

**CONTRACT BETWEEN
OKLAHOMA HEALTH CARE AUTHORITY
AND
ENTITY NAME**

Oklahoma Health Care Authority and Contractor agree to the following regarding Multimedia Marketing Services performed under Solicitation # 8070000805.

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SECTION A – CONTRACT GENERAL TERMS AND CONDITIONS

A.1 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) 2 and 74 O.S. §85.1. OHCA’s Chief Executive Officer has authority to execute this Contract on OHCA’s behalf pursuant to 63 O.S. §5008(B) 4 and 5.
2. Contractor
 - a. Contractor states that it has the experience and expertise to perform the services required under the Contract.
 - b. Contractor has the authority to enter into the resulting Contract pursuant to its organizational documents, by laws, or properly enacted resolution of its governing authority. The person executing the Contract for Contractor has authority to execute the Contract on Contractor’s behalf pursuant to the Contractor’s organizational documents, bylaws, or properly enacted resolution of Contractor’s governing authority.

A.2 LEGAL CONTRACT

1. Submitted bids are rendered as a legal offer and any bid, when accepted by the OHCA, shall constitute a contract.
2. The Contract resulting from this solicitation will consist of the following documents in order of preference:
 - a. Contract award documents, including but not limited to the purchase order, contract modifications, certifications and change orders;
 - b. This RFP including any amendments to the RFP;
 - c. The proposal submitted by the Contractor; and,
 - d. The Final Contract Document to the extent that it does not conflict with the requirements of the Contract award documents, RFP, or applicable law.
3. In the event there is a conflict between any of the preceding documents, the Contract award documents prevail over the Final Contract document, and both the Contract award documents and the Final Contract document shall prevail over the successful proposal and RFP.

A.3 CONTRACT TERM

This Contract shall begin on April 1, 2015 and terminate on June 30, 2015. There shall be options to renew for two additional one-year periods (July 1st – June 30th). The option to renew shall be contingent upon the needs of the OHCA, funding availability, and is at the sole discretion of the OHCA. If OHCA does not intend to issue a change order for the new fiscal year, it will notify the Contractor.

A.4 AMENDMENTS OR MODIFICATIONS

1. This Contract contains all of the agreements of the parties and no verbal representations from either party that contradict the terms of this Contract are binding. Any modifications to this Contract must be in writing and signed by both parties.
2. 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 approval by OHCA and the Contractor. At all times, all parties shall adhere to the overall intent of the Contract.

A.5 ASSIGNMENT/SUBCONTRACTORS

1. Contractor shall not assign or transfer any rights or obligations under this Contract without prior written consent of OHCA. If the Contractor uses a major subcontractor, the Contractor shall obtain OHCA consent prior to the effective date of any subcontract. If the Contractor proposed a major subcontractor in its Pre Award Document which was accepted by OHCA, no separate OHCA consent is required.
2. The Contractor shall be responsible for all subcontractors' performance and shall be wholly responsible for meeting all the terms of the Contract. No subcontract or delegation shall relieve or discharge the Contractor for any obligation or liability under the Contract. Any major subcontractor shall be subject to the same conditions as the Contractor, including contract modifications subsequent to award, including confidentiality, audit, certifications, and other relevant contract terms.

A.6 AUDIT AND INSPECTION

1. As used in this clause "records" includes books, documents, accounting procedures and practices, and other data regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with the State, the 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. The Contractor is required to retain records relative 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 the seven-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 year retention period, whichever is later.
3. The 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 SA&I (State Auditor & Inspector), CPD (Office of State Finance – Central Purchasing Division), the GAO (General Accounting Office), MFCU (Oklahoma Attorney General's Medicaid Fraud Unit), and the U.S. Secretary of the Department of Health and Human Services (hereinafter referred to as Secretary) for seven years from the date of service which includes all renewal options. The Contractor shall not destroy or dispose of records, which are under audit, review or investigation when the seven-year limitation is met. The Contractor shall maintain such records until informed in writing by the auditing, reviewing or investigation 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 the Contractor's location or facility and to examine records relating to financial statements or claims submitted by the Contractor under this contract and to audit the Contractor's financial records.
5. Pursuant to 74 O. S. § 85.41, OHCA, CPD, and the SA&I shall have the right to examine the 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. 1-29.

A.7 CHANGE MANAGEMENT

The Parties agrees that it is unlikely that there will be a need to renegotiate the all-inclusive price. Some possible reasons for renegotiation include:

1. An unusually large amount of travel required; or,
2. A project requires the use of a subcontractor.

If requesting a change in the all-inclusive hourly rate, the Contractor shall provide information supporting the need for the change and the amount of the change.

A.8 CONFIDENTIALITY

1. Definitions

Catch-all definition:

The following terms in this section shall have the same meaning as those terms in the HIPAA Rules: Breach, Business Associate, Covered Entity, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.
- b. HITECH Act. "HITECH Act" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160.

2. Obligations and Activities

Obligations of OHCA

- 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, 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 to the use or disclosure of PHI that OHCA has agreed to or is required to abide by in accordance with 42 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 agrees to disclose to Contractor only the minimum amount of PHI necessary to accomplish the services covered in the Interagency Agreement.

Obligations of Contractor

- a. Contractor(s) agrees 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(s) 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.
- b. Contractor agrees 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.
- c. Contractor agrees to comply with the HIPAA rules that are applicable to such party as mandated by the Health Insurance Portability and Accountability Act of 1996 and 42 U.S.C. §§1320d et. seq.
- d. Contractor agrees to report potential known violations of 21 O. S. §1953 to OHCA Legal Division within 48 hours of knowledge 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.
- e. Contractor shall, following the discovery of a breach of unsecured PHI (Protected Health Information) as defined in the HITECH (The Health Information Technology for Economic and Clinical Health Act) or accompanying regulations, notify OHCA of such breach pursuant to the terms of 45 C. F. R. §164.410 and cooperate in OHCA's breach analysis procedures, including risk assessment, if requested. Contractor must report a known breach to OHCA Privacy and Confidentiality Officer within 48 hours of knowledge of an unauthorized act. A breach shall be treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.
- f. Contractor shall report to OHCA any Security Incident of which it becomes aware within 48 hours of knowledge of the incident. For purposes of this Contract, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In addition, Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Contract.
- g. 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 the Contractor for this purpose nor accept any Contractor provided hardware/software.
- h. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Contractor will ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Contractor agree to the same restrictions, conditions, and requirements that apply to the Contractor with

respect to such information. Contractor must obtain satisfactory written assurance of this from the subcontractor;

- i. Contractor will make available protected health information in a designated record set to the OHCA as necessary to satisfy OHCA's obligations under 45 CFR 164.524;
- j. Contractor will make any amendment(s) to protected health information in a designated record set as directed or agreed to by OHCA pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy OHCA's obligations under 45 CFR 164.526;
- k. 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 CFR 164.528;
- l. To the extent the Contractor is to carry out one or more of OHCA's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- m. Contractor will make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Obligations of Contractor Upon Termination

Upon termination of this Addendum for any reason, OHCA, with respect to protected health information received from OHCA, or created, maintained, or received by Contractor on behalf of OHCA, shall:

- a. Retain only that protected health information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
- b. Return to OHCA or, if agreed to by OHCA, destroy the remaining protected health information that Contractor still maintains in any form;
- c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Contractor retains the protected health information; and
- d. Return to OHCA or, if agreed to by OHCA, destroy the protected health information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities.
- e. The Contractor will transmit the protected health information to another Business Associate of the OHCA at termination, and Contractor is obligated to obtain or ensure the destruction of protected health information created, received, or maintained by subcontractors.

Survival

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

3. Permitted Uses and Disclosures by Contractor

- a. Contractor may only use or disclose protected health information as necessary to perform the services set forth in the Underlying Contract. The Contractor is

authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

- b. Contractor may use or disclose protected health information as required by law.
- c. Contractor agrees to make uses and disclosures and requests for protected health information consistent with minimum necessary requirements under the HIPAA Rules.
- d. Contractor may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by OHCA.

4. Miscellaneous

- a. **Regulatory References.** A reference in this section in the HIPAA Rules means the section as in effect or as amended.
- b. **Interpretation.** Any ambiguity in this section shall be interpreted to permit compliance with the HIPAA Rules.
- c. 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 the Contractor for this purpose nor accept any Contractor provided hardware/software.

A.9 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.

A.10 CONTRACT TERMINATION

1. Either party may terminate for cause with a thirty (30) day written notice to the other party. Either party may terminate without cause with a sixty (60) day written notice to the other party.
2. In the event funding is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to the anticipated Contract expiration date, this Contract may be terminated immediately by OHCA.

A.11 DISPUTES

The parties shall use their best good faith efforts to cooperatively resolve disputes and problems that arise in connection with the resulting Contract.

A.12 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 OHCA. The Bidder'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.

A.13 FORCE MAJEURE

1. Neither the 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 and without fault or negligence by the Contractor(s) or OHCA. Such causes may include, but are not limited to, catastrophic events or acts of God. In all cases, the failure to perform must be beyond the reasonable control of, and without fault or negligence of, either party.
2. Within 24 hours of the occurrence of such an event, the Contractor(s) shall initiate disaster recovery and/or back up procedures to provide alternate services. The 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 24 hours of onset of the problem.

A.14 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) state Medicaid statutes and rules, and (iii) state statutes and rules governing practice of health-care professions. The parties shall be mutually bound by such changes.
2. The Contractor shall comply and certifies compliance with:
 - a. the Age Discrimination in Employment Act, 29 U. S. C. §621 et seq.;
 - b. the Rehabilitation Act, 29 U. S. C. §701 et seq.;
 - c. the Federal Drug-Free Workplace Act, 41 U. S. C. §701 et seq.;
 - d. Subchapters XIX and XXI of the Social Security Act, 42 U. S. C. §1396 et seq.;
 - e. Titles VI and VII of the Civil Rights Act, 42 U. S. C. §§2000(d) et seq. and §§2000(e) et seq.;
 - f. the Age Discrimination in Federally Assisted Programs, 42 U. S. C. §6101 et seq.;
 - g. Equal Opportunity for Individuals with Disabilities 42 U. S. C. §12101 et seq.;
 - h. the Oklahoma Worker's Compensation Act, 85 O. S. §1 et seq.;
 - i. the Fair Labor Standards Act, 29 U. S. C. §201 et seq.;
 - j. the Equal Pay Act, 29 U. S. C. §206(b)
 - k. the Vietnam Era Veterans Re-adjustment Act, 38 U. S. C. §4212;
 - l. 31 U. S. C. §1352 and 45 C. F. R. §93.100 et seq., which (1) prohibit 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 and 11375, 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, or national origin;
 - n. 45 C. F. R. §§76.105 and 76.110 concerning debarment, suspension and other responsibility matters;
 - o. 74 O. S. §85.44(B) and (C) and 45 C. F. R. §74.34 with regard to equipment (as defined by 2 C.F.R. §220, §225, or §230 as applicable to the Bidder's entity) purchased with monies received from OHCA pursuant to this Contract; and
 - p. the Anti-Kickback Act; 41 U. S. C. §8701 - 8707, which prohibits any person from providing or attempting to provide or offering to provide any kickback;

- q. Federal False Claims Act, 31 U. S. C. §3729-3733 and the Administrative Remedies for False Claims Statements 31 U. S. C. §3801.
 - r. Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O. S. §1313 and participates 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 shall not exclude other statutory or regulatory duties.
 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 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 stricken from this Contract and the remainder of the Contract shall remain in full force and effect.

A.15 NON-APPROPRIATION

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the OHCA may terminate its obligations under the Contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amount due for multiple year agreements. OHCA's decision as to whether sufficient appropriations are available shall be accepted by the Bidder and shall be final and binding.

A.16 OWNERSHIP OF MATERIALS

1. Materials developed and/or produced by the Contractor for which OHCA pays the 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 Agreement. 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 Agreement become the sole property of the 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. The Contractor agrees not to use the OHCA's names, trademarks, service marks, logos, images, or any data resulting from the Agreement as a part of any commercial advertising or proposal without the express prior written consent of the OHCA in each instance.
2. Materials developed, produced, or purchased by the 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 RFP.

A.17 PAYMENTS/REIMBURSEMENT AND PAYMENT STRUCTURE

In consideration for the satisfactory performance of the services under this Contract, OHCA shall pay Contractor according to the following at the applicable amounts shown on the Contractor's Price Proposal (See Form-4).

1. Budget

The budget for this Contract is not to exceed \$300,000.00 for the period April 1, 2015 through June 30, 2015. There shall be options to renew for two additional one-year periods (July 1st – June 30th). The option to renew shall be contingent upon the needs of the OHCA, funding availability, and is at the sole discretion of the OHCA. Bidders may assume that the budget for subsequent fiscal years will stay constant at about this same amount. Final approval of renewal amounts will be at the sole discretion of the OHCA. Increases or decreases at the time of renewal shall not require a modification in accordance with this Contract's amendment clause.

2. Financial Summary

- a. Services within the cost:
- b. Services not included in the cost:
 1. Pursuant to 74 Okla. Stat. §85.44(B), invoices will be paid in arrears after services have been provided.
 2. The not-to-exceed amount for this Contract is established by the Purchase Order and associated Change Orders issued to the Contractor for each fiscal year.
 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) telephone number; 3) FEI or vendor number; 4) invoice number; 5) purchase order number (where applicable); 6) description of service(s); 7) date(s) of service; and, 8) amount(s) 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. OHCA shall have forty-five (45) days from the date that a proper invoice is received by OHCA to pay claims pursuant to the terms of this RFP. If OHCA fails to pay and invoice within that time, Contractor shall have right to interest upon the invoice amount consistent with 62 O.S. §34.71 and 62 O.S. §34.72.
 5. Contractor(s) shall have the later of: (a) ninety (90) days from the final date of service(s) rendered under the terms of this Contract; or (b) ninety (90) days from the expiration of this Contract to submit invoice(s) for payment. OHCA will not be held responsible for payment of invoices submitted in excess of these time limitations.

A.18 TURNOVER PLAN

1. Six months prior to the conclusion of the Contract, the Contractor shall provide, at no extra charge, assistance in turning over the operations to OHCA or its agent. The Contractor shall provide a 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) Transfer of all data in a usable format to OHCA to include all native production files; and
 - (e) Turnover tasks and schedule.
2. OHCA must approve the Turnover Plan. At a turnover date, to be determined by OHCA, the Contractor shall provide to OHCA or its agent all updated manuals and all other documentation and records as will be required by OHCA for continuity of services under this Contract. Following turnover of operations, the Contractor must provide the state with a Turnover Results Report which will document completion and results of each step of the Turnover Plan.
 3. The OHCA may begin withholding 10% of the total invoice amount no more than six months prior to the conclusion of the Contract. Upon final receipt and approval of the turnover plan, the Contractor shall invoice the OHCA for all final costs including the 10% withheld.

EXECUTED:

Contractor

Date

Joel Nico Gomez, C.E.O.
Oklahoma Health Care Authority

Date