

**OKLAHOMA HEALTH CARE AUTHORITY
TRIBAL MEDICAID ADMINISTRATIVE MATCH CONTRACT
SECTION A. 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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A.1 PURPOSE

The purpose of this Contract is to acquire the expertise necessary to assist OHCA in successfully carrying out functions described in Section B.

A.2 THE PARTIES

1. Oklahoma Health Care Authority

- a. 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.
- b. 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).
- c. 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
- d. OHCA’s email address for **electronic submission of invoices** is as follows:
Contracts@okhca.org

2. Contractor

- a. Is a Tribal organization carrying out health programs of the Indian Health Services (IHS), including health services which are eligible for reimbursement by Medicaid, under a contract or compact entered into between the Tribal organization and the IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L.93-638;
- b. Is either the recognized governing body of an Indian Tribe or an entity which is formed solely by, wholly owned by or comprised of, and exclusively controlled by Indian Tribes, as defined in Section 4 of the ISDEAA (Indian Self-Determination and Education Assistance Act);
- c. Has the experience and expertise to perform the services required under this Agreement. This includes:
 - i. Knowledge of relevant OHCA policy and procedures;
 - ii. Frequent face-to-face interactions with a significant number of SoonerCare Members or potential Members; and
 - iii. Basic knowledge of SoonerCare eligibility requirements such as income levels, citizenship verification, correct social security numbers, etc.
- d. 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 the 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.
- e. Contractor’s mailing address and contact information for the purposes of this Contract is included in Section B.

A.3 INDEPENDENT CONTRACTOR

- 1. 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.

A.4 GENERAL PROVISIONS

1. Contract Term

This Contract shall begin on last date on which both parties have signed the Contract and shall expire as indicated in Section B; hereafter, referred to as the Initial Contract Year.

There shall be options to renew for additional one-year periods (July 1st – June 30th) as specified in Section B. A change order to the original purchase order shall be issued to Contractor to exercise each renewal option. The option to renew shall be contingent upon the needs of OHCA, funding availability, and is subject to mutual agreement by both parties.

2. Contract Extension Option

- a. OHCA may choose to exercise an extension for up to 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 Contractor in writing prior to the Contract end date.
- b. OHCA may choose to exercise subsequent extensions, up to 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. 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, shall not require an amendment/modification.

4. 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 35% of the Scope of Work), Contractor shall obtain OHCA's consent prior to the effective date of any subcontract.
- 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.

5. Product and/or Services Substitutions

Substitutions are not permitted without the written permission of OHCA or as authorized in the Scope of Work.

6. 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 and/or benefits

accruing to State employees.

7. 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. In the event that Contractor acquires any interest that may be in conflict with the performance of this Contract, Contractor will notify OHCA within three business days.

8. 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.

9. 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 10 business days upon demand by OHCA. Such use shall constitute breach of contract and may result in termination of this Contract and other remedies available to OHCA under this Contract and applicable law.

10. Public Disclosure

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

A.5 PAYMENTS AND REIMBURSEMENT

1. In consideration of satisfactory performance of the services enumerated in Section B of this Contract, OHCA shall make payments to Contractor at the rate specified in Section B. Total payments shall not exceed the amount specified in Section B 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 to by the Parties hereto that all obligations of OHCA, including the continuation of payments, are contingent upon the availability and continued appropriation of State and Federal funds, and in no event shall OHCA be liable for any payments in excess of such available appropriated funds.
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 90 calendar days of the end of the SFY, which is June 30th. OHCA will not be held responsible for payment of invoices submitted beyond the deadline established by this paragraph.
5. OHCA shall have 45 calendar days within which to pay a proper invoice. If OHCA fails to pay an invoice within that time, Contractor shall have the right to interest thereon pursuant to 62 O.S. §§ 34.71 and 34.72.

A.6 CERTIFICATION OF STATE DOLLARS, if applicable

1. The Parties agree and acknowledge that OHCA's payment of 100% of the allowable cost for the services indicated in the Attachment(s) in this Contract shall constitute OHCA advancing the state share match required under Federal Medicaid rules to the Contractor.
2. OHCA shall submit the state share match invoices to the address indicated on Section B.
The Contractor certifies that the State share funds used to match Federal funds or to repay the State share of actual SoonerCare expenditures under this Contract are expressly authorized by Federal law for use, without penalty, as the State's share in claiming Federal Financial Participation. Such funds shall:
 - i. Include directly appropriated public dollars to Contractor or transferred public funds, as allowed by 42 C.F.R. § 433.51; and,
 - ii. Not include state funds used to match other federal matching programs.
3. In the event any state share monies used to match federal funds or to repay the state share of actual SoonerCare expenditures under this Contract is subsequently disallowed by federal or state authorities, the Contractor shall reimburse the OHCA those amounts paid by OHCA which were disallowed within ninety (90) days of the disallowance.

A.7 STATE SHARE BILL BACK

If the Contractor is responsible for the state share funds associated with this Contract then the Contractor has 30 days from the receipt of the State Share Bill Back Invoice from OHCA's General Accounting in which to pay the state share funds. If the state share funds are not paid within 30 days then the OHCA will pay no further invoices until the state share funds have been received by the OHCA.

A.8 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 reimburse Contractor for all work satisfactorily performed prior to the date of any notice of termination of this Contract pursuant to this section. This clause shall operate as an exception to the notice provisions otherwise applicable to amendment or termination of the Contract.

A.9 FEDERAL DISALLOWANCES OR OTHER RECOUPMENTS

1. Contractor and OHCA understand that during the term of this Contract, the federal government may levy a disallowance, deferral and/or recovery/recoupment regarding payments for programs or services funded under SoonerCare, for which the entity listed in the Attachment(s) to the Contract is responsible to pay the state share. The OHCA will only pay the state share after the funds for the state share are received from the entity listed in the Attachment(s).
2. If the federal government declares a disallowance or deferral of federal funds and/or penalty and/or withholds funds from OHCA, Contractor shall be liable for such monetary disallowance, deferral and/or recovery/recoupment and shall compensate OHCA in the amount equal to the amount of federal funds lost, as well as any penalty amount within 30 days of the date that such disallowance, deferral and/or recovery/recoupment occurs. Contractor shall also be liable for the future loss of any federal funds by OHCA which may result from the direct actions of Contractor.
3. In any disallowance, deferral or recovery/recoupment action in which Contractor is liable to OHCA for the loss of funds, as described above, Contractor shall be responsible for all reasonable legal fees and costs directly associated with the defense against the disallowance, deferral or recovery/recoupment action. Contractor shall cooperate with OHCA in the defense of any action involving disallowance, deferral or recovery/recoupment by providing or making available related records, documents and Contractor staff to provide assistance to OHCA in preparing its defense. The OHCA assumes no other liability for the defense of the disallowance, deferral or recovery/recoupment.

A.10 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.

A.11 FORCE MAJEURE

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

to initiation of alternate services as to the extent of the disaster and/or emergency and the expected duration of alternate services within this same 72 hour period.

A.12 CONTRACT COMPLIANCE AND PENALTIES

1. Substantial elements of this Contract are performance-based and require Contractor to meet specific standards and/or metrics. Contractor's performance may be assessed by such means as written reports, oral communication, onsite visits, audit, and data analysis.
2. 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.

A.13 TERMINATION

1. Either Party may terminate this contract in whole or in part for cause with a 30 day written notice to the other Party. Either Party may terminate this Contract in whole or in part without cause with a 60 day written notice to the other party. In the event of termination, payments will be made for all work satisfactorily performed up to the date of termination.
2. OHCA may terminate this Contract immediately, in whole or in part, with a written notice to Contractor when one of the following applies:
 - a. Funding of the Medicaid Program from the State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract;
 - b. Violations are found to be an impediment to the function of OHCA;
 - c. Conditions preclude the 30 day notice;
 - d. OHCA determines that an administrative error occurred prior to Contract performance; or,
 - e. Both parties agree to terminate 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.

A.14 SCOPE OF WORK

The scope of work is described in Section B.

A.15 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 the practice of health care professions. The Parties shall be mutually bound by such changes.
2. As applicable, Contractor shall comply with and certify compliance with:

- a. Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*;
- b. Rehabilitation Act, 29 U.S.C. § 701 *et seq.*;
- c. Drug-Free Workplace Act, 41 U.S.C. § 8101 *et seq.*;
- d. Title XIX and Title XXI of the Social Security Act, 42 U.S.C. § 1396 *et seq.* and § 2101 *et seq.*;
- e. Civil Rights Act, 42 U.S.C. § 2000d *et seq.* and § 2000e *et seq.*;
- f. Age Discrimination Act, 42 U.S.C. § 6101 *et seq.*;
- g. Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*;
- h. Oklahoma Anti-Discrimination Act, 25 O.S. § 1101 *et seq.*;
- i. Oklahoma Worker's Compensation Act, 85A O.S. § 1 *et seq.*;
- j. Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*;
- k. Equal Pay Act, 29 U.S.C. § 206(d);
- l. 31 U.S.C. § 1352 and 45 C.F.R. § 93.100 *et seq.*, which (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;
- 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 in the District Court of Oklahoma County, Oklahoma. For the purpose of Federal jurisdiction, in any action in which the State of Oklahoma is a party, venue shall be in the United States District Court for the Western District of Oklahoma.
6. If any portion of this Contract is found to be in violation of State or Federal statutes, that portion shall be struck from this Contract and the remainder of the Contract shall remain in full force and effect.

A.16 AUDIT AND INSPECTION

1. As used in this Contract, “records” includes books, documents, accounting procedures and practices, and other data regardless of type and regardless of whether such items are in written or electronic form, in the form of computer data, or in any other form.
2. Contractor shall keep records as are necessary to fully disclose the extent of the services provided under this Contract, and shall furnish records and information regarding any claim for providing such service to OHCA, the State Auditor & Inspector (SA&I), the Office of Management and Enterprise Services Central Purchasing Division (CPD), the U.S. General Accounting Office (GAO), the Oklahoma Attorney General’s Medicaid Fraud Control Unit (MFCU), and the U.S. Secretary of the Department of Health and Human Services (hereinafter, referred to as “Secretary”). Contractor is required to retain records relating to this Contract for the duration of this Contract and for a period of seven (7) years following completion and/or termination of the Contract. If an audit, review, litigation, or other action involving such records is started before the end of this seven (7) year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
3. Authorized representatives of OHCA, SA&I, CPD, GAO, MFCU, and the Secretary shall have the right to make physical inspection of Contractor’s location or facility and to examine records relating to financial statements or claims submitted by Contractor under this Contract and to audit Contractor’s financial records.
4. Pursuant to 74 O.S. § 85.41, OHCA, CPD, and the SA&I shall have the right to examine Contractor’s books, records, documents, accounting procedures, practices, or any other items relevant to this Contract. OHCA shall allow for the inspection of public records in accordance with the provisions of the Oklahoma Open Records Act, 51 O.S. §§ 24A *et seq.*

A.17 CONFIDENTIALITY AND SECURITY OF PROTECTED HEALTH INFORMATION

1. To the extent any provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including but not limited to the Privacy Rule and the Security Rule, or the Health Information Technology for Economic and Clinical Health Act (HITECH) and its implementing regulations, affect the duties and responsibilities of this Contract, both Parties agree to these terms. Contractor acknowledges that in its role as Contractor, it may have or

obtain access to protected health information (PHI), including but not limited to individually identifiable health information, some of which may be electronic protected health information (Electronic PHI or ePHI), both as defined by HIPAA. PHI shall hereinafter refer collectively to both PHI and ePHI.

2. Definitions for the Purposes of this Section:
 - a. HIPAA shall mean the Health Insurance Portability and Accountability Act of 1996, the Privacy Rule, and the Security Rule, and other administrative simplification provisions as contained in 45 C.F.R. § 160.103 and the HITECH Act of 2009.
 - b. The following terms used in this Contract shall have the same meaning as those terms in HIPAA: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
 - c. Contractor is a “Business Associate” as defined by 45 C.F.R. § 160.103.
 - d. Discovery shall generally mean the first day a security incident or breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.
 - e. OHCA is a “Covered Entity” as defined by 45 C.F.R. § 160.103.
3. Obligations of Contractor:
 - a. Contractor’s use of PHI is limited to the performance of its duties and responsibilities under this. Contractor acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Contract or as Required by Law. Specifically, Contractor agrees it will and will require its employees, agents, vendors, and subcontractor to:
 - i. Use or further disclose PHI only as permitted in this Contract or as Required by Law, including, but not limited to HIPAA.
 - ii. Ensure that SoonerCare member information is confidential and is not to be released pursuant to 42 U.S.C §1396a(a)(7), 42 C.F.R. §§ 431.300-431.306 and 63 O.S. § 5018. Contractor agrees not to release the information governed by these SoonerCare member requirements to any other person or entity without the approval of OHCA, or as required by law or court order.
 - iii. Ensure that SoonerCare member and provider information cannot be re-marketed, summarized, distributed, or sold to any other organization without the express written approval of OHCA.
 - iv. Implement and document appropriate technical, physical, and administrative safeguards and comply with 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of PHI other than as provided for by this Contract, 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 PHI available 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 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 PHI, as well as any breaches of 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. Ensure that disclosure of OHCA data, including, but not limited to a designated record set, be approved in advance by OHCA and then disclosed only to individuals expressly authorized to review such information under applicable Federal or State laws. If Contractor, employees, or subcontractors disclose(s) or attempt(s) to disclose OHCA data without the requisite prior approval, OHCA may take a any available remedy to prevent or mitigate any further disclosure. Contractor shall provide written notice to OHCA of any use or disclosure of OHCA data not provided for by this Contract of which Contractor becomes aware within five (5) calendar days of its discovery.
- xvii. Notwithstanding anything to the contrary herein, promptly provide written notice to OHCA upon receipt of a subpoena or other legal process that seeks disclosure of OHCA data, so that OHCA may have the opportunity to seek a protective order or other means of limiting or preventing such disclosure. Contractor shall withhold from production, to the extent allowed by law, any data before OHCA has had an opportunity to review and/or respond further.
- xviii. 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, 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:

Except as otherwise provided in this Contract, Contractor may use or disclose PHI on behalf of or to provide services to OHCA for the purposes specified in this Contract, only if such use or disclosure of PHI would not violate HIPAA and related rules and regulations if performed by OHCA and is consistent with the minimum necessary standards. Contractor may:

- i. Use PHI for its proper management and administration as necessary to perform the services set forth in 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 as legally required 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 pursuant to this Contract;
 - ii. Comply with the data transition requirements in the turnover plan as described in A.20 Turnover, including:
 - 1) Transmit PHI that Contractor still maintains in any form to OHCA or another Contractor of OHCA at termination;
 - 2) After transmission to OHCA or another Contractor, obtain or ensure the destruction of PHI created, received, or maintained by subcontractors;
 - 3) After transmission to OHCA or another Contractor, destroy 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) Dispose of all electronic storage media in accordance with the media sanitation procedures outlined in the State of Oklahoma Information Security Policy, Procedures, Guidelines, Appendix E, Section 3 that can be accessed at the following link:
<https://ok.gov/cio/documents/InfoSecPPG.pdf>.
 - 5) Contractor shall send written certification of the destruction of the files to OHCA within 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; and,
- 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 at Subsection A.15.4 “Permitted uses and disclosures by Contractor” that applied prior to termination.

7. Survival

The obligations of Contractor under this Contract shall survive the termination of the Contract pursuant to the terms in Subsection 6 and Section. A.21.

8. Miscellaneous

- a. If Contractor maintains a designated record set in an electronic format on behalf of OHCA, then Contractor agrees that within 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 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.

A.18 SOCIAL SECURITY ADMINISTRATION DATA

- 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 the Contractor and with copies of the Agreement, related Information Exchange Agreements (IEAs), and all related attachments. The 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 the 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 the 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 shall report to OHCA and the SSA any security incident involving SSA data upon discovery within one (1) hour of knowledge of the incident. 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 SSA data, or changes to system hardware, firmware, or software without Contractor's consent. Reports shall include successful Security Incidents.
4. The Contractor agrees to follow the requirements of OHCA's data exchange agreement with SSA. The Contractor's employees will annually complete the OHCA security awareness training on the OHCA Learning Management System (LMS).
5. The 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 the Contractor following the review, and to SSA during OHCA's scheduled compliance and certification reviews or upon SSA's request.
6. The compliance reviews will be structured to ensure that the 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 the Contractors's network infrastructures and assets.

A.19 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES

1. Contractor represents and warrants that neither Contractor nor any of its Subcontractors has not been 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 and has no 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 have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations and have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

A.20 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 subcontract(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.

A.21 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.

EXECUTED:

Authorized Tribal Partner Representative’s Signature and Title	Date
Oklahoma Health Care Authority	Date