

**AGREEMENT between ELECTRONIC DATA SYSTEMS and O-EPIC EMPLOYER**

Electronic Data Systems Corporation, F.E.I. #752548221, (hereinafter referred to as "EDS") and

\_\_\_\_\_ (hereinafter referred to as "EMPLOYER") enter into this Agreement:

*(Print Employer's Name)*

**ARTICLE I. PURPOSE**

1.0 The purpose of this Agreement is for EDS and EMPLOYER to contract for subsidy payments to assist in purchasing group health coverage for employees under the Oklahoma Employee/Employer Partnership for Insurance Coverage Program (O-EPIC.) The parties agree and understand that the O-EPIC Program is a federal matching program and that funds are paid from federal and state treasury funds.

**ARTICLE II. THE PARTIES**

2.0 Electronic Data Systems (EDS)

(a) EDS is contracted by the Oklahoma Health Care Authority (OHCA) to provide third party administrator services (as defined) for O-EPIC. OHCA is the state agency that the Oklahoma Legislature has designated to administer Oklahoma's O-EPIC Program.

2.1 NAME \_\_\_\_\_

*(Print EMPLOYER's Name)*

(a) EMPLOYER certifies it is a legal business entity that qualifies for participation under O-EPIC rules found at OAC 317:45-7-1.

(b) EMPLOYER has authority to enter into this Agreement pursuant to its organizational documents, bylaws, or properly enacted resolution of its governing authority. The person executing this Agreement for EMPLOYER has authority to execute this Agreement on EMPLOYER's behalf pursuant to EMPLOYER's organizational documents, bylaws, or properly enacted resolution of EMPLOYER's governing authority.

2.2 ADDRESSES

The parties agree that the mailing addresses for the parties to this Agreement are as follows:

EDS mailing address:

EMPLOYER mailing address:

Premium Assistance EDS

Attention: Employer Specialists

2401 NW 23<sup>rd</sup>, Suite 11

Oklahoma City, OK 73107

\_\_\_\_\_

\_\_\_\_\_

**ARTICLE III. TERM**

3.0 This Agreement shall be effective starting the first day of \_\_\_\_\_ (the "Effective Date") and will automatically renew every twelve (12) months there after, so long as the employer qualifies for participation under O-EPIC rules found at OAC 317:45-7-1.

3.1 EMPLOYER shall not assign or transfer any rights, duties, or obligations under this Agreement without EDS' prior written consent.

**ARTICLE IV. SCOPE OF AGREEMENT**

4.0 EMPLOYER RESPONSIBILITIES

EMPLOYER agrees to:

(a) Provide group coverage to certain employees through one or more O-EPIC qualifying health plan(s) as defined by OAC 317:45-5-1.

(b) Provide O-EPIC forms and information received from EDS to its employees on a timely basis and to inform them of their option to apply for the O-EPIC program.

(c) Pay all invoices for group health plan(s) chosen by employees participating in O-EPIC by the due date specified by the carrier (including any allowable grace period).

(d) Pay no less than 25% of the health plan premium for employees participating in O-EPIC. This minimum amount for each participating employee can be found on the "Employee Approved-Inform Employer Letter" PMS-9003-D.

(e) Withhold a premium from an employee's paycheck as shown in the "Employee Approved -Inform Employer Letter" PMS-9003-D of:

- no more than 15% of the applicable premium for any employee participating in O-EPIC.
- no more than 15% of the applicable premium for the employee's spouse if EMPLOYER offers coverage for spouses and an employee's spouse participates in O-EPIC.

(f) Provide written notification to EDS on the O-EPIC-4 (Small Business Employer Change Form) within five days from the effective date of

- any change in the employment status of any employee participating in O-EPIC, for example employee's termination
- new employees' eligibility for health coverage, e.g. new hires or an employee who switched from part time to full time

- (g) Provide written notification to EDS on the O-EPIC-4 (Small Business Employer Change Form) within seven working days of being informed of any qualifying event that changes the employee or spouse's eligibility for health coverage.
- (h) Comply with all applicable federal and state statutes and regulations, OHCA rules and EDS policies.
- (i) Give EDS and OHCA the right to access any payment, coverage, or other EMPLOYER-related records of EMPLOYER'S carrier.
- (j) Assist OHCA and EDS in determining the liability of third parties for any O-EPIC employee's health care expenditures in accordance with 42 U.S.C. 1396a (25) (A)
- (k) Provide information to OHCA related to EMPLOYER's expenditures for group health care coverage and benefit plans offered in the previous five years so that OHCA can comply with federal reporting requirements.
- (l) Accept payment from EDS by direct deposit to the EMPLOYER's financial institution and ensure that EDS has correct direct deposit information.

4.1 PAYMENT OF THE PREMIUM SUBSIDY

- (a) EDS shall pay EMPLOYER a monthly subsidy amount as shown on the "Employee Approved-Inform Employer Letter" PMS-9003-D for health premiums for its eligible employees enrolled in O-EPIC.
- (b) EDS shall make payment in accordance with the direct deposit information supplied by EMPLOYER.
- (c) In the event of an overpayment to EMPLOYER due to fraud or error, EDS will recoup the amount of the overpayment from EMPLOYER. Overpayments will be recouped by deduction from future premium subsidies and/or creating an account receivable and invoicing EMPLOYER for a payment. The date of any notice of adverse action issued by OHCA or EDS to an employee enrolled in O-EPIC has no bearing on EDS's ability to recoup overpayments from EMPLOYER.
- (d) All payments will be from federal and state funds. Any false claims, statements, or documents, or any concealment of a material fact may be prosecuted under applicable federal or state laws.
- (e) EMPLOYER agrees and understands that EDS cannot make payment to employers who discriminate on the grounds of race, color, religion, sex, national origin or handicap.

4.2 BILLING PROCEDURES

- (a) EMPLOYER agrees to submit its claim for a subsidy payment in a format acceptable to EDS and attach a complete premium invoice from the carrier.
- (b) EMPLOYER agrees to submit the claim on a monthly basis at least five (5) days prior to the monthly premium cycle cut-off date as published in the Employer Invoice Calendar contained in EMPLOYER's enrollment packet.
- (c) In the event that the carrier invoice shows that full payment of the previous month's invoice has not been made and EMPLOYER has received a premium subsidy for that previous month, the subsidy payment for the current month may be delayed.
- (d) If no claim and carrier invoice is received for a particular month, EDS may at its option assume that the employer is no longer participating in O-EPIC and terminate EMPLOYER's Agreement.

**ARTICLE V. LAWS APPLICABLE**

- 5.0 The parties to this Agreement acknowledge and expect that over the term of this Agreement laws may change. Specifically, the parties acknowledge and expect (i) federal Medicaid statutes and regulations and (ii) state Medicaid and O-EPIC statutes and rules may change. The parties shall be mutually bound by such changes.
- 5.1 The explicit inclusion of some statutory and regulatory duties in this Agreement shall not exclude other statutory or regulatory duties.
- 5.2 All questions pertaining to validity, interpretation, and administration of this Agreement shall be determined in accordance with the laws of the State of Oklahoma, regardless of where any service is performed or product is provided.
- 5.3 The venue for civil actions arising from this Agreement shall be Oklahoma County, Oklahoma. For the purpose of rightful 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.

**ARTICLE VI. AUDIT AND INSPECTION**

- 6.0 EMPLOYER shall keep such records as are necessary to disclose fully the extent of its participation in the O-EPIC program and shall furnish records and information regarding eligibility requirements, employee status, and subsidy payments received to EDS, OHCA, the Oklahoma Attorney General's Medicaid Fraud Control Unit (MFCU hereafter), and the U.S. Secretary of Health and Human Services (Secretary hereafter) for six years from the date of provision. EMPLOYER shall not destroy or dispose of records, which are under audit, review or investigation when the six-year limitation is met. EMPLOYER shall maintain such records until informed in writing by the auditing, reviewing or investigating agency that the audit, review or investigation is complete.
- 6.1 Authorized representatives of the EDS, OHCA, MFCU, and the Secretary shall have the right to make physical inspection of EMPLOYER's place of business and to examine records relating to financial statements or forms submitted by EMPLOYER under this Agreement and to audit EMPLOYER's financial records.

**ARTICLE VII. CONFIDENTIALITY**

- 7.0 EMPLOYER agrees that information regarding its employees' participation in O-EPIC is confidential. EMPLOYER shall not release such information to any entity or person other than EDS without OHCA's permission.
- 7.1 EMPLOYER agrees to comply with the provisions of the Health Insurance and Portability Accounting Act of 1996 (HIPAA), specifically the privacy provisions of that act found at 45 C.F.R. sections 164.502.

**ARTICLE VIII. TERMINATION**

- 8.0 Either party may terminate this Agreement without cause with a sixty-day written notice to the other party. EDS may terminate this Agreement immediately under the following conditions:
  - a. EMPLOYER no longer offers its employees coverage under a qualified health plan;
  - b. EMPLOYER fails to make full payment to the carrier by the required date
  - c. EMPLOYER fails to submit a claim and carrier invoice in any month;
  - d. An audit indicates EMPLOYER is ineligible for O-EPIC;
  - e. EMPLOYER no longer has a business location in the state of Oklahoma;
  - f. On evidence of fraud.
- 8.1 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 Agreement and prior to the anticipated Agreement expiration date, this Agreement may be terminated immediately by EDS.
- 8.2 In the event of termination of EMPLOYER or employee, EMPLOYER shall provide any records or other information necessary for an orderly transition of O-EPIC employees' health care.
- 8.3 In the event of termination under 8.0, EMPLOYER agrees that any overpayment determined as a result of EMPLOYER may be recovered from EMPLOYER through an administrative proceeding.

**ARTICLE IX. OTHER PROVISIONS**

- 9.0 The representations made in this Agreement constitute the sole basis of the parties' contractual relationship. Attachments to this Agreement which are made part of the Agreement and incorporated by reference are (i) EMPLOYER'S Affidavit, (ii) Electronic Funds Transfer Authorization, (iii) EMPLOYER-completed Enrollment Packet, (iv) Letter PMS-9003D, (v.) Letter PMS-9001D, and (vi.) O-EPIC-4 (Small Business Employer Change Form.) No oral representation by either party relating to services covered by this Agreement shall be binding on either party. Any amendment to this Agreement shall be in writing and signed by both parties, except those matters addressed in Paragraph 2.2. Address changes shall be in writing but shall not require the signature of the receiving party.
- 9.1 If any provision of this Agreement is determined to be invalid for any reason, such invalidity shall not affect any other provision, and the invalid provision shall be wholly disregarded.
- 9.2 Titles and subheadings used in this Agreement are provided solely for the reader's convenience and shall not be used to interpret any provision of this Agreement.
- 9.3 Limitation of Liability. Except for that parties indemnification obligations, in no event will the measure of damages payable by either party include, nor will either party be liable for, any amounts for loss of income, profit or savings or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, even if such party has been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed.
- 9.4 Third Party Indemnification of EDS. Each of the parties acknowledge that by entering into and performing its obligations under this Agreement EDS will not assume and should not be exposed to the business and operational risks associated with EMPLOYER'S business, and EMPLOYER therefore agrees to indemnify and defend EDS from any and all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses (collectively, "Losses") arising out of, under or in connection with any third party claim relating to the conduct of EMPLOYER'S business, including any breach of EMPLOYER'S obligations under this Agreement.
- 9.5 Relationship of Parties. EMPLOYER is performing pursuant to this Agreement only as an independent contractor. EMPLOYER shall not act or attempt to act or represent itself, directly or by implication, as an agent of EDS or its Affiliates or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of, EDS or its Affiliates.

\_\_\_\_\_  
EMPLOYER'S FEIN

\_\_\_\_\_  
EDS Authorized Representative Name

\_\_\_\_\_  
EMPLOYER Authorized Representative Name

\_\_\_\_\_  
EDS Authorized Representative Signature

\_\_\_\_\_  
EMPLOYER Authorized Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

