



RFP Services: Consulting Services

RFP Number: 8070001092

Section B. Contract Terms and Conditions

Based upon the following recitals, the Oklahoma Health Care Authority (hereinafter referred to as OHCA), and Contractor enter into this Contract.

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B.1 DEFINITIONS

1. Amendment - means a written restatement of or modification to a Contract Document executed by both parties.
2. Bidder - means a Business Entity that submits a response to an invitation to bid or a request for proposal.
3. Business Entity - means any individual, business, partnership, joint venture, corporation, limited liability corporation, limited liability partnership, limited liability limited partnership, sole proprietorship, joint stock company, consortium, or other legal entity recognized by statute.
4. Child – means an individual who is age twenty (20) or younger.
5. Contract – means this RFP, as may be amended from time to time, which together with other Contract Documents, evidences the final Contract between the parties with respect to this RFP.
6. Contractor – means the Business Entity with which OHCA enters into this contract.
7. Medicaid Management Information System (MMIS) - means a mechanized claims processing and information retrieval systems as defined at is identified in section 1903(a)(3) of the Act and defined in regulation at 42 C.F.R. 433.111.
8. OHCA - means the Oklahoma Health Care Authority, which is initiating the RFP.
9. Proposal - means an offer in the form of a bid, proposal, or quote an Bidder submits in response to a request for proposal.
10. RFP – request for proposal.
11. State – means the State of Oklahoma.

B.2 CONTRACT GENERAL TERMS AND CONDITIONS

1. Purpose
The purpose of this Contract is to acquire the expertise necessary to assist OHCA in successfully carrying out functions described in Section A.
2. The Parties
 - a. Oklahoma Health Care Authority
 - i. OHCA is the single State agency designated by the Oklahoma Legislature through 63 O.S. §5009(B) to administer Oklahoma’s Medicaid Program, known as SoonerCare.

- ii. OHCA has authority to enter into this Contract pursuant to 63 O.S. §5006(A), 74 O.S. §85.1 *et. seq.* OHCA's Chief Executive Officer has authority to execute this Contract on OHCA's behalf pursuant to 63 O.S. §5008(B).
 - iii. OHCA's mailing address for the purposes of this Contract is as follows:
Oklahoma Health Care Authority
Attn: Contracts Development Unit
4345 N. Lincoln Boulevard
Oklahoma City, OK 73105-5101
 - iv. OHCA's email address for **electronic submission of invoices** is as follows:
Contracts@okhca.org
- b. Contractor
- i. Contractor has the authority to enter into this Contract pursuant to its organizational documents, by laws, or properly enacted resolution of its governing authority. The person executing this Contract has authority to execute this Contract on Contractor's behalf pursuant to Contractor's organizational documents, bylaws, or properly enacted resolution of Contractor's governing authority.
 - ii. Contractor's mailing address and contact information for the purposes of this Contract is included in Attachment 1 Proposal Cover Page.

B.3 INDEPENDENT CONTRACTOR

Contractor is in all respects an independent Contractor and is neither an agent nor an employee of OHCA. Contractor shall not have authority to bind OHCA nor is entitled to any of the benefits or worker's compensation provided by OHCA to its employees.

B.4 GENERAL PROVISIONS

1. Contract Term
 - a. This Contract shall begin on last date on which both parties have signed the Contract and shall expire as indicated in Attachment 6; hereafter referred to as the Initial Contract Year.
 - b. There shall be options to renew for additional one-year periods (July 1st – June 30th) as specified in Attachment 6.
 - c. A change order to the original purchase order shall be issued to Contractor to exercise each renewal option.
 - d. The option to renew shall be contingent upon the needs of OHCA, funding availability, and is at the sole discretion of OHCA.
2. Contract Extension Option
 - a. OHCA may choose to exercise an extension for up to one-hundred-eighty (180) days beyond the final renewal option period at the Contract pricing rate; the extension shall be executed by mutual agreement. If this option is exercised, OHCA shall notify the other party in writing prior to the Contract end date.
 - b. OHCA may choose to exercise subsequent extensions, up to one-hundred-eighty (180) days each, by mutual agreement and at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new contract or as needed for transition to a new Contractor.
3. Legal Contract

- a. The proposal submitted in response to this RFP will be considered a legal offer.
 - b. This Contract resulting from the RFP consists of the following documents in order of precedence:
 - i. This RFP and any amendments to the RFP (including only the Bidder's Questions which have led to a change in the project scope);
 - ii. Contractor's Proposal; and,
 - iii. The Purchase Order issued by OHCA.
 - c. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth in the RFP shall govern. In the event that an issue is addressed in the proposal that is not addressed in the RFP, no conflict in language shall be deemed to occur. However, OHCA reserves the right to clarify, in writing, any contractual relationship with the concurrence of Contractor(s), and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP. In all other matters not affected by the written clarifications, if any, the RFP shall govern.
4. Amendments/Modifications
- a. This Contract contains all of the agreements of the parties and no oral representations by either party are binding. Any amendments and/or modifications to this Contract's term, scope of work, and/or pricing methodology shall be in writing and signed by both parties.
 - b. Legislative, regulatory, and programmatic changes may require changes in the terms and conditions of the Contract. Modifications of terms and conditions of this Contract shall be authorized in such cases upon mutual approval by OHCA and Contractor. At all times, all parties shall adhere to the overall intent of the Contract.
 - c. Not-to-exceed increases or decreases, solely at the time of Contract renewal, as contained in the originally accepted proposal, shall not require an amendment/modification.
5. Assignment
- a. Contractor shall not assign or transfer any rights or obligations under this Contract without prior written consent of OHCA.
 - b. If Contractor uses a major subcontractor (an entity performing more than thirty-five percent (35%) of the Scope of Work), Contractor shall obtain OHCA's consent prior to the effective date of any subcontract. If Contractor has proposed a major subcontractor in its Proposal Response, which was accepted by OHCA, no separate OHCA consent is required.
 - c. Contractor shall be responsible for all subcontractors' performance and shall be solely responsible for meeting all the terms of the Contract. No subcontract or delegation shall relieve or discharge Contractor for any obligation or liability under this Contract. Any subcontractor shall be subject to the same conditions as Contractor, including Contract modifications subsequent to award, confidentiality, audit, certifications, and other relevant Contract terms.
 - d. All subcontracts shall be available in an electronic form for review or inspection by OHCA upon request.
6. Product and/or Services Substitutions
- Substitutions are not permitted without the written permission of OHCA or as authorized

in the scope of work.

7. Employment Relationship

This Contract does not create an employment relationship. Individuals performing services required by this Contract are not employees of the State of Oklahoma or of OHCA. Contractor's employees shall not be considered employees of the State of Oklahoma nor of OHCA for any purpose, and accordingly shall not be eligible for rights or benefits accruing to State employees.

8. Conflict Of Interest

Contractor certifies and agrees that it presently has no interest and shall not acquire any interest, either direct or indirect, which would conflict in any manner or degree with the performance of the Contract.

9. Equipment, if applicable.

Equipment is defined by the State of Oklahoma as a tangible nonexpendable item having a useful life of more than one year and total acquisition cost of \$500.00 or more per unit. In the event Contractor is loaned equipment by OHCA under this Contract, this equipment remains the property of OHCA. Contractor may not add software to any equipment and shall follow all OHCA policies regarding computer usage and storage. The equipment shall be returned to OHCA in the same condition as when originally loaned upon completion of this Contract, subject to normal wear and tear through routine use.

10. Use of State Property, if applicable

Contractor is prohibited from using OHCA's equipment, OHCA's location, or any other resources of OHCA or the State for any purpose other than performing services under this Contract. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Contractor using OHCA's equipment for any purpose other than performing services under this Contract shall be fully reimbursed by Contractor to OHCA within ten (10) business days upon demand by OHCA. Such use shall constitute breach of Contract and may result in termination of the Contract and other remedies available to OHCA under the Contract and applicable law.

11. Public Disclosure

Contractor shall not cause public disclosures or news releases pertaining to this Contract without prior written approval of OHCA.

B.5 PAYMENTS AND REIMBURSEMENT

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 in Attachment 6 Price Proposal. Total payments shall not exceed the amount specified in Attachment 6 Price Proposal for each State Fiscal Year (SFY) period of the contract. 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 at OHCA or time spent on assigned OHCA business. No additional payments shall be made under this Contract.
2. It is understood and agreed 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.

3. 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: 1) Contractor name; 2) FEI or vendor number; 3) invoice number; 4) purchase order number (where applicable); 5) description of service(s); 6) date(s) of service; 7) detail of amount(s) billed; and 8) detailed attachments to support work being billed. 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.
4. All invoices for services rendered under this Contract shall be received by OHCA within ninety (90) calendar days of the end of the State Fiscal Year (“SFY”), which is June 30. OHCA will not be held responsible for payment of invoices submitted beyond the deadline established by this paragraph.
5. OHCA shall have forty-five (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 62 O.S. § 34.72.

B.6 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 the Contract upon formal correspondence 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 formal correspondence to OHCA delivered through email. OHCA agrees to pay 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.

B.7 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, and employees in the performance of the 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.

B.8 FORCE MAJEURE

1. Neither Contractor(s) 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(s) 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 seventy two (72) hours of the occurrence of such an event, Contractor(s) shall initiate disaster recovery and/or back up procedures to provide alternate services. Contractor(s) 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 seventy two (72) hour period.

B.9 CONTRACT COMPLIANCE AND PENALTIES

1. Substantial elements of this Contract are performance-based and require Contractor to meet specific standards or metrics. Contractor's performance may be assessed by such means as written reports, oral communication, onsite visits, audit, and data analysis.
2. OHCA and Contractor shall establish performance standards for this Contract based on the scope. 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.
3. The CAP shall clearly specify which paragraphs in the 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 within the time frame specified by OHCA.
4. Failure to resolve the issue may result in a penalty which is the withholding or reduction of Contractor reimbursement for the specific deliverable or milestone included in the CAP or Contract action, up to and including termination.

B.10 TERMINATION

1. Either party may terminate this contract in whole or in part for cause with a thirty (30) day written notice to the other party. Either party may terminate this contract in whole or in part without cause with a sixty (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. All notices of termination under this paragraph shall be in writing.
2. OHCA may terminate this Contract immediately, in whole or in part, with a written notice to Contractor(s) 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 thirty (30) day notice;
 - d. OHCA determines that an administrative error occurred prior to Contract performance; or,
 - e. Both parties agree to terminate the 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.

B.11 LAWS APPLICABLE

1. The parties to this Contract acknowledge and expect that changes may occur over the term of this Contract regarding (i) Federal Medicaid statutes and regulations, (ii) Oklahoma Medicaid statutes and rules, and (iii) Oklahoma statutes and rules governing 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 (1) 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 (2) 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 Act¹ (HITECH) (42 U.S.C. § 300jj *et seq.* and § 17921 *et seq.*);
 - o. Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. § 4212 and 41 C.F.R. Part 60-300;
 - p. Protective Services for Vulnerable Adults Act, 43A O.S. § 10-101 *et seq.*;
 - q. Non-procurement, debarment, and suspension, 2 C.F.R. Part 376;

[¹The 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).]

- r. 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);
 - s. Anti-Kickback Act of 1986, 41 U.S.C. § 8701 *et seq.*;
 - t. Oklahoma Anti-Kickback Act of 1974, 74 O.S. § 3401 *et seq.*;
 - u. Federal False Claims Act, 31 U.S.C. §§ 3729-3733 and § 3801 *et seq.*;
 - v. Oklahoma Medicaid False Claims Act, 63 O.S. § 5053 *et seq.*; and
 - w. 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 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 the Contract shall remain in full force and effect.

B.12 FEDERAL REGULATIONS

1. 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
Software & Ownership Rights, Federal Licenses, Information Safeguarding, Health Insurance Portability and Accountability Act of 1996 (HIPAA) Compliance, and Progress Reports	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. 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. 45 C.F.R. § 95.617 42 C.F.R. 433.112 42 C.F.R. § 431.300 45 C.F.R. Part 164
Information Safeguarding	42 C.F.R. § 433.112(b)(9) 45 C.F.R. § 205.50
Progress Reports	SMM Section 11267
Disaster Recovery Procedure	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.
IV&V	45 C.F.R. § 95.626

B.13 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. In accepting any Contract with the State, Contractor agrees that any pertinent State or Federal agency has the right to examine and audit all records relevant to execution and performance of the Contract.
2. Contractor is required to retain records relating to the Contract for the duration of the Contract and for a period of seven (7) years following completion and/or termination of the Contract. If an audit, 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. Contractor shall keep records as are necessary to disclose fully 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), Office of Management and Enterprise Services Central Purchasing Division (CPD), General Accounting Office (GAO), 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) at any time and for a period of seven (7) years from the date of service including dates of service under any renewal options. Contractor shall not destroy or dispose of records, which are under audit, review or investigation when the seven (7) -year limitation is met. Contractor shall maintain such records until informed in writing by the auditing, reviewing or investigative agency that the audit, review or investigation is complete.
4. 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.

5. 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.*

B.14 CONFIDENTIALITY AND SECURITY OF PROTECTED HEALTH INFORMATION

1. Both parties agree the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including but not limited to the Privacy Rule and Security Rule, or the Health Information Technology for Economic and Clinical Health Act (HITECH) and its implementing regulations apply to this contract. 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 ("Electronic PHI" or "ePHI"), both as defined by HIPAA.
2. Definitions for the Purposes of this Section:
 - a. Contractor - shall generally have the same meaning as the term "Business Associate" at 45 C.F.R. § 160.103, and in reference to the party to this Contract, shall mean the entity whose name appears in Attachment 1 Proposal Cover Page.
 - b. 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.
 - c. OHCA - shall generally have the same meaning as the term "Covered Entity" at 45 C.F.R. § 160.103.
 - d. HIPAA - shall mean the Health Insurance Portability and Accountability Act of 1996 and the Privacy, Security, Breach Notification, and Enforcement Rules per 45 C.F.R. Part 160 and Part 164, all as may be amended, and related regulations, including Administrative Simplification rules at 42 U.S.C § 1320d *et seq.* and the HITECH Act of 2009.
 - e. The following terms used in this section shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
3. Obligations of Contractor:
 - a. Contractor may use Electronic PHI and PHI (collectively, "PHI") solely to perform its duties and responsibilities under this Contract and only as provided in 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 electronic PHI to prevent use or disclosure of PHI other than as provided for by this Contract, and to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of OHCA in accordance with HIPAA including but not limited to training all employees, agents, and subcontractors in HIPAA to protect OHCA's PHI and prevent, detect, contain, and correct Security violations in accordance with HIPAA; applying security patches and performing vulnerability assessments on a regular basis, and using encryption for all electronic transmission of PHI including forced TLS connections for email.
- v. Not use or disclose or otherwise make available OHCA's PHI to any entity or individual who is not subject to the laws of the United States.
- vi. Not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of OHCA.
- vii. 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 to him/her/it in connection with a use or disclosure made in violation of this Contract.
- viii. Report potential known violations of 21 O.S. § 1953 to OHCA Legal Division without delay and in no event later than five (5) calendar days after discovery of an unauthorized act. In general, this criminal statute makes it a crime to willfully and without authorization gain access to, alter, modify, disrupt, or threaten a computer system.
- ix. 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 electronic PHI, as well as any breaches of unsecured 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 ePHI, or changes to system hardware, firmware, or software without Contractor's consent. Reports shall include successful Security Incidents.
- x. With the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. § 164.412, notify OHCA promptly, in writing and without unreasonable delay and in no case later than five (5) calendar days, upon the discovery of a breach of unsecured PHI as reasonable in the HITECH Act or accompanying regulations, 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.

- xi. 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.
- xii. 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.
- xiii. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, transmit, or have access to OHCA's PHI agree to the same restrictions, conditions, and requirements that apply to Contractor under this Contract, including but not limited to implementing reasonable and appropriate safeguards to protect PHI. Contractor shall obtain satisfactory written assurance of this from the subcontractor, and make this assurance available to OHCA upon request.
- xiv. Contractor will make available PHI in a designated record set to OHCA as necessary to satisfy OHCA's obligations under 45 C.F.R. § 164.524.
- xv. Contractor will make any amendment(s) to PHI in a designated record set as directed or agreed to by OHCA pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy OHCA's obligations under 45 C.F.R. § 164.526.
- xvi. Any disclosure of OHCA data shall be approved in advance by OHCA and then only to individuals expressly authorized to review such information under applicable Federal or State laws. If Contractor, employees, or subcontractors disclose(s) or attempt(s) to disclose OHCA data, an injunction may be sought to prevent that disclosure as well as any other remedies of law that may be available. Participants 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.
- xvii. Notwithstanding anything to the contrary herein, Contractor shall 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, on their own behalf, with respect to such data. Contractor will, to the extent allowed by law, fully cooperate with any attempt by OHCA to seek such a protective order, including but not limited to withholding from production any data before OHCA has had a reasonable opportunity to seek such an order or to seek review of the denial of such an order or the issuance of an order that OHCA deems insufficiently protective.

- xviii. Contractor will maintain and make available the information required to provide an accounting of disclosures to OHCA as necessary to satisfy OHCA's obligations under 45 C.F.R. § 164.528.
- xix. To the extent Contractor is to carry out one 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).
- xx. Contractor will make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
- xxi. To the extent allowed by law, Contractor shall 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 related to the Breach by Contractor, its employees, subcontractors, vendors, and agents of any obligation related to PHI.
- xxii. 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.
- xxiii. 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.
- xxiv. 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.
- xxv. 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.
- xxvi. 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 OHCA's minimum necessary standards. Contractor may:
 - i. Use PHI for its proper management and administration as necessary to perform the services set forth in the 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 to appropriate Federal and State authorities;
 - v. Aggregate the PHI with other data in its possession for purposes of OHCA's Health Care Operations; or,
 - vi. Make uses and disclosures and requests for PHI consistent with the minimum necessary standards.
 - vii. Contractor may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164, if done by OHCA.

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:

- a. 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:

- i. Retain only that PHI that is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
- ii. Comply with the data transition requirements in the turnover plan as described in B.25 Turnover, including:
 - 1) Transmit the PHI that Contractor still maintains in any form to OHCA or another Contractor of OHCA at termination;
 - 2) Obtain or ensure the destruction of PHI created, received, or maintained by subcontractors;
 - 3) 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.
 - 4) All electronic storage media shall be disposed of in accordance with the media sanitation procedures outlined in the State of Oklahoma Information Security Policy, Procedures, Guidelines, Appendix E, Revision 3 that can be accessed at the following link:
<https://ok.gov/cio/documents/InfoSecPPG.pdf>.
 - 5) Contractor shall send written certification of the destruction of the files to OHCA within thirty (30) days of the destruction.
- iii. 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 the PHI, other than as provided for in this Section, for as long as Contractor retains any PHI;
- iv. Not use or disclose the PHI retained by Contractor other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under “Permitted uses and disclosures by Contractor” that applied prior to termination; and,

7. Survival

The obligations of Contractor under this Contract shall survive the termination of the Contract.

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.

B.15 REQUIRED INSURANCE COVERAGE

1. As a condition of this Contract with OHCA, Contractor shall provide the listed insurance coverage within five (5) business days of execution of the Contract if Contractor is awarded services which require that Contractor's employees perform work at any OHCA premises and/or use employer vehicles to conduct work on behalf of OHCA.
2. In addition, when engaged by OHCA to provide services on OHCA premises, Contractor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to OHCA within five (5) business days following the execution of the Purchase Order.
3. Contractor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, OHCA.
4. All required insurance shall be issued by companies that are A rated by A.M. Best, licensed in the State of Oklahoma, and authorized to provide the corresponding coverage. OHCA will be named as an Additional Insured on all required coverage.
5. Required coverage shall remain in effect through the term of the Contract and each Purchase Order issued to Contractor there under. The minimum acceptable insurance provisions are as follows:
 - a. Commercial General Liability
 - i. Commercial General Liability shall include a combined single limit per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:
 - ii. Blanket contractual liability coverage for liability assumed under the Contract;
 - iii. Independent Contractor coverage;
 - iv. State of Oklahoma and OHCA listed as an additional insured;
 - v. 30-day Notice of Termination in favor of OHCA; and
 - vi. Waiver of Transfer Right of Recovery Against Others in favor of OHCA.
 - b. Workers' Compensation Insurance
 - i. Workers' compensation insurance and employers' liability coverage shall include limits consistent with statutory benefits outlined in the Oklahoma Workers' Compensation Act (Oklahoma Worker's Compensation Act, 85 O.S. § 1 *et seq.*) and minimum policy limits for employers' liability for
 - 1) bodily injury per accident;
 - 2) bodily injury disease policy; and,
 - 3) per disease per employee;
 - c. Business Automobile Liability Insurance

- i. Business Automobile Liability Insurance shall cover all owned, non-owned and hired vehicles with a minimum combined single limit per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of OHCA:
 - 1) Waiver of Subrogation;
 - 2) 30-day Notice of Termination; and,
 - 3) Additional Insured;
- d. Professional Errors and Omissions Insurance which shall include Consultant's Computer Errors and Omissions Coverage with minimum limits per claim and in the aggregate; and,
- e. Additional coverage required by OHCA in writing in connection with a particular Contract.

B.16 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. OHCA will provide Contractor and with copies of the Agreement, related Information Exchange Agreements (IEAs), and all related attachments. Contractor will provide OHCA with a current list of the employees with access to SSA data and OHCA will provide the lists to SSA. It is also the responsibility of Contractor to immediately communicate any changes to this list to OHCA, no later than 24 hours following the change.
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. For the purposes of this agreement, the Contractor's staff with access to SSA-provided information, will use this access only as needed for the purposes stated in this contract with Contractor. Any other use is a violation of this agreement unless the additional use is specifically identified in a mutually accepted amendment to this contract.
3. Contractor agrees to follow the requirements of OHCA's data exchange agreement with SSA. Contractor's employees will annually complete the OHCA security awareness training on the OHCA Learning Management System (LMS).
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. OHCA will provide the documentation to Contractor following the review, and to SSA during OHCA's scheduled compliance and certification reviews or upon SSA's request.
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 Contractors's network infrastructures and assets.

A.17 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES

1. Contractor represents and warrants that neither Contractor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under the Oklahoma Consumer Protection Act, 15 O.S. § 15-751 or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.
2. Contractor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

B.18 SYSTEM REQUIREMENTS, if applicable

1. Infrastructure Requirements – Contractor shall provide its own hardware, software and information technology support services as detailed below as necessary to access OHCA’s MMIS and associated applications:
 - a. Connection Options – Contractor shall use non RFC 1918 addresses with one of the following:
 - i. Leased line from Contractor to OHCA’s fiscal agent with an Ethernet, Fast Ethernet, or Gigabit handoff;
 - ii. Dark fiber or dark copper connection with an Ethernet, Fast Ethernet, or Gigabit handoff; or,
 - iii. Establish a VPN (virtual private network) connection across the internet to OHCA’s fiscal agent using a high speed internet service and a device compatible with OHCA’s fiscal agent’s hardware.
 - b. Transmission – Contractor shall encrypt via IPsec all connections with OHCA’s fiscal agent utilizing all of the following minimum standards:
 - i. Authentication Algorithm – SHA;
 - ii. Encryption Algorithm – AES 256;
 - iii. Group 5 Diffie-Hellman; and,
 - iv. Security Protocol – ESP;
 - c. Authentication – Contractor shall establish a Federated Trust with the existing Microsoft Active Directory Federation Service (ADFS) and meet the following requirements:
 - i. Compatible with Microsoft Windows 2008 R2 ADFs;
 - ii. Enable JavaScript and cookie policies for browser-based sign-in and sign-out;
 - iii. Obtain three certificates for ADFS setup:
 - 1) Service communication certificate – This is a standard SSL certificate that is used for securing communications between federation servers and clients;
 - 2) Token-Signing Certificate – This is a standard X509 certificate that is used for securely signing all tokens that the federation server issues;
 - 3) Token-Decrypting certificate – This is a standard SSL certificate that is used to decrypt any incoming tokens that are encrypted by a partner federation server;
 - iv. Configure and maintain Active Directory Groups to address application authorization;

- v. Configure organization custom claims for OKMMIS Applications;
 - vi. Application System Requirements – Contractor shall utilize an Internet Explorer Version acceptable to the OHCA;
2. MMIS SFTP Connectivity Requirements
- Contractor shall:
- a. Provide its own hardware, software and information technology support services as shown below as necessary in conformance with the following requirements:
 - i. A secure ftp application which supports public keys;
 - ii. A firewall which supports the following:
 - 1) Public IP address;
 - 2) NAT subnet (if applicable);
 - iii. Contractor operating systems:
 - 1) Compatible with unix;
 - 2) Compatible with Microsoft Windows;
 - iv. Application specifics:
 - 1) Establish an account name for the directory/folder for data reception/origination;
 - 2) The account name will be used in lieu of a password;
 - 3) OHCA’s fiscal agent’s SFTP platform will initiate the connection to Contractor platform using Contractor account name and IP address;
 - v. Connection Options – Connect to OHCA’s MMIS using non Request for Comments (non-RFC) 1918 addresses with one of the following:
 - 1) Public internet (peer to peer);
 - 2) Establish a VPN (virtual private network) connection across the internet to OHCA’s fiscal agent using a high speed internet service and a device compatible with OHCA’s fiscal agent’s hardware;
 - vi. Transmission –Encrypt via IPsec (Internet Protocol Security) all connections with OHCA’s fiscal agent utilizing all of the following minimum standards:
 - 1) Authentication Algorithm – SHA (Secure Hash Algorithm);
 - 2) Encryption Algorithm – AES (Advanced Encryption Standard) 256;
 - 3) Group 5 Diffie-Hellman; and,
 - 4) Security Protocol – ESP (Encapsulating Security Payload).

B.19 INFORMATION TECHNOLOGY ACCESS CLAUSE, if applicable

- 1. Electronic and information technology procurements, agreements, and contracts shall comply with applicable Oklahoma Information Technology Accessibility Standards issued by the Oklahoma Office of Management and Enterprise Services in accordance with 74 O.S., §85.7d and O.A.C. 580:16-7-56. All web-based information developed as a deliverable under this contract shall comply with Section 4.3 of the Oklahoma Technology Accessibility Standards (Web-Based Information and Applications). EIT (electronic information technology) Standards may be found at the following link:
[http://www.ok.gov/DCS/Central Purchasing/VPAT & Accessibility.html](http://www.ok.gov/DCS/Central_Purchasing/VPAT_&_Accessibility.html).
- 2. Upon request, Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system or application development/customization by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document. Any exceptions to the

Oklahoma Information Technology Accessibility Standards shall be documented and approved by the OHCA. Additional information regarding the Oklahoma Information Technology Accessibility Standards may be found on the OMES website at <https://www.ok.gov/OSF/Accessibility.html>.

3. 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.

B.20 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.

B.21 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; and,
 - c. 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.

B.22 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 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.

B.23 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, 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 the 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.

B.24 PUBLICATIONS RIGHTS/ SCHOLARLY WORK, if applicable.

1. Contractor may publish the results generated through this Contract. Authorship will be determined by mutual agreement of both parties. Publications shall reference sponsor funding. Confidential information will not be included in the manuscript(s). Publication may be delayed for a reasonable period of time not to exceed ninety (90) days to protect proprietary interests of OHCA and Contractor.
2. If Contractor wishes to publish results of the studies, Contractor will furnish OHCA with a copy of the manuscript or abstract disclosing Contractor's desire to publish the results ninety (90) days prior to submission to any publisher in order to ensure that confidential information of OHCA is not inadvertently disclosed. Contractor will provide appropriate acknowledgement of the source of the data in all publication of results.
3. OHCA shall provide final approval or disapproval within ninety (90) days of submission of the manuscript or abstract. OHCA's determination regarding proprietary or intellectual property is determinative.

B.25. TURNOVER

1. Three (3) months prior to the conclusion of this Contract, or in the event Contractor's company ceases to do business or no longer exist, 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 certification of all data in Contractors possession will be turned over and all copies of data in Contractor's possession will be destroyed.
2. OHCA and Contractor shall work together to develop the Turnover Plan.
3. OHCA shall approve the Turnover Plan prior to Contractor beginning turnover activities.
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 as 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 and all copies of data in Contractor's possession have been destroyed.
5. OHCA may begin withholding 15% of the total invoice amount each month no more than three (3) months prior to the conclusion of the 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 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.

B.26 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.

EXECUTED:

	Date
Rebecca Pasternik-Ikard, C.E.O. Oklahoma Health Care Authority	Date