**Attachment C-2**

**Oklahoma State Department of Health**

**Agency-Specific Terms and Conditions**

1. **Audit Compliance**

The Supplier, at the request of the Comptroller General of the U.S. or other Federal officials or the OSDH or State Auditor, provides books, records, documents, accounting procedures, practices or any other items of the service provider relevant to the contract for examination.

The Supplier shall allow, support, and comply with results of any and all audits as may be required by the OSDH or other government agency.

Any findings identified in any final audit report shall be remedied completely and expediently.

The Supplier shall have 60 working days after final report submission to respond with a remediation plan for the identified findings. Failure to comply with the requirements of this standard may result in funding being withheld from the entity, and/or full audit and inspection of the entity’s compliance as it pertains to this contract.

1. **Cancellation Clause**

The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State’s best interest. In the event of a termination for convenience, Supplier will be provided at least one hundred eighty (180) 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.

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

1. **Conformance with State and Federal Laws and Regulations**

The Supplier shall comply with all Oklahoma and Federal laws, regulations, and policies as they exist or as amended which are or may be applicable to the contract including those not specifically mentioned in the contract. Work performed under the contract must conform to the Federal requirements set forth in [7 CFR Part 246](https://www.fns.usda.gov/part-246%E2%80%94special-supplemental-nutrition-program-women-infants-and-children) .

1. **Contact Persons**

For purposes of the contract, all contacts with the OSDH shall be directed to its representative Contract Monitor. The contact name and information shall be provided with the award documentation.

1. **Contract Monitoring Plan**

As a vendor with the OSDH, the contract will be monitored to ensure compliance with the terms and conditions outlined in the contract. Typical monitoring activities may include Supplier site visits, review of contractually required deliverables, invoice review, and verification of licensure and/or insurance required and other monitoring activities.

All communications related to the contract will be between the Supplier’s Contact Person and the OSDH Contract Monitor. The OSDH Contract Monitor for the contract shall be provided with the award documentation.

1. **Contractor’s Relation to the OSDH:**

The Supplier is in all respects an independent Contractor and is neither an agent nor an employee of the OSDH. Neither the Supplier 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 Supplier shall notify the OSDH Contract Monitor of the change in relationship.

1. **Cooperation with Other Parties**

Supplier shall cooperate fully with any other Suppliers, consultants, or other parties that may be engaged by the State in connection with the Contract and permit access by all such other parties, as requested in writing by the State, to any records and procedures that may be in the possession or control of Supplier.

1. **Corporate Sale or Company Takeover**

In addition to the terms contained in Attachment B, Section 13 (Assignment and Permitted Subcontractors), in the event of a Corporate sale or Company takeover of a majority ownership in Supplier by a person or entity that did not have such ownership interest on the day before the effective date of the resulting Contract, Supplier shall ensure that it or its successor organization continues to perform its duties under this contract. Supplier must inform all parties interested in buying or taking majority control of its business of its obligation to continue performing under this Contract, and shall not agree to any sale or takeover of its business without assuring that this Contract will continue to be performed until the term has expired.

1. **Disclaimer**

All statistical and fiscal data contained in the RFP and any addenda, appendices, or attachments of this contract reflect the data currently available to the State at the time the above noted documents were prepared. The State does not guarantee the accuracy of any statistical or fiscal estimates or projections or information not generated by the State and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in projections, estimates or information generated by the Supplier, its representatives or subcontractors. The State does not guarantee that future caseloads will be similar to historic caseloads.

1. **Drug-Free Workplace**

The Supplier certifies compliance in providing or continuing to provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988, and implemented at 45 CFR Part 76, Subpart F, for grantees, as defined at 45 CFR Part 76, Sections 76.605 and 76.610 and 7 CFR Part 3021.200 through 3021.230.

1. **Electronic Signatures/Execution in Counterparts**

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.

1. **Enhancements and Modifications**

The State may request project changes or modifications not otherwise specified or required.  Such requests shall be in writing and signed by an authorized representative of the OSDH. The Supplier shall have no more than 30 calendar days in which to respond to the request and provide the cost of system changes, scheduled timeframe for completion of the request, any impact to meeting the established project timeline and any impact to previously approved system changes that have not been completed. If additional time is required to complete the estimate, the Supplier shall provide the proposed response date within 2 weeks of receipt of the enhancement and/or change request.  However; the extension shall never exceed more than 60 calendar days. The State will have 10 calendar days in which to accept or reject the cost proposal from the Supplier. If approved, the Supplier will prepare detailed descriptions of the change requested which must be approved by the State before any programming occurs. The State will not be responsible for the cost to the Supplier for providing cost and implementation timelines on system enhancements. The Supplier will provide a monthly written description of all enhancements requested by the OSDH.

Any modifications or amendments to the contract shall be in writing and agreed to by both the Supplier and the OSDH. All Enhancements or modifications that impact the WIC EBT system may also require the approval of FNS.

1. **Environmental Protection**

If the payments pursuant to the contract are expected to exceed $100,000.00, then the Supplier must comply with the Section 306 of the Clean Air Act (42 U.S.C. 1857 (L), Section 508 of the Clean Water Act (33 U.S.C. 1638), Executive Order 11738, and Environmental Protection Agency Regulations (40 C.F.R. Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

1. **Equal Opportunity and Discrimination**

The Supplier is an Equal Opportunity Employer, a provider of services and/or assistance, and is in compliance with the 1964 Civil Rights Act, as amended, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended and Executive orders 11246 and 11375. The Supplier assures compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), all amendments to, and all requirements imposed by the regulations issued pursuant to this act.

1. **Equipment and Other Purchases**

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 Supplier for financial statement purposes, or $5000.

1. **Event of Default\***

The OSDH may withhold payment or terminate the contract in whole or in part in the event (i) it has provided Supplier with written notice of material breach, and (ii) Contractor fails to cure such material breach within thirty (30) days of receipt of written notice. If the contract or certain obligations under the contract are terminated, the OSDH shall be liable only for payment for products or services delivered and accepted prior to the date of 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. In no event shall the OSDH be liable to the Supplier, for compensation for any products or services provided by Contractor neither requested nor accepted by the OSDH. Any partial termination of the contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of the Supplier or the OSDH regarding portions of the contract that remain in effect.

 \*Exception to standard cancellation clause of one hundred eighty calendar (180) days’ notice.

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

A. As a condition of this contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below. Such proof of coverage shall be provided to the OSDH Procurement if services will be provided by any of Supplier’s employees, agents or subcontractors at any State premises and/or employer vehicles will be used in connection with performance of work for the OSDH. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall promptly provide proof to the OSDH Procurement of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the contract is a continuing obligation through the term of the contract and each purchase order issued to Supplier in connection with the contract. The minimum acceptable insurance limits of liability are as follows:

1. Workers’ Compensation and Employer’s Liability Insurance in accordance with and to the extent required by applicable law;
2. Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate;
3. Automobile Liability Insurance with limits of liability of not less than $1,000,000 per occurrence and in the aggregate, with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles;
4. Professional Errors and Omissions Insurance which shall include Consultant’s Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than $1,000,000 per claim and in the aggregate;
5. Medical Malpractice insurance, if applicable;
6. Comply with applicable Federal and State occupational disease statutes. If occupational diseases are not covered under those statues, they shall be covered under the employer’s section of the insurance policy; and
7. Additional coverage required by State in writing in connection with a particular purchase or service.

B. Supplier shall be entirely responsible during the existence of the contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers’ Compensation. The OSDH shall not be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers’ Compensation or any benefit available to a State employee.

C. Supplier agrees to indemnify and hold harmless the OSDH and its employees, agents, representatives, contractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs and expenses and attorneys’ fees relating to tax liability, unemployment insurance and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs and expenses and attorneys’ fees relating to tax liability, unemployment insurance and/or Workers’ Compensation in connection with its performance under the Contract.

If the Supplier 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.), and not that of an employee, the Supplier 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..

1. **Failure to Comply Statement**

The Supplier shall be subject to all applicable state and federal laws, rules and regulations, and all amendments thereto. The Supplier agrees that should it be in noncompliance, the 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 Supplier, without reliance on or direction by the OSDH.

1. **Force Majeure**

Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under the contract if and to the extent that such party's performance of the contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force Majeure shall include acts of God, war, riots, strikes, fire, floods, or other similar occurrences. Force Majeure shall not include, or be related to, the following occurrences:

Late delivery of equipment, supplies or materials or an oversold condition of the market.

Inability of either the Supplier or approved subcontractor to acquire or maintain any required insurance, bond, license or permit.

Notification: If either party is delayed by Force Majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the Force Majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of it shall be provided. The time of completion for the suppliers’ performance may be extended by contract modification for a period of time as determined by the State Purchasing Director equal to the time that the results or effects of such delay prevented the supplier from performing in accordance with this contract.

Rights Reserved: The state reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of Force Majeure and Supplier shall have no recourse against the state.

1. **HIPAA and Data Privacy Rule**

Incorporated herein in its entirety, and made a part of this contract, is the attached Business Associate Agreement (Exhibit 2 to Attachment C-2) signed between the parties.

1. **Information Security**
2. State of Oklahoma – Title 62, Chapter 1, Section 41.5v – Security Risk Assessments:

In accordance with this Oklahoma State law, all entities that are hosting, storing, accessing, utilizing, managing, or manipulating data or information systems of the OSDH shall adhere to Section 41.5v.  Each entity must annually perform an information security risk assessment due to the Director of WIC Service by the first day of November of each year for private entities and by the last day in January for public entities. The final information security risk assessment report shall identify, prioritize, and document information security vulnerabilities of the entity. The entity is granted 60 working days after final report submission to respond with a mitigation plan for the identified security vulnerabilities. Failure to comply with the requirements of this standard may result in funding being withheld from the entity, and/or full audit and inspection of the entities security compliance as it pertains to this contract. Entities shall use either the standard security risk assessment created by the Office of State Finance or a third-party risk assessment meeting the ISO/IEC 17799 standards and using the National Institute of Standards and Technology Special Publication 800-30 (NIST SP800-30) process and approved by the Office of State Finance. The text of the Oklahoma State Statute is found on the Oklahoma Legislature Information System website in the Oklahoma State Statutes and Constitution webpage (www.lsb.state.ok.us).

1. State of Oklahoma – Title 74, Chapter 49, Section 3113.1:

Disclosure of Security Breach of Personal Data - In accordance with this Oklahoma State law, all entities that are hosting, storing, accessing, utilizing, managing, and/or manipulating data or information systems of the OSDH shall adhere to the requirements of Section 3113.1.  Each entity shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of Oklahoma whose encrypted or unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay to the Director of WIC Service. The entity must deliver a final report of the breach post-mortem, citing the reason, sources, affected records, and mitigation plans or actions within 10 business days of breach discovery. Failure to comply with the requirements of this standard may result in funding being withheld from the entity, and/or full audit and inspection of the entity’s security compliance as it pertains to this contract. The text of the Oklahoma State Statute is found on the Oklahoma Legislature Information System website in the Oklahoma State Statutes and Constitution webpage ([www.lsb.state.ok.us](http://www.lsb.state.ok.us)).

1. Federal Information Processing Standards – FIPS 200:

This standard promotes the development, implementation, and operations of secure information systems within governmental agencies by establishing minimum levels of due diligence for information security and facilitating a more consistent, comparable, and repeatable approach for selecting and specifying security controls for information systems that meet minimum security requirements. Failure to comply with the requirements of this standard may result in funding being withheld from the entity, and/or full audit and inspection of the entity’s security compliance as it pertains to this contract. This publication is available from the NIST Computer Security Division web site at [http://csrc.nist.gov/publications.](http://csrc.nist.gov/publications. )

1. SOC Audit

The Supplier will have annual System and Organization Controls (SOC), Type 1 and Type 2 audits of the service processor's controls over WIC’s Electronic Benefit Transfer Program. The report on the examination will assess the policies and procedures placed in operation over WIC’s EBT Program and tests of the operating effectiveness of those controls. The areas subject to review should include the following: Most recent 12 months, Control Environment, Access Controls, Computer Operations-Processing, Computer Operations-Data Transmission, Computer Operations-Output, EBT Control-Processing, EBT Controls-Settlement, EBT Controls-Transactions Received from Authorized Sources, EBT Controls—Transaction Amounts and Recording, Physical Environment, Systems Development and Maintenance and Contingency Planning. Three copies of the annual SOC audit reports shall be submitted to the Oklahoma State Department of Health, WIC Service 123 Robert S Kerr Avenue Suite 1702 Oklahoma City, Oklahoma 73102, within 90 calendar days of the end of the examination period.

1. **Inspection, Acceptance, and Delivery**

### Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination and any that do not meet or exceed the specifications may be rejected. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

### The OSDH shall be given up to ninety (90) days from the final completion of the installation (if installed by the Supplier) or up to ninety (90) days after delivery if the OSDH installs (using the Supplier’s installation documentation or with the Supplier working on-site with OSDH staff) to test, evaluate, and accept the materials, software, and services (collectively, the deliverables) delivered or furnished under this contract.

### If the Supplier’s product or services fail to meet the specifications, then the same may be rejected and returned to the Supplier with a letter stating the reasons for non-acceptance.  Such rejection will exempt the OSDH from all related costs incurred by the Supplier.  The Supplier shall be given thirty (30) days to cure the nonconforming products or services and re-submit the deliverable(s) to the OSDH, with a letter explaining the corrections made, for inspection, re-testing, and re-evaluation.  The OSDH shall be given thirty (30) days to inspect, re-test, and re-evaluate the deliverable(s), and to issue a written notice of acceptance or rejection of the deliverables.  If the deliverables submitted fail to pass acceptance within ninety (90) days, the OSDH may, at its sole discretion, continue with the Supplier or terminate the agreement.

### Deliverables must be accepted in writing by the OSDH before title shall pass to the OSDH or payment shall be authorized.

### 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 Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier’s expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy

### The State of Oklahoma and its authorized representatives shall, at all reasonable times, have the right to enter the Supplier's work areas to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work or services being performed.

1. **Invoicing**

A properly completed invoice must be submitted within 30 calendar days of the completion of a deliverable and, during the final phase of the project, the end of the month in which services were delivered and include the following items:

1. name, address and FEI number of the Supplier,
2. invoice date,
3. period covered by invoice,
4. purchase order number,
5. any other data, reports, information or documentation required by other conditions of the contract,
6. detail of the services provided and be in accordance with the terms and conditions of this agreement,
7. for invoices involving payment for the Supplier’s time, the invoice must be notarized 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 the OSDH.

An Active Family Household is defined as:

1. A unit receiving benefits through a single client EBT account for which a benefit authorization has been posted and made available during the billing month;
2. An active household may only be counted once per month regardless of the number of postings made on the case.
3. Billing shall be based on the date benefits are made available to the client, in the event the benefit posts at the end of the month but benefits are not available to the client until the following month.

The OSDH shall not be charged for households that have had no benefit authorization activity (credits) posted and made available during the billing month.

At the end of the contract, the State will hold back the final payment until the Supplier successfully completes all transition requirements, including but not limited to, transferring project documentation that accurately describes the EBT systems on the date of award.

The invoice shall be submitted to:

OKLAHOMA STATE DEPARTMENT OF HEALTH

WIC Service  Attn:  Jennifer Ortiz

123 Robert S. Kerr Ave., Suite 1702

Oklahoma City, Oklahoma 73102-6406

The State of Oklahoma has 45 calendar days from presentation of a proper invoice to issue payment to the Supplier.

**The OSDH may withhold or delay payment to any Supplier failing to provide required programmatic documentation and/or requested financial documentation.**

**The OSDH reserves the right not to process invoices submitted by the Supplier to OSDH more than 30 days after the month in which services were delivered. The OSDH will not pay invoices received more than sixty (60) days after the end of the applicable contract period.**

1. **Liaison**

The Supplier shall provide reasonable assistance as requested by the State in maintaining liaison and coordination with groups, committees, or similar bodies, which are interested in the performance or objectives of the Contract.

1. **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 Contractor 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 Contractor 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 shall result in termination of the contract.

1. **Lobbying**

The Supplier certifies compliance with the Anti-Lobbying law, Section 1325, Title 31 of the U.S. Code, and implemented at 45 CFR Part 93, for persons entering into a grant or cooperative agreement over $100,000.00 as defined at 45 CFR 93, Section 93.105 and 93.110.

1. **Meetings**

Supplier shall notify the Contract Monitor prior to scheduling or agreeing to participate in a meeting between Supplier and non-state parties related to this Contract. For the purpose of this paragraph, “meeting” shall include but not be limited to a telephone conference call. Such notice shall be in writing and shall be delivered prior to scheduling or agreeing to participate in the meeting. The State will respond to the notice within a reasonable period. The State may, at its option, participate in any meeting or require the Supplier to re-schedule any meeting to allow for State participation.

1. **Other Certifications**

The Contractor certifies compliance with the provisions of the 1964 Civil Rights Act, Education Amendment of 1972; Section 504 of the Rehabilitation Act 1973; the Age Discrimination Act of 1975; the Hatch Act; the Pro Children Act of 1994; Drug Free Workplace Act of 1988; the American with Disabilities Act of 1990; Title IX or the Education Amendments of 1972; 31 U.S.C. Section 1352, Public Law 105-78; Section 503 of Division F, Title V, of the FY12 Consolidated Appropriations Act; 41 U.S.C. 4712 and the National Defense Authorization Act (NDAA) for Fiscal year (FY) 2013; Contract Work Hours and Safety Standards Act (40 U.S. C. 3701-3708); Anti-Lobbying Law (31 U.S.C. 1325); Internal Revenue Service Publication 1075 (regarding use, access and disclosure of Federal Tax Information); the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended; mandatory standards and policies relating to energy efficiency as outlined in the State of Oklahoma’s energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201); 2 CFR § 200.112 (Conflict of Interest); 2 CFR § 200.113 (Mandatory Disclosures); 2 CFR § 200.322 (Procurement of Recovered Materials); registered as business entity licensed to do business in the State, having obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable; and, the Single Audit Act of 1984; as applicable.

Supplier shall be subject to all applicable state and federal laws, rules and regulations, and all amendments thereto. Supplier agrees to devote special attention to its responsibilities under state statutes; observance of the compliance with the requirements therefore shall be the responsibility of the Supplier, without reliance on or direction by the Department. This includes, but is not limited to, total compliance with the Privacy Act of 1974, Public Law 93-579, 5 US Code 552a.

In addition, Supplier certifies compliance with the Assurance of Civil Rights Compliance attached as Exhibit 1 to Attachment C-2.

1. **Ownership of Tangible Property**

Supplier shall be responsible for the proper custody and care of any State-owned personal tangible property furnished for Supplier’s use in connection with the performance of the Contract, and Supplier will reimburse the State for such property’s loss or damage, normal wear and tear excepted.

1. **Privacy Clause**

The Supplier shall, at all times, maintain confidential all information pertaining to any person, patient, or client with whom it has a professional relationship, contact or contract. No information shall be released to any person or party not directly employed by the Supplier without first obtaining such persons, patients or client's expressed written consent therefore. Confidential information pertaining to any minor shall not be released to any person or party without the express written consent of a custodial parent, court appointed guardian, court authorized foster parent, or authorized self-consenting minor, subject however, to all applicable state and federal statutes, rules and regulations.

1. **Service Levels and Liquidated Damages**
2. The Supplier agrees to the importance of this contract and performance standards agreed to herein. The OSDH and the Supplier agree that in the event of failure to meet the contract requirements, deliverable dates or any standard performance within the time set forth under each Section, damage shall be sustained by the OSDH and that it may be impractical and extremely difficult to ascertain and determine the actual damages which the OSDH will sustain by reason of such failure. It is therefore agreed that the OSDH, at its sole option, may require the Supplier to pay liquidated damages for such failures with the following provisions:
3. Where the failure is due to (i) the sole and exclusive fault of the OSDH, (ii) the failure of third parties outside of Supplier’s reasonable control, or (iii) a *force majeure* event, no liquidated damages shall be imposed.
4. For any failure by the Supplier to meet any performance standard, project task, project deliverable date or timeframes specified in any section of the contract, the OSDH may require the Supplier to pay liquidated damages in the amount specified below per business day, per task, per deliverable, performance standard or timeframe for each and every business day thereafter until such task, deliverable or performance standard is completed and accepted by the OSDH.
5. The Supplier agrees that there are some failures that so negatively impact our customers and clients that no advance notification will be provided before damages are imposed, these shall be agreed upon in writing by the OSDH and the Supplier prior to award of the contract. For all other standards and tasks written notification of failure to meet a requirement shall be given by the OSDH Contract Monitor to the Supplier (e-mail shall be an acceptable form of written notification). The OSDH will notify the Supplier of the first incident of failure to meet one or more of the defined standards and request a corrective action plan. The OSDH will set a date for submission of the plan. If the OSDH does not receive the plan by the due date and no extension has been granted, the OSDH may, at its sole discretion invoke the appropriate remedy per this schedule.
6. If the OSDH receives the plan by the due date, it will cooperate with the Supplier to achieve a mutually agreed upon final corrective active plan and schedule. The OSDH may, at its sole discretion, invoke the appropriate remedy if the Supplier does not meet the schedule and no extension has been granted.
7. The Supplier shall have:
   1. Five (5) business days to correct any delayed project task or project deliverable related to the transition to the new EBT system. The OSDH may impose $5,000 per deliverable after five business days;
   2. Five (5) business days to correct any delayed task related to the on-going maintenance of the EBT system. The OSDH may impose $5,000 per task after five business days;
   3. Twenty-four (24) hours to provide required reports or to correct reports that contained inaccurate information. The OSDH may impose $1,000 per occurrence, per day;
   4. Twenty-four (24) hours to transmit missing data files or to submit corrected files for previously transmitted files that contained inaccurate information. The OSDH may impose $5,000 per occurrence;
8. The OSDH and the Supplier agree that the following chart represents the reasonable pre-breach estimate of probable loss that will be sustained by the OSDH for each EBT failure of Supplier to achieve the required service levels.
9. The parties may elect to use any or all remedies available to them on default whether set forth above or otherwise available to them by law. The OSDH will make every endeavor to resolve any disputes through the informal resolution dispute process.

**Service Level Agreements and Liquidated Damages.**

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| --- | --- |
| **Service Level** | **Liquidated Damage** |
| **System Availability** |  |
| WIC EBT central processing system shall be available 99.9% of scheduled up time measured on a calendar month basis; Scheduled uptime shall mean the time the database is available and accessible for transaction processing, this includes EBT system network connections, database processor,  central computer facilities and excludes scheduled downtime for routine maintenance.  The total system under the Supplier’s control, either directly or contractually, including central computer, any network, intermediate facilities, or processor, shall be available 99.9% of scheduled up time measured on a calendar month basis. | $5,000 for each percentage point below the tolerance levels on system availability requirements |
| **Settlement and Reconciliation** |  |
| The host computer shall permit no more than two (2) inaccurate transactions per 50,000 transactions processed for WIC EBT.  Benefit authorizations to EBT accounts and ACH settlement shall occur accurately and on schedule 100% of the time. | $10,000 per occurrence for any system/operator error that results in inaccurate settlement or inability to access benefits. Further, the OSDH shall reduce invoices to offset any OSDH staff Costs in resolving system/operator error  All benefits for current period will be posted real time from the time the benefit file is received and processed by Bidder on a daily basis. Benefits will be made available at 12:01 am CST on the benefit availability date. |
| **Help Desk – Participant, Retailer, State Office** |  |
| Automated Response Unit (ARU) measured over the calendar month: At a minimum 99% of all calls will be answered within 4 rings (4 rings are defined as 25 seconds) and the remaining 1% shall be answered within 35 seconds.  Average Speed of Answer (ASA) and the abandoned calls for a Customer Service Representative (CSR) shall be as follows and shall be measured over a calendar month: At a minimum, 98 % of all calls will be answered within 25 seconds, and the remaining 2% shall be answered within 40 seconds with an abandon rate not to exceed 3%. Abandoned calls are considered calls not answered in more than 40 seconds and when the caller hangs up after 40 seconds. | $2,500 for each percentage point below the tolerance levels on Help Desk requirements |
| **Retailer Support** |  |
| All WIC EBT POS (Point of Sale) systems that are reported as defective will be repaired or replaced within 2 business days. All POS devices are tracked to ensure 2 day delivery to retailer. Tracking numbers and delivery dates are provided on an as needed basis. | $500 per day for every failure to comply with the standard. |
| **Operational and Project Management** |  |
| Supplier has certain responsibilities that are critical to the success of EBT operations. Damages specific to the tasks considered by OSDH to be mission critical are itemized here with an associated level of damage. Note that some of these damages are subject to a cure period stated elsewhere in the contract. | $15,000 if Supplier changes Project Managers at any time during transition or conversion without good cause as determined by the OSDH.  $500.00 per day for all manuals or documents not updated within 30 calendar days of changes;  $500.00 per day for failure to submit enhancement quotes and impact statements within agreed upon timelines;  $2,500 per day for any unavailable test systems.  $2,500 per day for any item listed in the contract and not specifically stated above;  $10,000 per occurrence for making any changes in the production system without the express written approval of the Contract Monitor and Director of WIC Service. Further, the OSDH shall reduce invoices to offset any OSDH staff Costs in resolving issues arising from this action;  Any delayed project task or project deliverable related to the transition or conversion to the new EBT system.  The OSDH may impose $5,000 per deliverable after five business days;  Any delayed task related to the on-going maintenance of the EBT system. The OSDH may impose $5,000 per task after five business days;  24 hours to provide required reports or to correct reports that contained inaccurate information. The OSDH may impose $1,000 per occurrence, per day commencing on the business day following the date in which the corrected report was due.  24 hours to transmit missing data files or to submit corrected files for previously transmitted files that contained inaccurate information. The OSDH may impose $5,000 per occurrence commencing on the business day following the date in which the corrected data file was due. |

1. **Transitional Services**

Supplier agrees that, regardless of the reason for termination, the Supplier agrees that it will perform all the requirements of the contract until the State can successfully migrate to a new Supplier, including working with the new Supplier to cooperate with and facilitate any transition as outlined in Exhibit 2.

1. **Travel and Related Expenses**

All travel expenses incurred by the Supplier that are associated with the execution of the contract shall be included in the fees payable to the Supplier.