed approach to turnover;
 - b. Identification of State-owned equipment and/or furnishings;
 - c. Identification of documentation in Contractor's possession that is necessary for the operation of services under this Contract;
 - d. Description of the format and method of transfer Contractor will use to transfer all data pertaining to services performed for this Contract to OHCA. Format and transfer method are subject to OHCA approval;
 - e. Turnover tasks and schedule;
 - f. A template turnover status report;
 - g. Acceptance criteria for turnover activities; and
 - h. Estimated date that all data in Contractor's possession will be turned over to OHCA.
2. OHCA and Contractor shall work together to develop the Turnover Plan.
3. Contractor shall not begin work on turnover activities until OHCA approves the Turnover Plan.
4. At the turnover date, to be determined by OHCA, Contractor shall provide to OHCA or its agent the following:
 - a. All documentation and records that will be required by OHCA for continuity of services under this Contract; and
 - b. Certification that all data in Contractor's possession has been turned over to OHCA.
5. OHCA may begin withholding 15% of the total invoice amount each month no more than six (6) months prior to the conclusion of this Contract for the following deliverables:
 - a. Approved Turnover Plan – OHCA may withhold five percent (5%) of each monthly invoice until the Turnover Plan is approved. Upon approval, Contractor shall invoice OHCA the total amount withheld; and,

- b. Approved Operations Turnover – OHCA may withhold ten percent (10%) of each monthly invoice until the completed turnover of operations is approved by OHCA. Upon approval, Contractor shall invoice OHCA for the total amount withheld.

X. PERFORMANCE BOND

1. MMIS Bond

- a. Contractor(s) shall be required to furnish a performance bond in the amount of \$5,000,000.00 within 10 calendar days of the effective date of this Contract to guarantee performance in accordance with the conditions and specifications of this RFP and the contract. A certified check, cashier's check, or certificate of deposit would be acceptable in lieu of a performance bond.
- b. Prior to acceptance of the performance bond, OHCA reserves the right to review the bond and may require Contractor(s) to substitute a more acceptable bond in such form as may be required.
- c. Failure to provide a performance bond within the required time shall be cause for termination of the contract.
- d. In the event of termination for default, the performance bond shall become payable to OHCA for any outstanding damage assessments against Contractor(s). Up to the full amount of the performance bond may also be applied to Contractor's liability for any administrative costs and/or excess costs incurred by OHCA in obtaining similar equipment or services to replace those terminated as a result of the default. OHCA may seek other remedies under law in addition to this stated liability.
- e. The performance bond shall also become payable to OHCA if this Contract is terminated due to bankruptcy on the part of Contractor(s), whether voluntary or involuntary.

2. NET Broker Bond

- a. Contractor shall furnish a performance bond payable to the State of Oklahoma and OHCA. The amount of the bond will be determined annually after each year's contract rate proposal (PMPM rate) is accepted by multiplying the annual contract rate by three (3) times the prospective average monthly membership for the contract year as determined by OHCA. This will result in an amount that approximates 1/4 of the annual contract amount. The bond shall be submitted within thirty (30) calendar days of this Contract award or renewal to guarantee performance in accordance with the conditions and specifications of this RFP and the Contract. A certified check, cashier check, or certificate of deposit is acceptable in lieu of a performance bond. Failure to provide a performance bond within the required time shall be cause for termination of the contract.
- b. In the event of termination for default, the performance bond shall become payable to the State from any outstanding damage assessments against Contractor. Up to the full amount of the performance bond may also be applied to Contractor's liability for any administrative costs and/or excess costs incurred by OHCA in obtaining similar equipment or services to replace those terminated as a result of the default. OHCA may seek other remedies under law in addition to this stated liability.

- c. The performance bond shall also become payable to the State if this Contract is terminated due to bankruptcy on the part of Contractor, whether voluntary or involuntary.

Y. DISCLOSURE OF OWNERSHIP (if applicable)

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