

Addenda 8

Provider Agreement

PROVIDER AGREEMENT

FOR INTERNAL USE ONLY

Agreement Number: OKDAYC-00-_____

Provider State License No.: _____

Contract No.: _____

Effective Date:

This **Agreement** is made by and between the Awarded Contractor (hereinafter "**{NAME}**") and _____, a corporation, individual(s), partnership, other _____; organized and existing under the Laws of the State of Oklahoma, and having a business, residence at _____ (hereinafter "**Provider**").

{NAME} is under contract with the State of Oklahoma (hereinafter "**State**") to provide an automated system that provides timekeeping and recording of attendance of State authorized attendees as well as provide the State's reimbursement for the subsidized attendees to providers. As part of that contract with the State, {NAME} is also required to furnish equipment for the use of providers and maintain that equipment.

Article 1: {NAME} RESPONSIBILITIES

- 1.1 {Name} will furnish Provider with POS equipment (hereinafter "**Equipment**") and related services: installation, training, repair, help desk support and settlement.
- 1.2 Equipment. Equipment shall be a ({Equipment name} , {Name} reserves the right to change the Equipment's brand, model or features at any time without prior notification to Provider.
- 1.3 Equipment Ownership. Equipment shall at all times remain the property of {Name}
- 1.4 Equipment Usage. Unless otherwise provided for in this Agreement, Equipment shall be used by Provider solely in connection with the Oklahoma EPC Program (hereinafter "**EPC Program**").
- 1.5 Equipment Allocation. One (1) unit of Equipment shall be furnished for every 30 State authorized attendees assigned to the Provider under the EPS Program (hereinafter "**Active Participants**") {Name} reserves the right to remove excess Equipment on demand during Provider's normal business hours. Excess Equipment is defined as a ratio of Equipment to Active Participants of less than 1:30 when more than 1 (one) unit of Equipment is furnished (examples: 1:30 or 2:60). Guidelines for Equipment allocation are established under a separate contract between {Name} and the State.

{Name} will furnish Equipment under this Agreement to providers who do not currently have Active Participants, provided an Equipment deposit is furnished by the Provider under Exhibit B.
- 1.6 Installation. {Name} shall provide for Equipment installation at a time mutually agreed to between {Name} (or its designated installer) and the Provider.
- 1.7 Training. At the time of installation, the Provider or authorized person will be trained and provided one (1) *Quick Reference Guide* and one (1) *Provider Operations Manual*.
- 1.8 Help Desk. {Name} shall provide a toll-free telephone number for Provider use 24 hours per day/7 days per week. The Help Desk will be staffed 24/7.
- 1.9 Equipment Repair. {Name} shall be solely responsible for repair of Equipment. For Equipment repair, Provider shall promptly notify {Name} using the telephone number(s) separately furnished to Provider by {NAME}. Repair calls are processed through the Help Desk. At {NAME} discretion, Equipment may be repaired or replaced.

- 1.10 Settlement. {NAME} shall provide for weekly settlement to the Provider based on Provider's participation under the EPC Program. {NAME} shall use the data furnished by the Provider under Exhibit A for settlement, as may be updated from time to time by the Provider in writing. Settlement shall be by electronic funds transfer only.
- 1.11 Supplies. {NAME} will be responsible for financially reimbursing the Provider for paper used in the Equipment. The amount of reimbursement is based on an algorithm of Equipment usage, not supplies actually expended. Reimbursement shall be made monthly via electronic funds transfer only.

Article 2: PROVIDER RESPONSIBILITIES

- 2.1 Equipment Use and Care. The Provider agrees that it shall follow the instructions of any manuals accompanying the Equipment, as amended from time to time, in the care, use and installation requirements of the Equipment as specified by the manufacturer.
- 2.2 Equipment Security. Provider agrees that it shall provide reasonable security measures to protect the Equipment from damage, theft or unauthorized use.
- 2.3 Equipment Environmentals. Provider agrees that it shall provide suitable electric current to operate the Equipment, a suitable place for Equipment installation, a suitable environment for the Equipment and telephone service for use by the Equipment (shared or dedicated at Provider discretion). Provider agrees to be solely responsible for and bear all one-time and recurring expenses and fees, of all electrical and telephone services necessary for the operation of the Equipment.
- 2.4 Provider and Bank Data. Provider agrees that at all times it shall provide accurate and current data for Exhibit A. Provider acknowledges that failure to immediately notify {NAME} in writing of changes to Exhibit A data may result in delayed or lost settlement reimbursements.
- 2.5 Equipment Control and Location. Provider agrees that it will at all times keep the Equipment in its sole possession and control. The Equipment shall not be moved from the Provider address(es) stated in Exhibit C without prior written notification to {NAME}. Provider agrees that at all times it shall provide accurate and current data for Exhibit C.
- 2.6 Equipment Liens. Provider agrees that it shall keep the Equipment free and clear of all liens and encumbrances.
- 2.7. Equipment Access. Provider agrees that {NAME} or its designee shall have free and clear access to the Equipment at all reasonable times for the purpose of maintenance, repair, inspection or removal.
- 2.8 Equipment Repair. Provider agrees that it shall not make or attempt to make any repairs to the Equipment.
- 2.9 Equipment Supplies. Provider agrees that it shall be responsible for procuring the Equipment's printer paper with reimbursement provided per Section 1.11 of this agreement.

Article 3: TERM AND TERMINATION

- 3.1 Initial Term. The initial term of the Agreement shall commence on the Effective Date and extend to July 1, 2016 (hereinafter "**Initial Term**").
- 3.2 Renewal Periods. Unless the Agreement is terminated or expires in accordance with the terms of this Agreement, this Agreement shall automatically renew without further action for twelve (12) month periods from July 1 to June 30 (hereinafter "**Renewal Period(s)**").
- 3.3 Termination. Either party may terminate this Agreement without cause upon giving fifteen (15) days prior written notice to the other party, citing this Section 3.3.

This Agreement shall terminate immediately upon the instance of one or more of the following: Provider is no longer authorized under the EPC Program or Provider ceases its business operations in the State for any reason.

- 3.4 Effect of Termination – Equipment. Within five (5) business days of Agreement termination, Provider shall return all Equipment to {NAME} at {NAME} expense or make the Equipment available for {NAME} pickup at a mutually agreed time from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays.

Article 4: LOSS OF EQUIPMENT

- 4.1 Provider shall ensure that Provider’s existing insurance coverage, if any, covers the Equipment against casualty loss. Provider agrees to bear the expenses to replace Equipment that is lost, suffers a casualty loss or is stolen while the Equipment is in the Provider’s care.

Article 5: LIMITATION OF LIABILITY

- 5.1 {NAME} shall in no event be liable for any damages, including but not limited to, special, consequential or exemplary damages of any kind whether arising in contract, tort, warranty, indemnification or contribution, or under any other theory of law with regard to matter arising from this Agreement.

Article 6: INDEMNIFICATION

- 6.1 Except for {NAME} gross negligence, if any claim is asserted or action brought against {NAME} arising from this Agreement, Provider shall hold harmless and defend {NAME} from any such claim or action at Provider expense, and shall indemnify {NAME} for any cost and damages, including attorney's fees actually incurred by {NAME} in connection therewith.

Article 7: WARRANTIES

- 7.1 {NAME} WARRANTS THAT SERVICES PROVIDED UNDER THIS AGREEMENT WILL BE PERFORMED IN ACCORDANCE WITH INDUSTRY STANDARDS BY QUALIFIED PERSONNEL IN A QUALITY MANNER AND WILL CONFORM TO THE SPECIFICATIONS AS DESCRIBED HEREIN.
- 7.2 THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES GIVEN BY {NAME} WITH RESPECT TO THE SERVICES AND EQUIPMENT PROVIDED PURSUANT TO THIS AGREEMENT. {NAME} MAKES NO OTHER WARRANTIES EXPRESSED OR IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Article 8: GOVERNING LAW

- 8.1 This Agreement will be governed by and construed in accordance with the Laws of the State of Oklahoma and any action commenced hereunder shall be brought in State of Oklahoma. Further, Provider consents to the jurisdiction of the courts located in State of Oklahoma.

Article 9: ASSIGNMENT

- 9.1 Neither this Agreement, nor any right or obligation thereunder, shall be assigned to third parties by the Provider without the prior written consent of {NAME}.

Article 10: PROVIDER PURCHASE ORDER

10.1 The terms and conditions contained in this Agreement shall take precedence over and shall apply in lieu of any terms and conditions contained on any Provider document unless mutually agreed to by the parties and specifically incorporated herein.

Article 11: AMENDMENTS OR ADDENDA

11.1 The amendments, addenda, exhibits or attachments listed below, are incorporated herein by reference:

- Exhibit A: Provider Settlement Authorization Form
- Exhibit C: Provider Location Information

Article 12: INDEPENDENT CONTRACTOR

12.1 The parties shall, at all times, be independent contractors, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or employer and employee between the parties.

Article 13: ENTIRE AGREEMENT AND MODIFICATIONS

13.1 This Agreement supersedes any and all prior representations, conditions, warranties, understandings, proposals, or previous agreements between the parties hereto, either oral or written relating to the matters of this Agreement hereunder and constitutes the sole, full and complete agreement between the parties.

13.2 Further, this Agreement shall not be modified, changed, amended, or waived except by means of a written instrument signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties hereto have, through duly authorized officials, executed this Agreement.

	PROVIDER
By: _____	_____
(Signature)	(Signature)
_____	_____
(Name, type or print)	(Name, type or print)
<u>{NAME} Project Manager</u>	_____
(Title)	(Title)
_____	_____
(Date)	(Date)

Exhibit A

Provider Settlement Authorization Form

{NAME} is hereby authorized by (full legal name) _____

_____ or its designee, and the other financial institution listed below to transfer funds and make correcting debit adjustments, when needed, to the indicated financial account for activity to the EPC Program subject to the terms of the Provider Agreement.

1. Check One:

First Submission

Change in
Information

3. Provider Business Information:

d/b/a (If doing business under another name or a trade name)

Address

City/State/Zip Code

Telephone Number

5. Authorized Signature:

Authorized Signature

Printed Name

Title

Date

2. Financial Institution Information:

Name of Bank

Bank Address

City/State/Zip Code

4. Fill-in checking or savings information that funds will be deposited into.

Checking Account Number:

Savings Account Number:

Bank Routing Number (ABA Number):

IMPORTANT:

- a. ATTACH COPY OF VOIDED CHECK OR DEPOSIT TICKET.
- b. RETURN THIS FORM TO:

{NAME}
VENDOR ADDRESS