



Solicitation

1. Solicitation #: 0900000215 REBID

2. Solicitation Issue Date: 5/26/16

3. Brief Description of Requirement:

Request for proposal to establish a contract for the post payment auditing of inpatient hospital claims for the Employees Group Insurance Division of the Office of Management and Enterprise Services.

4. Response Due Date¹: 6/16/2016

Time: 3:00PM CST/CDT

5. Issued By and RETURN SEALED BID TO²:

Personal, U.S. Postal or Common Carrier Delivery:

Office of Management and Enterprise Services
Central Purchasing
5005 N. Lincoln Blvd., Suite 300
Oklahoma City, OK 73105

6. Solicitation Type (type "X" at one below):

- ☐ Invitation to Bid
- ☒ Request for Proposal
- ☐ Request for Quote

7. Requesting Agency: Office of Management and Enterprise Services/Employees Group Insurance Division

8. Contracting Officer:

Name: Jacob Charries
Phone: 405-522-1040
Email: Jacob.charries@omes.ok.gov

¹ Amendments to solicitation may change the Response Due Date (read GENERAL PROVISIONS, section 3, "Solicitation Amendments")

² If "U.S. Postal Delivery" differs from "Carrier Delivery", use "Carrier Delivery" for courier or personal deliveries



Responding Bidder Information

*"Certification for Competitive Bid and Contract" **MUST** be submitted along with the response to the Solicitation.*

1. **RE: Solicitation #** 0900000215

2. Bidder General Information:

FEI / SSN : _____

VEN ID: _____

Company Name: _____

3. Bidder Contact Information:

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Name: _____

Contact Title: _____

Phone #: _____ FAX#: _____

Email: _____ Website: _____

4. Oklahoma Sales Tax Permit¹:

☐ YES – Permit #: _____

☐ NO – Exempt pursuant to Oklahoma Laws or Rules

5. Registration with the Oklahoma Secretary of State:

☐ YES - Filing Number: _____

☐ NO - Prior to the contract award, the successful bidder will be required to register with the Secretary of State or must attach a signed statement that provides specific details supporting the exemption the supplier is claiming (www.sos.ok.gov or 405-521-3911).

6. Workers' Compensation Insurance Coverage:

Bidder is required to provide with the bid a certificate of insurance showing proof of compliance with the Oklahoma Workers' Compensation Act.

☐ YES – include a certificate of insurance with the bid

☐ NO - attach a signed statement that provides specific details supporting the exemption you are claiming from the Workers' Compensation Act (Note: Pursuant to Attorney General Opinion #07-8, the exemption from 85 O.S. 2011, § 311 applies only to employers who are natural persons, such as sole proprietors, and does not apply to employers who are entities created by law, including but not limited to corporations, partnerships and limited liability companies.)²

Authorized Signature

Date

Printed Name

Title

¹ For frequently asked questions concerning Oklahoma Sales Tax Permit, see <http://www.tax.ok.gov/faq/faqbussales.html>

² For frequently asked questions concerning workers' compensation insurance, see <http://www.ok.gov/oid/faqs.html#c221>



Certification for Competitive Bid and/or Contract (Non-Collusion Certification)

NOTE: A certification shall be included with any competitive bid and/or contract exceeding \$5,000.00 submitted to the State for goods or services.

Solicitation or Purchase Order #: 0900000215

Supplier Legal Name: _____

SECTION I [74 O.S. § 85.22]:

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - d. to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to Section 85.45j.1 of this title.

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

SECTION II [74 O.S. § 85.42]:

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

The undersigned, duly authorized agent for the above named supplier, by signing below acknowledges this certification statement is executed for the purposes of:

☐ the competitive bid attached herewith and contract, if awarded to said supplier;

OR

☐ the contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma statutes.

Supplier Authorized Signature

Certified This Date

Printed Name

Title

Phone Number

Email

Fax Number



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A. GENERAL PROVISIONS

The following provisions shall apply where and as applicable to this Solicitation.

A.1. Definitions

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

- A.1.1.** "Acquisition" means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, or rental pursuant to applicable state law.
- A.1.2.** "Amendment" means a written restatement of or modification to a Contract Document executed by both parties.
- A.1.3.** "Bid" means an offer in the form of a bid, proposal or quote a Bidder submits in response to this Solicitation.
- A.1.4.** "Bidder" means an individual or Business Entity that submits a Bid in response to this Solicitation.
- A.1.5.** "Business Entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, limited liability limited partnership, sole proprietorship, joint stock company, consortium, or other legal entity recognized by statute.
- A.1.6.** "COTS" means software that is commercial off the shelf.
- A.1.7.** "Contract" means this Solicitation, which together with other Contract Documents, as may be amended from time to time, evidences the final agreement between the parties with respect to the contract awarded pursuant to this Solicitation.
- A.1.8.** "Contract Document" means, when executed by all applicable parties as necessary, this Solicitation, the Bid of the awarded Supplier, any statement of work, work order, rider or similar document related hereto, any purchase order related hereto, other statutorily required or mutually agreed documents related hereto, and any Amendment to any of the foregoing.
- A.1.9.** "Closing Date and Time" is 3:00 P.M. Central Time on the date this Solicitation closes.
- A.1.10.** "Interlocal Entity" means, with respect to any state other than Oklahoma, any authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of such state government, any political subdivision of such state, and any organization related to any of the foregoing.
- A.1.11.** "OMES - ISD" means the Office of Management and Enterprise Services, Information Services Division, on behalf of the State of Oklahoma.
- A.1.12.** "Procuring Agency" means the State of Oklahoma Agency initiating the procurement.
- A.1.13.** "Request for Information or RFI" means a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation.
- A.1.14.** "State" means the government of the State of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of Oklahoma.
- A.1.15.** "State Entity" means any agency, authority, office, bureau, board, council, court, commission, department, district, institution, unit, division, body or house of any branch of the State government, any political subdivision of the State, and any organization related to any of the foregoing.
- A.1.16.** "State CIO" is the State Chief Information Officer or designee, in the capacity of the State Purchasing Director for information technology and telecommunications Acquisitions.
- A.1.17.** "Solicitation" means this document inviting Bids for the Acquisition referenced herein.
- A.1.18.** "Supplier" means the Bidder with whom the State enters into the Contract awarded pursuant to this Solicitation.
- A.1.19.** "Utilities" means a Bidder's reusable or pre-existing proprietary intellectual property that forms the basis for a customized or developed software deliverable for the State and which is specifically identified as such by the Bidder in writing prior to execution of the Contract awarded pursuant to this Solicitation.

A.2. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

By submitting a Bid to this Solicitation:

- A.2.1.** The Bidder certifies that the Bidder and its principals or participants:
 - A.2.1.1.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;
 - A.2.1.2.** Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; or for violation of federal or

state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

A.2.1.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the foregoing offenses enumerated in this certification; and

A.2.1.4. Have not within a three-year period preceding this Contract had one or more public (federal, state or local) contracts terminated for cause or default.

A.2.2. Where the Bidder is unable to certify to any of the statements in the certification above, Bidder shall attach an explanation to the Bid.

A.3. Bid Public Opening

Sealed Bids may be opened upon public request at the time and date specified herein as the Closing Date and Time.

A.4. Late Bid

Bids received by the State after the Closing Date and Time shall be deemed non-responsive and shall not be considered for any resultant award.

A.5. Legal Contract

By submitting a Bid to this Solicitation:

A.5.1. Submitted Bids are rendered as a legal offer and when accepted by the State, shall constitute a contract.

A.5.2. The Contract Documents resulting from this Solicitation shall have the following order of precedence: this Solicitation, other contract award documents, including but not limited to the Purchase Order, Amendments, required certification statements, change orders, license and other similar agreements; and the successful Bid. In the event there is a conflict between any of the preceding documents, the other contract award documents prevail over this Solicitation, and both the other contract award documents and this Solicitation shall prevail over the successful Bid. If there is a conflict between the terms of any Contract Document and applicable Oklahoma law, rules or regulations, such laws, rules and regulations shall prevail over the conflicting terms of the Contract Document.

A.5.3. Any Contract Document related to this Solicitation shall be legibly written or typed.

A.5.4. All transactions related to this Solicitation, and any Contract Document related hereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

A.6. Pricing

A.6.1. Bids shall remain firm for a minimum of one-twenty (120) days after the Closing Date and Time.

A.6.2. Bidders guarantee unit prices to be correct.

A.6.3. In accordance with 74 O.S. §85.40, all travel expenses to be incurred by Supplier in performance of the Contract shall be included in the total Bid price/contract amount.

A.6.4. All costs incurred by the Bidders for Bid preparation and participation in this competitive procurement shall be the sole responsibility of the Bidder. The State of Oklahoma shall not reimburse any Bidder for any such costs.

A.7. Firm Fixed Price

Unless this Solicitation specifies otherwise, a Bidder shall submit a firm, fixed price for the term of the Contract.

A.8. Pricing Requirements

If Bidder pricing does not meet requirements of the section herein titled Price and Cost, the Bid may be considered non-responsive.

A.9. Manufacturers' Name and Approved Equivalents

Unless otherwise specified in this Solicitation, manufacturers' names, brand names, information, and/or catalog numbers listed in a specification are for information and not intended to limit competition. Bidder may offer any brand for which it is an authorized representative, which meets or exceeds the specification for any item(s). However, if a Bid is based on equivalent products, indicate on the Bid form the manufacturer's name and number. Bidder shall submit sketches, descriptive literature, and/or complete specifications with their Bid. Reference to literature submitted with a previous Bid shall not satisfy this provision. The Bidder shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids that do not comply with these requirements are subject to rejection.

A.10. Rejection of Offer

The State reserves the right to reject any Bids that do not comply with the requirements and specifications of this Solicitation. A Bid may be rejected when the Bidder imposes terms or conditions that would modify requirements of this Solicitation or limit the Bidder's liability to the State. Other possible reasons for rejection of Bids are listed in OAC 580:15-4-11

Attempts to impose unacceptable conditions on the State, or impose alternative terms not in the best interest of the State shall not be tolerated. Continued attempts to impose unacceptable conditions or terms on the State shall result in a determination of non-responsiveness of the Bid due to lack of compliance with the terms and conditions of negotiation or this Solicitation.

A.11. Award of Contract

- A.11.1.** The State may award the contract to more than one Bidder by awarding the contract(s) by item or groups of items, or may award the contract on an all or none basis, whichever is deemed to be in the best interest of the State of Oklahoma.
- A.11.2.** Contract awards shall be made to the lowest and best Bid(s) unless this Solicitation specifies that best value criteria is being used.
- A.11.3.** In order to receive an award or payments from the State of Oklahoma, Bidder must be registered. The Bidder registration process can be completed electronically through the website at the following link:
<https://www.ok.gov/dcs/vendors/index.php>.
- A.11.4.** It is the preference of the State to award to a single Bidder. However, the State reserves the right to award to multiple Bidders when it has been determined to be in the best interest of the State.

A.12. Contract Modification

- A.12.1.** The Contract Documents issued as a result of this Solicitation is under the authority of the State personnel signing the Contract Documents. The Contract may be modified only through a written Amendment, signed by the State.
- A.12.2.** Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by OMES - ISD in writing, or that is made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including but not limited to any unauthorized written Amendment, shall be void and without effect, and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.

A.13. Delivery, Inspection and Acceptance

- A.13.1.** All deliveries shall be F.O.B. Destination. The Supplier shall prepay all packaging, handling, shipping and delivery charges and prices quoted shall include all such charges. Any products delivered pursuant to this Contract shall be subject to final inspection and acceptance by the procuring entity at destination and the procuring entity has no responsibility for the delivered products prior to acceptance. Title and risk of loss or damage to all items shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance. "Destination" shall mean delivered to the receiving dock or other point specified in the applicable purchase order.
- A.13.2.** Supplier shall be required to deliver products as offered on or before the required date. Deviations, substitutions, or changes in the products shall not be made unless expressly authorized in writing by the State or Interlocal Entity, as applicable.

A.14. Invoicing and Payment

- A.14.1.** Upon submission of an accurate and proper invoice, the invoice shall be paid in arrears after products have been delivered or services provided and in accordance with applicable law. Invoices shall contain the purchase order number, a description of the products delivered or services provided, and the dates of such delivery or provision of services.
- A.14.2.** State Acquisitions are exempt from sales taxes and federal excise taxes.

A.15. Audit and Records Clause

- A.15.1.** 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 Supplier agrees any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Contract.
- A.15.2.** The Supplier is required to retain records relative to this Contract for the duration of this Contract and for a period of seven (7) years following completion and/or termination of this 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 (7) year retention period, whichever is later.

A.16. Non-Appropriation Clause

The terms of this Contract and any purchase order issued for multiple years under this Contract are contingent upon sufficient appropriations being made by the applicable state legislature, federal government or other appropriate government entity. Notwithstanding any language to the contrary in this Contract, or any other Contract Document, the State Entity or Interlocal Entity may terminate its obligations under this Contract if sufficient appropriations are not made by the Oklahoma Legislature, federal government or other appropriate governing entity to pay amounts that may become due under the terms of multiple year agreements in connection with this Contract. The decision as to whether sufficient appropriations are available shall be accepted by, and be final and binding on, the Supplier.

A.17. Choice of Law and Venue

- A.17.1.** Any claims, disputes or litigation relating to the Contract Documents, singularly or in the aggregate, or the execution, interpretation, performance, or enforcement thereof shall be governed by the laws of the State of Oklahoma, or in the case of an Interlocal Entity, in the state in which the Interlocal Entity is located, without regard to application of choice of law principles.
- A.17.2.** Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents shall be in Oklahoma County, Oklahoma, or in the case of an Interlocal Entity, as agreed to between such Interlocal Entity and Supplier or as otherwise provided by applicable law.

A.18. Termination for Cause

- A.18.1.** The Supplier may terminate this Contract in whole or in part for default with both a thirty (30) day written request and upon written approval from the State. The State may terminate this Contract in whole or in part for default or any other just cause upon a thirty (30) day written notification to the Supplier.
- A.18.2.** The State may terminate this Contract immediately, in whole or in part, without a thirty (30) day written notice to the Supplier, when violations are found to be an impediment to the function of the State and detrimental to the cause of a State Entity, when conditions preclude the thirty (30) day notice, or when the State determines that an administrative error occurred prior to Contract performance. Similarly, an Interlocal Entity may terminate its obligations to Supplier immediately upon any of the foregoing conditions in this subsection.
- A.18.3.** If this Contract or certain obligations hereunder are terminated, the State, State Entity or Interlocal Entity, as applicable, shall be liable only for payment for products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

A.19. Termination for Convenience

- A.19.1.** The State may terminate this Contract, in whole or in part, for convenience if the State Chief Information Officer determines that termination is in the State's best interest. The State shall terminate this Contract by delivering to the Supplier a notice of termination for convenience specifying the terms and effective date of termination. The Contract termination date shall be a minimum of sixty (60) days from the date the notice of termination is issued by the State. Similarly, an Interlocal Entity may terminate its obligations to Supplier upon a determination by the proper authority for such Interlocal Entity that termination is in the Interlocal Entity's best interest and notice of termination by such Interlocal Entity shall be provided in accordance with the foregoing requirements set forth in this subsection.
- A.19.2.** If this Contract or certain obligations hereunder are terminated pursuant to this section, the State, State Entity, or Interlocal Entity, as applicable, shall be liable only for products delivered and accepted and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law.

A.20. Insurance

The Supplier shall maintain and promptly provide proof to the State of the following insurance coverage, and any renewals, additions or changes thereto, as long as the Supplier has any obligation under a Contract Document:

- a) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b) Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage;
- c) Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including bodily injury and property damage and with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles;

- d) Professional Errors and Omissions Insurance which shall include Consultant's Computer Errors and Omissions Coverage with limits not less than \$1,000,000 per claim and in the aggregate; and
- e) Additional coverage required by the State in writing in connection with a particular Acquisition.

A.21. Employment Relationship

This Contract does not create an employment relationship between the parties. Individuals performing services required by this Contract are not employees of the State, a State Entity or an Interlocal Entity and, accordingly, shall not be eligible for rights or benefits accruing to such employees including but not limited to health insurance benefits, workers' compensation insurance, paid vacation or other leave, or any other employee benefit.

A.22. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007

By submitting a Bid to this Solicitation, the Bidder certifies that it is registered and participates in the Status Verification System, available at www.dhs.gov/E-Verify, as required under applicable State law and is in compliance with applicable federal immigration laws and regulations. The Bidder agrees that compliance with the certification set forth in this section shall be a continuing obligation.

A.23. Compliance with Applicable Laws

- A.23.1.** In connection with its performance of obligations under the terms of this Contract, the Bidder certifies compliance with and, if awarded the Contract pursuant to this Solicitation, shall continue to comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, including but not limited to the following:
- a) Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;
 - b) If the payments pursuant to the Contract are expected to exceed \$100,000.00, Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;
 - c) Prospective participant requirements set forth at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
 - d) 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973 and Executive Orders 11246 and 11375, Americans with Disabilities Act of 1990;
 - e) For Persons entering into a grant or cooperative agreement over \$100,000.00 (as defined at 45 C.F.R. §93.105 and 93.110), Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;
 - f) Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Circular A-133 with approval and work paper examination rights of the applicable procuring entity; and
 - g) Be registered as a business entity licensed to do business in the State, (registration through the Oklahoma Secretary of State at <https://www.sos.ok.gov>), have obtained a sales tax permit and be current on franchise tax payments to the State, as applicable.
- A.23.2.** The Supplier shall maintain all applicable licenses and permits required in association with its obligations hereunder.
- A.23.3.** The Supplier shall inform its employees, agents and proposed subcontractors who perform services for the State under this Contract of the Supplier's obligations hereunder and shall require compliance accordingly. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations hereunder.

A.24. Gratuities

The rights of Supplier under the terms of this Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to any State or Interlocal Entity employee directly involved in this Contract. In addition, a Supplier determined to be guilty of such a violation may be suspended or debarred.

A.25. Preclusion from Resulting Contracts

Any Bidder that has provided any consulting services or technical assistance that resulted in any specifications or concepts in this Solicitation, either directly or indirectly, is precluded from being awarded the Contract and from securing a sub-contractor that has provided such services.

A.26. Mutual Responsibilities

The State and Supplier agree that:

- A.26.1.** Neither party grants the other the right to use any trademarks, trade names, or other designations in any promotion or publication without express written consent by the other party.
- A.26.2.** This is a non-exclusive Contract and each party is free to enter into similar agreements with others.
- A.26.3.** Each party grants the other only the licenses and rights specified in the Contract Document and all other rights and interests are expressly reserved.
- A.26.4.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by either party is required under this Contract, such action shall not be unreasonably delayed or withheld

A.27. Background Checks and Verifications

At the sole discretion of the State, State Entity or Interlocal Entity, as applicable, employees of the Supplier and any subcontractor of the Supplier may be subject to background checks. If background check information is requested, the Supplier must submit, or cause to be submitted, the required information in a timely manner and the Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State, State Entity or Interlocal Entity.

A.28. Confidentiality

- A.28.1.** The Supplier shall maintain strict security of all State data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and state laws, rules, regulations and policies and shall use any such data or records only as needed by Supplier for performance of its obligations hereunder. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or state laws, rules and regulations. If Supplier utilizes a permitted subcontractor, Supplier shall obtain specific written assurance, and provide a copy to the State, that the subcontractor shall maintain this same level of security of all data and records entrusted to or accessed by the subcontractor and agree to the same obligations as Supplier, to the extent applicable. Such written assurance may be set forth in the required subcontractor agreement referenced herein.
- A.28.2.** No State data or records shall be provided or the contents thereof disclosed to a third party unless specifically authorized to do so in writing by the State CIO or in compliance with a valid court order. The Supplier shall immediately forward to the State and the State CIO any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

A.29. Unauthorized Obligations

At no time during the performance of this Contract shall the Supplier have the authority to obligate any other party hereto for payment of any goods or services over and above those set forth in this Contract. If the need arises for goods or services over and above the products, Supplier shall cease the project and contact the appropriate procuring entity for written approval prior to proceeding.

A.30. Electronic and Information Technology Accessibility

Supplier shall comply with federal and state laws, rules and regulations related to information technology accessibility, as applicable, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at http://www.ok.gov/cio/documents/isd_itas.pdf and Supplier shall provide a Voluntary Product Accessibility Template ("VPAT") describing such compliance, which may be provided via a URL linking to the VPAT. If the products will require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to state bids, request for proposals, statements of work, riders, agreements, purchase orders and Amendments. Accordingly, in each statement of work or similar document issued pursuant to this Contract, Supplier shall describe such compliance and identify, if and as applicable, (i) which exception to the Standards applies or (ii) a description of the tasks and estimated cost to make the proposed products and/or services compliant with applicable Standards.

All representations contained in the VPAT provided will be relied upon by the State for accessibility compliance purposes.

A.31. Patents and Copyrights

- A.31.1.** Without exception, the products prices shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent or copyright.

- A.31.2.** If a third party claims that any portion of the products provided by Supplier under the terms of this Contract infringes that party's patent or copyright, the Supplier shall defend the State against the claim at the Supplier's expense and pay all related costs, damages, and attorneys' fees incurred by, or assessed to, the State, provided the State (i) promptly notifies the Supplier in writing of the claim and (ii) to the extent authorized by the Attorney General of the State, allows the Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section but Supplier shall remain responsible to indemnify the State for all associated costs, damages and fees incurred by or assessed to the State.
- A.31.3.** If such a claim is made or appears likely to be made, the Supplier shall enable the State to legally continue to use, or modify for use, the portion of products at issue or replace such potential infringing products with at least a functional non-infringing equivalent. If the Supplier determines that none of these alternatives is reasonably available, the State shall return such portion of the products at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund, if applicable, of other products which are rendered materially unusable as intended due to removal of the portion of products at issue.
- A.31.4.** Supplier has no obligation regarding a claim based on any of the following: (i) modification of a product by any party other than Supplier, its employee, agent, representative, permitted subcontractor, or any State employee acting in conjunction with the Supplier; (ii) a program's use in other than its specified operating environment; (iii) the combination, operation, or use of a product with other products not provided by Supplier as a system or (iv) infringement solely by a non-Supplier product that has not been provided to the State by, through or on behalf of the Supplier as opposed to its combination with products Supplier provides to or develops for the State as a system.

A.32. Assignment

Supplier's obligations under a Contract Document may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld in its sole discretion. Rights granted under the terms of this Contract may be assigned or transferred, at no additional cost, to other entities within the State.

A.33. Severability

If any provision for this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

A.34. Paragraph Headings

The headings used in this Contract are for convenience only and do not constitute part of the Contract.

A.35. Failure to Enforce

Failure by the State, as applicable, at any time to enforce a provision of, or exercise a right under, any Contract Document shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State to enforce any provision of, or exercise any right under, a Contract Document at any time in accordance with its terms. Likewise, a waiver of a breach of any provision in a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in a Contract Document.

A.36. Conflict of Interest

- A.36.1.** Bidder must provide immediate disclosure of any contractual relationship or any other relevant contact with any State personnel or another Supplier involved in the development of a Bidder's response to this Solicitation. Any conflict of interest shall, at the sole discretion of the State, be grounds for rejection of the Bid or termination of project involvement.
- A.36.2.** In addition to any requirement of law or through a professional code of ethics or conduct, the Supplier and the Supplier's employees performing services for the State are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Further, without prior written approval of the State, such employees shall not plan, prepare, or engage in any activity that conflicts or may conflict with the best interest of the State as long as the Supplier has an obligation under this Contract. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State.

A.37. Limitation of Liability

To the extent any limitation of liability in any Contract Document is construed by a court of competent jurisdiction to be a limitation of liability in violation of applicable law, such limitation of liability shall be void.

A.38. Media Ownership (Disk Drive and/or Memory Chip Ownership)

- A.38.1.** In accordance with the State of Oklahoma Information Security Policy, Procedures, Guidelines set forth online at <http://www.ok.gov/cio/documents/InfoSecPPG.pdf> ("Electronic Media Retention Requirements"), any disk drives and memory cards purchased with or included for use in leased or purchased equipment under this Contract remain the property of the State.
- A.38.2.** Personal Identification Information may be retained within electronic media devices and components; therefore, the State shall not allow the release of electronic media either between State Entities or for the resale of refurbished equipment that has been in use by State Entities, by the Supplier to the general public or other entities. Electronic Media Retention Requirements shall also be applied to replacement devices and components, whether purchased or leased, the Supplier may supply during the downtime (repair) of equipment purchased or leased through this Contract. If a device has to be removed from a location for repairs, the State shall have sole discretion, prior to removal, to determine and enforce sufficient safeguards (such as a record of hard drive serial numbers) to protect Personal Identification Information that may be stored within the hard drive or memory of the device.

A.39. Offshore Services

No offshore services are provided for under this Contract. State data shall not be used or accessed internationally, for troubleshooting or any other use not specifically provided for herein without prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State.

A.40. Failure to Provide

The Supplier's repeated failure to provide defined services, without reasonable basis as determined in the sole discretion of the State CIO, shall constitute a material breach of the Supplier's obligations, which may result in partial or whole cancellation of the Contract.

A.41. Agency Policies

The Supplier's employees and/or sub-contractors must adhere to the applicable State policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. It is up to the Supplier to review and relay State policies covering the above to the consulting staff.

A.42. Compliance with Technology Policies

The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at: www.ok.gov/OSF/documents/StateOfOklahomaInfoSecPPG_osf_12012008.pdf

A.43. High Technology System Performance and Upgrades

- A.43.1.** If an Acquisition pursuant to this Contract includes a "high technology system" as defined under Oklahoma law, the Supplier shall provide documentation of the projected schedule of recommended or required system upgrades or improvements to such system for the three (3) year period following the target purchase date. If Supplier does not plan such system upgrades or improvements, the Supplier shall provide documentation that no system upgrades or improvements to the high technology system are planned for the three (3) year period following the target purchase date.
- A.43.2.** Any Acquisition pursuant to this Contract of an upgrade or enhancement to a high technology system shall be conditioned upon the Acquisition being provided at no charge to the State; the Acquisition being provided to the State at no additional charge pursuant to a previous agreement with the Supplier; the Supplier providing documentation that any required or recommended upgrade will enhance or is necessary for performance of the applicable State agency duties and responsibilities; or the Supplier providing documentation that it will no longer supply maintenance assistance to the applicable State agency and the applicable State agency documenting that the functions performed by the high technology system are necessary for performance of the State agency duties and responsibilities.

A.44. Emerging Technologies

The State of Oklahoma reserves the right to modify the terms of this Contract at any time to allow for technologies not identified in this Contract. If there are repeated requests for an "emerging technology" and the State feels it is warranted to add such technologies, the State reserves the right to include such technology hereunder or to issue an Amendment to this Contract.

A.45. Ownership Rights

- A.45.1.** Any software developed by the Supplier is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on the Utilities, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Utilities, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Utilities embodied in or delivered to the State in conjunction with the products.
- A.45.2.** Except for any Utilities, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.
- A.45.3.** In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as "Work Made for Hire", Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Utilities embodied in or delivered to the State in conjunction with the products.
- A.45.4.** Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.
- A.45.5.** If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.
- A.45.6.** It is understood and agreed that the Software is being developed by the Supplier for the sole and exclusive use of the State of Oklahoma. Moreover, except with regard to any deliverable based on Supplier's Utilities, the State of Oklahoma shall be deemed the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto.
- A.45.7.** Except for any Utilities, all work performed by the Supplier of software and any supporting documentation therefore shall be considered as Works for Hire (as such are defined under the U.S. Copyright Laws) and, as such, shall be owned by and for the benefit of State of Oklahoma.

A.46. Source Code Escrow – Reference Title 62 O.S. § 34.31

If required under applicable Oklahoma law relating to customized computer software developed or modified exclusively for a State Entity, the Supplier shall have a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, with the escrow agent including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- a) A bona fide material default of the obligations of the Supplier under the agreement with the agency;
- b) An assignment by the Supplier for the benefit of its creditors;
- c) A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- d) The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- e) The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- f) The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- g) The ceasing of a Supplier of maintenance and support of the software; or
- h) Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

A.47. Right to Renegotiate

Prior to exercising the State's right to cancel this Contract, the State may renegotiate the Contract for the purpose of obtaining more favorable terms for the State, provided that the term of the Contract is not modified.

A.48. Used or New Products

Bidder shall offer new items of current design unless this Solicitation specifies used, reconditioned, or remanufactured products are acceptable. Warranties in both cases should be the same.

A.49. Publicity

The award of this Contract to Supplier is not in any way an endorsement by the State of Supplier or the products and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales promotion, and other publicity matters relating to this Contract wherein the State's name is mentioned or language used from which the connection of the State's name therewith may, in the State's judgment, be inferred or implied as an endorsement. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Contract without obtaining the prior written approval of the State.

A.50. Mandatory and Non-Mandatory Terms

- A.50.1.** Whenever the terms "shall", "must", "will", or "is required" are used in this Solicitation, the specification being referred to is a mandatory specification of this Solicitation. Failure to meet any mandatory specification may cause rejection of a Bid.
- A.50.2.** Whenever the terms "can", "may", or "should" are used in this Solicitation, the specification being referred to is a desirable item and failure to provide any item so termed shall not be cause for rejection of a Bid.

A.51. Non Tobacco – Smoke Free

By order of the Governor's Executive Order 2012-01, effective August 06, 2012 the use of any tobacco product shall be prohibited on any and all properties owned, leased or contracted for use by the State of Oklahoma, including but not limited to all buildings, land and vehicles owned, leased or contracted for use by agencies or instrumentalities of the State of Oklahoma.

A.52. OMES - ISD / Agency Relationship

Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, OMES - ISD is the entity designated to purchase information technology assets on behalf of the State of Oklahoma. The Act directs OMES - ISD to acquire necessary hardware and software, and directs OMES - ISD to authorize the use of these assets by other State agencies. OMES - ISD, as the owner of information technology assets on behalf of the State of Oklahoma, allows other State agencies to use these assets while retaining ownership and the right to reassign them upon written notification to the Supplier.

A.53. Acceptance of Solicitation Content

Unless otherwise provided in Section One of the Bidder's response to this Solicitation, all Bids shall be firm representations that the responding Bidder has carefully investigated and will comply with all terms and conditions contained in this Solicitation. Upon award of any contract to the successful Bidder, the contents of this Solicitation, as may be amended by the Bid, shall become contractual obligations between the parties. Failure to provide all proposed Amendments to the terms and conditions contained in this Solicitation of the Bid may cause the Bid to be rejected from consideration for award.

A.54. Special Provisions

Special Provisions apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

B. SPECIAL PROVISIONS

B.1. Contract Term, Renewal and Extension Option

- B.1.1.** The initial contract period shall begin on the effective date and shall extend through One (1) Year (the "Initial Term") unless renewed, extended, or terminated in accordance with applicable contract provisions. The Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until so notified in writing of the approval of the contract. The authorized State representative is the only individual who can transmit that approval to the Supplier.
- B.1.2.** Under Oklahoma law, the State may not contract for a period longer than one (1) year (the "Initial Term"). By mutual consent of the parties hereto, it is intended that there shall be four (4) options to renew, subject to the terms and conditions set forth herein, each for duration of one (1) year.
- B.1.3.** After the Initial Term, the Agreement may be renewed annually upon mutual written consent of the parties. Prior to each renewal, the State shall subjectively consider the value of this Contract to the State, the Supplier's performance under the Contract and shall review certain other factors, including but not limited to the a) terms and conditions of Contract Documents to determine validity with current State and other applicable statutes and rules; b) then current products pricing and price discounts offered by Supplier; and c) then current products and support offered by Supplier.
- B.1.4.** If the State determines changes to a Contract Document are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Amendment.
- B.1.5.** The State, at its sole option, may choose to exercise an extension for ninety (90) days beyond the final renewal option period, at the Contract pricing rate. If this option is exercised, the State shall notify the Supplier in writing prior to contract end date. The State, at its sole option, may choose to exercise subsequent ninety (90) day extensions, by mutual consent and at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.
- B.1.6.** In the alternative, the State CIO reserves the right to extend any Contract awarded if it is determined to be in the best interest of the State.

B.2. Issuing Office

- B.2.1.** The Office of Management & Enterprise Services (OMES), on behalf of the Employee Group Insurance Division (EGID), issues this RFP.

B.3. Appropriated Funds

- B.3.1.** The parties understand and agree that none of the sums to be paid under this agreement are appropriated funds. Should there be a revenue shortfall, EGID will not seek appropriations and will not use appropriated funds to pay for this obligation. The most recent financial statements of EGID are posted on EGID's website: <https://www.ok.gov/sib/> Go to Site Map, About EGID, 2015 Annual Report.

B.4. Notice

- B.4.1.** Any notice required to be given, pursuant to the terms and provisions of the contract, shall be in writing, and delivered either by hand delivery with written receipt, or delivered by the U. S. Postal Service, (USPS) postage prepaid, by certified mail, return receipt requested, to EGID at 3545 N.W. 58th, Suite 1000, Oklahoma City, Oklahoma 73112, or to the Consultant at the address listed on the OMES purchase order. The USPS notice shall be effective on the date indicated on the return receipt.

B.5. Assignments

- B.5.1.** This contract may not be assigned in whole or in part.

B.6. Conflict of Interest

- B.6.1.** The Consultant shall disclose any apparent or potential conflict of interest, or affirm there is none.
- B.6.2.** The Consultant shall have no interest, direct or indirect, which EGID deems to conflict in any manner or degree with the performance of services required under this contract. The Consultant shall not engage in any conduct that violates or induces others to violate provisions in the Oklahoma Statutes regarding the conduct of public employees. This includes, but is not limited to, The Anti-Kickback Act of 1974 at 74 O. S. (2001) §3401, et seq., and the Conflict of Interest provision in the Oklahoma Central Purchasing Act at 74 O. S. (2001) §85.3.

B.7. Lawsuits and Litigation

The Consultant must disclose any prior lawsuits and litigation involving alleged or actual violations of administrative rules and hearings, or any lawsuits and litigation threatened or impending, involving the Consultant and the State of Oklahoma or any political subdivisions, and/or any state officer and/or any state employee acting in the capacity of a state employee, and any settlements, compromises (if confidential, a statement of that fact) or Judgments of Record resulting from the foregoing described litigation or administrative proceedings for the past five (5) years or affirm there are none.

The Consultant shall list and disclose contract cancellations or negligent causes of action that arose from work performed that is the same or similar to work identified in the Solicitation Specifications in this RFP that was initiated by persons or entities other than the Consultant and resulted in a settlement with or judgment against the Consultant in any jurisdiction in the United States in an amount of Ten Thousand Dollars (\$10,000.00) or more within the previous five (5) years, or affirm there are none.

B.8. No Commissions

B.8.1. The Consultant agrees:

B.8.1.1. To and shall perform all services described in this RFP and the final EGID/State of Oklahoma contract, strictly according to a fee-for services basis;

B.8.1.2. That absolutely no commissions or finder's fees shall be paid to anyone or any organization resulting from the State of Oklahoma's contract, either arising from an agreement to pay a commission or finder's fee prior to or during the term of this contract; and,

B.8.1.3. To provide a statement as part of its response to this RFP, and prior to each contract renewal, that absolutely no commissions or finder's fees are to be paid to any subcontractor, broker, agent or other individual, organization or entity.

B.9. Confidentiality, Security and HIPAA Requirements

B.9.1. The Consultant shall ensure confidentiality and security of member information and must provide policies and guidelines addressing this issue as part of its response to this RFP. All member information concerning this RFP and EGID is the sole property of the State of Oklahoma and shall remain confidential. It shall not be used by the Consultant nor transmitted to others for any reasons whatsoever, except as shall be required to administer and implement the program, and then only with prior written approval from EGID. A list of individuals with EGID who are capable of granting this approval shall be supplied to the successful Consultant.

B.9.2. The Consultant shall comply with Health Insurance Portability and Accountability Act (HIPAA) regulations including, but not limited to, laws pertaining to EGID health plan members' medical information.

B.9.3. The Consultant shall agree to execute a HIPAA Business Associate Agreement with EGID according to the terms as defined in the HIPAA Business Associate Agreement found in Section G of this RFP.

B.9.4. The Consultant shall agree to EGID Information Technology Data Sharing Policies and Procedures for Business Associates.

B.10. The Office of Inspector General's Exclusion List

B.10.1. Consultant agrees that it does not currently, nor during the term of this Contract will it, contract with or employ individuals or entities that are excluded by the Department of Health and Human Services, Office of the Inspector General or included on the Excluded Parties List System maintained by the General Services Administration.

B.11. Fraud, Waste & Abuse Compliance Program

B.11.1. Consultant acknowledges the terms of EGID's Compliance Program and agrees that each of Consultant's employees that work on EGID's account will receive at least one hour of training as specified in Section III. Part D of the Compliance Program. EGID's Compliance Program can be viewed at www.sib.ok.gov.

B.12. Obligations of Permitted Subcontractor

B.12.1. If the Supplier is permitted to utilize subcontractors in support of this Contract, the Supplier shall remain solely responsible for its obligations under the terms of this Contract and for its actions and omissions and those of its agents, employees and subcontractors. Any proposed subcontractor shall be identified by entity name and by employee name in the applicable proposal and shall include the nature of the services to be performed. Prior to a subcontractor being utilized by the Supplier in connection with provision of the products, the Supplier shall obtain written approval of the State of such subcontractor and each employee of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such potential subcontractor is bound by and agrees to perform the same covenants and be subject to the same

conditions, and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

- B.12.2.** All payments for products shall be made directly to the Supplier. No payments shall be made to the Supplier for any services performed pursuant to this Contract by unapproved or disapproved employees of the Supplier or a subcontractor.

C. SOLICITATION SPECIFICATIONS

C.1. Identification of EGID

- C.1.1.** EGID was established by, and operates pursuant to, the Oklahoma Employees Insurance and Benefits Act, 74 O.S. § 1301, et seq., hereinafter (Act). The Act was established for the benefit of state and education employees, employees of other state governmental entities and quasi-state governmental entities authorized by the Act to participate in the insurance plans offered by EGID. The health, dental and life insurance plans offered by EGID are known as the HealthChoice plans. EGID makes decisions on all policy matters affecting the group insurance plans, including member benefits, premium rates and the investment of premiums. EGID serves over 900 employer groups with multiple retirement systems. See www.sib.ok.gov for more information about EGID and plans offered.
- C.1.2.** Pursuant to legislative authority, EGID Rules set forth the eligibility, type of participation and benefits guidelines for all participating employers. A copy of the official agency Rules is on file with the Office of the Secretary of State beginning at Oklahoma Administrative Code Title 260:45, or the Rules may be found at www.sib.ok.gov/sib ("About EGID").
- C.1.3.** The census data for the active and retired non-Medicare members in EGID Health Plans as of March 31, 2016 is 96,125 primary members and 153,312 participants.
- C.1.4.** A provider network arrangement is established to provide members with cost efficient delivery of health benefits. Network providers agree to accept reimbursement for medical services that are covered by the plan and do not exceed the eligible charges allowed by EGID. Therefore, the network provider can only expect to receive payment from the participant for the charges allowed by the network agreement. Generally, that includes coinsurance and deductibles. Currently, EGID has approximately 10,000 network providers.

For claims incurred in 2015, EGID paid medical claims were as follows:

Inpatient Hospital	\$160,080,709
Outpatient Hospital	\$212,474,310
Medicare Supplement	\$ 56,044,716
Physician Visits	\$ 57,017,249
Surgical Services	\$ 26,814,383
Pharmacy	\$ 17,566,443
Therapy	\$ 21,034,473
Radiology	\$ 12,669,582
Laboratory	\$ 12,644,393
Anesthesia	\$ 12,619,745
Ambulance	\$ 7,369,597
Durable Medical Equipment	\$ 3,302,404
All Others	\$ 38,811,325
Total	\$638,449,330

C.2. Statement of Purpose

- C.2.1.** The "EGID", through the State of Oklahoma's purchasing agency, OMES, Central Purchasing Division, hereinafter "OMES", requests response from qualified Consultants to audit inpatient hospital claims, and credit balances on the accounts of service providers, as well as other professional services related to auditing the indemnity health insurance plans offered by EGID.

C.3. Objectives

- C.3.1.** The objective of this Request for Proposal (RFP) is to retain a Consultant to:
 - C.3.1.1.** Perform post-payment audits of inpatient hospital claims to determine the appropriateness of Medicare Severity Diagnosis-Related Group (MS-DRG) coding.
 - C.3.1.2.** Identify, reconcile and arrange for the recovery of any credit balances existing on the books of hospital facility service providers that should be refunded to EGID.
 - C.3.1.3.** Provide other professional services in accordance with Section C.6 – Special Projects in the Solicitation Specifications of this RFP for similar future projects that cannot presently be identified.

C.4. MS-DRG Validation of Inpatient Hospital Claims

- C.4.1.** EGID reimburses inpatient hospital claims by assigning a MS-DRG. EGID uses the weights established by CMS for each MS-DRG and applies a conversion factor specific to EGID. Outlier claims are identified using a dollar threshold and charges over the threshold are reimbursed at a percentage of billed charges. EGID has established four tiers for providers based upon number of beds and urban/rural location.
 - C.4.1.1.** Inpatient claims are subject to a certification process.
- C.4.2.** The Consultant shall obtain paid claims data from EGID. The Consultant shall review the data and identify claims for audit. The purpose of the audit will be to verify that the facility has the appropriate support for the diagnosis and procedures codes used to determine the MS-DRG.
- C.4.3.** For each selected claim, Consultant shall:
 - C.4.3.1.** Advance any audit or records fees charged by the facility.
 - C.4.3.2.** Obtain any medical record authorizations that are required.
 - C.4.3.3.** Conduct a review of the medical record and other documents.
 - C.4.3.4.** Review the coding of the claim for accuracy, validity, and sequencing in accordance with national coding standards.
 - C.4.3.5.** Establish that the records sufficiently support the principal and other diagnosis codes reported on the claims.
 - C.4.3.6.** Make a determination as to the appropriateness of the assigned MS-DRG.
 - C.4.3.7.** Perform any other analysis necessary to test the validity of the claim.
- C.4.4.** For each claim in which the medical records and documentation support the original MS-DRG, Consultant shall include the claim information on a report listing no-change claims.
- C.4.5.** For each claim where a revised MS-DRG is indicated, Consultant shall:
 - C.4.5.1.** Recommend a revised MS-DRG using nationally established coding guidelines and provide adequate substantiation for the revision.
 - C.4.5.2.** Conduct an exit interview with the hospital representative and obtain written acceptance and approval of the revision.
 - C.4.5.3.** Provide a report to EGID that includes the original and revised MS-DRG for each claim and the refund due to EGID because of the revision.

C.5. Credit Balance Auditing

- C.5.1.** Credit balances are accounts on a provider's Accounts Receivable system where payments and allowances exceed total charges. They occur in the normal course of business because of billing and payment errors. EGID is aware that providers may have credit balances that, when resolved, would result in a cash refund to EGID ("refundable credit balances").
- C.5.2.** The Consultant shall, at its own expense, establish relationships with such providers as EGID identifies as providing a high dollar value of services to EGID's members. The relationships shall enable the Consultant to access records as necessary to identify and research credit balances on the accounts of the service providers.
- C.5.3.** For each refundable credit balance, the Consultant shall provide to EGID information regarding claim information, amount, and circumstance leading to the creation of the refundable credit balance.
- C.5.4.** The Consultant shall obtain an agreement from the provider as to the amount of the refund and shall initiate a refund request. Consultant shall direct the provider to refund the credit balance in accordance with the financial terms agreed to in the contract.

- C.5.5.** The Consultant shall assist EGID in identifying possible internal procedures and systems issues that lead to refundable credit balances on the accounts of providers.

C.6. Special Projects

- C.6.1.** The Consultant must be available to perform special projects, presently undefined but which may become necessary, relating to audit services regarding EGID's account. Special projects shall be clearly defined and the estimated costs shall be approved in writing by EGID prior to the commencement of the work.

C.7. Provider Contracts

- C.7.1.** EGID Provider Contracts are available for reference at
- C.7.2.** https://www.ok.gov/sib/Providers/Contracts_and_Applications/

D. EVALUATION

D.1. Evaluation and Award

- D.1.1.** This RFP will be evaluated on the following:
 - D.1.1.1.** Compliance with Special Provisions
 - D.1.1.2.** Compliance with Solicitation Specifications
 - D.1.1.3.** Response to Questionnaire
 - D.1.1.4.** Interviews, if conducted
 - D.1.1.5.** Acceptable Business Associate Agreement and Statement of Compliance
 - D.1.1.6.** Price and Cost

D.2. Proposal Clarification Questions

The State reserves the right, at its sole discretion, to request clarifications of technical Bids or to conduct discussions for the purpose of clarification with any or all Bidders. The purpose of any such discussions shall be to ensure full understanding of the Bid. If clarifications are made because of such discussion, the Bidder(s) shall put such clarifications in writing. The clarification shall not alter or supplement the Bid.

D.3. Competitive Negotiations of Offers

The State reserves the right to negotiate with one, selected, all or none of the Bidders responding to this Solicitation to obtain the best value for the State. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issue material to an award decision or that may mitigate the State's risks. The State shall consider all issues negotiable and will not be artificially constrained by internal corporate policies. Negotiation may be with one or more Bidders, for any and all items in the Bid.

Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item shall face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:

- D.3.1.** Negotiations may be conducted in person, in writing, or by telephone.
- D.3.2.** Negotiations shall only be conducted with potentially acceptable Bids. The State reserves the right to limit negotiations to those Bids that received the highest rankings during the initial evaluation phase.
- D.3.3.** Terms, conditions, prices, methodology, or other features of the Bid may be subject to negotiations and subsequent revision. As part of the negotiations, the Bidder may be required to submit supporting financial, pricing, and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the Bid.
- D.3.4.** The requirements of this Solicitation shall not be negotiable and shall remain unchanged unless the State determines that a change in such requirements is in the best interest of the State Of Oklahoma.
- D.3.5.** BEST and FINAL – The State may request best and final Bids if deemed necessary, and shall determine the scope and subject of any best and final request. However, the Bidder should not expect an opportunity to strengthen its Bid and should submit its best Bid based on the terms and condition set forth in this solicitation.

E. INSTRUCTIONS TO BIDDER

E.1. Introduction

Prospective Bidders are urged to read this Solicitation carefully. Failure to do so shall be at the Bidder's risk. Provisions, terms, and conditions may be stated or phrased differently than in previous solicitations. Irrespective of past interpretations, practices or customs, Bids shall be evaluated and any resultant contract(s) shall be administered in accordance with the plain meaning of the contents hereof. The Bidder is cautioned that the requirements of this Solicitation can be altered only by written Amendment approved by the State and that verbal communications from whatever source are of no effect. In no event shall the Bidder's failure to read and understand any term or condition in this Solicitation constitute grounds for a claim after award of the Contract.

E.2. Mandatory and Non-Mandatory Terms

- E.2.1.** Whenever the terms "shall", "must", "will" or "is required" are used in this RFP, the specification being referred to is a mandatory specification of this RFP. Failure to meet any mandatory specification may cause rejection of the respondent's proposal.
- E.2.2.** Whenever the terms "can", "may", or "should" are used in this RFP, the specification being referred to is a desirable item and failure to provide any item so termed will not be cause for rejection.

E.3. Experience, Credentials and Expertise

- E.3.1.** The Consultant shall respond with specific instances showing experience, credentials, and expertise as a firm and as individuals for a minimum of three (3) years providing services for organizations similar in size to EGID and in the performance of services similar to the services requested by the Solicitation Specifications section of this RFP. The Consultant shall designate which specific individuals will be assigned to EGID account, list their anticipated job duties and provide representations of the individuals' specific experience related to the performance of the services requested in this RFP.

E.4. Preparation of Proposal

- E.4.1.** It is the responsibility of the supplier to inquire about any requirements of this RFP that is not understood.
- E.4.2.** Information shall be entered on the form provided or a copy thereof.

E.5. References

- E.5.1.** Provide the names of three (3) non-affiliated clients, contact names, e-mail addresses, addresses, telephone numbers, facsimile numbers, types of services provided and the number of primary participants for each reference, if applicable.

E.6. Submissions/Copies

- E.6.1.** Contractor is to submit TWO (2) complete copies of their response on TWO (2) separate CDs or DVDs (one copy on each Disc) which includes the completed proposal, including the scanned images of the OMES signed forms. Disc must be an unprotected document.
- E.6.2.** Original hard copies are not required or preferred. This overrides hard copy submittal requirements of A.2.4.
- E.6.3.** Please ensure that your Discs are marked clearly with the RFP Number.
- E.6.4.** PDF is an acceptable format for solicitation responses. This overrides requirements of A.2.4

E.7. Questions

- E.7.1.** All questions regarding this solicitation must be submitted in writing and are to be emailed to no later than 3:00pm CDT Friday, June 3, 2016. Questions are to be emailed to Jacob.Charries@omes.ok.gov. Questions received after this date will not be answered. An Amendment will be posted after this deadline listing all questions received and their answers.

E.8. Contact Prohibited

- E.8.1.** Vendors are to have no contact with the agency (EGID) or end-users that may have use of the resulting contract during the solicitation period. The solicitation period begins when the solicitation is issued and ends when an official public award is made. All questions must be submitted in writing to the purchasing officer per section E.6. Failure to meet this requirement may result in the vendor's submission being rejected for consideration.

E.9. Bid Change

If the Bidder needs to change a Bid prior to the Solicitation Closing Date and Time, a new Bid shall be submitted to the State with the following statement: "This Bid supersedes the Bid previously submitted" in a single envelope, package, or container and shall be sealed. The name and address of the Bidder shall be inserted in the upper left corner of the single envelope, package, or container. Solicitation number and solicitation closing date and time must appear on the face of the single envelope, package, or container.

E.10. Solicitation Amendments

- E.10.1.** If an "Amendment of Solicitation", OMES Form 011 (or other format as provided), is issued, then the Bidder shall acknowledge agreement with each such Amendment of Solicitation by signing and returning the Solicitation Amendment. An executed Amendment may be submitted with the Bid or may be forwarded separately. If forwarded separately, the executed Amendment must contain this Solicitation number and Closing Date and Time on the front of the envelope. The State must receive the executed Amendment by the Closing Date and Time specified for receipt of bids for the Bid to be deemed responsive. Failure to agree to a Solicitation Amendment may be grounds for rejection.
- E.10.2.** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Solicitation. All Amendments to this Solicitation shall be made in writing by the State.
- E.10.3.** It is the Bidder's responsibility to check the State's website frequently for any possible Amendments to this Solicitation that may be issued. The State is not responsible for the Bidder's failure to download any amendment documents required to complete its Bid.

E.11. Proprietary and/or Confidential

- E.11.1.** Unless otherwise specified in the Oklahoma Open Records Act, Central Purchasing Act, or other applicable law, documents and information a Bidder submits as part of or in connection with a Bid are public records and subject to disclosure. If a Bidder claims any portion of its Bid as financial or proprietary confidential information, the Bidder must specifically identify what documents or portions of documents are considered confidential and identify applicable law supporting the claim of confidentiality. In addition, the Bidder shall submit the information separate and apart from the Bid and mark it Financial or Proprietary and Confidential. Pursuant to the Oklahoma State Finance Act, the State CIO shall make the final decision as to whether the separately submitted information is confidential.
- E.11.2.** If the State CIO does not acknowledge the information as confidential, OMES – ISD will return or destroy the information with proper notice to the Bidder and the information will not be considered in the evaluation. A Bid marked, in total, as financial or proprietary and/or Confidential shall not be considered.

E.12. Oklahoma Open Records Act

Bids are subject to public disclosure in accordance with the Oklahoma Open Records Act. To the extent permitted by such Act, the Bid will not be disclosed, except for purposes of evaluation, prior to approval by the State CIO of the awarded Contract. All material submitted becomes the property of the State. Bids will not be considered confidential after award of the Contract except that information in the Bid determined to be confidential by the State CIO shall continue to be considered confidential.

E.13. Awardee Financial Status

Prior to award the State may choose to request information from the Bidder to demonstrate its financial status and performance, in the form of the last three years audited financial statements or the last three years of tax returns. A certified review may be accepted (clarification may be required). If the Bidder is a subsidiary of another entity, the last three years audited financial statements of three years tax returns for the parent company must also be submitted. The State reserves the right to withhold award to a Bidder who is deemed financially weak. The State reserves the right to determine financial status at its sole discretion.

Clarification or additional documents may be requested.

E.14. Notice of Award

A notice of award in the form of a purchase order or other Contract Documents resulting from this Solicitation shall be furnished to the successful Bidder and shall result in a binding Contract.

F. CHECKLIST

None

G. OTHER

G.1. Attachments

- G.1.1.** Attachment A – DRG Questionnaire
- G.1.2.** Attachment B – Price Sheet
- G.1.3.** Attachment C – Network Facility Contract
- G.1.4.** Attachment D – Statement of Compliance
- G.1.5.** Attachment E – Standard Business Associate Agreement

H. PRICE AND COST

- H.1.** The Consultant shall submit a financial proposal using the attached price sheet. The quoted fee shall be submitted as a percentage of actual amounts recovered. Based on the data included in this RFP, there will be no adjustments permitted to fees after the solicitation submission deadline. EGID is prohibited from reimbursing the Consultant for any type of expense. All anticipated expenses, including travel, shall be borne by the Consultant. EGID may choose to contract with the Consultant for all requested services of this RFP or may choose to perform the requested services of one or more categories internally.

ATTACHMENT A FOR RFP # 0900000215

QUESTIONAIRRE

The questions contained on Attachment A must be answered. The Consultant's response shall be incorporated as part of the contract and therefore the Consultant shall be obligated to perform in all manners described. These answers will formulate an important part of the evaluation of this RFP. However, if a specific question has been answered to the Consultant's satisfaction in any of the corresponding preceding sections of the response, the Consultant may reference that answer by previous section of the response without the need for re-answering it in this questionnaire.

Q1. Provide a resume for each principal assigned to EGID's account.

Q2. Explain in detail the clinical coding and review experience of each individual assigned to EGID's account.

Q3. Provide a brief overview of your post-payment auditing services.

Q4. Describe post-payment auditing services staffing, including number of staff, location, average years of experience, and annual turnover rate.

Q5. Do you subcontract any of your post-payment auditing services? If so, please describe.

Q6. Provide details about your post-payment auditing process including goals, turnaround times, approaches, prioritization, deliverables, and processes. Describe the experience that each individual assigned to EGID's account has with exit interviews and other interaction with provider representatives.

Q7. Provide a brief summary about your computer systems and other related technological capabilities that will be utilized in the execution of this contract. Include system platform, hardware, operating system, database software, and networking connectivity capabilities.

Q8. Describe how your claims-detection software is developed and supported (in-house, third party vendor, etc.)?

Q9. EGID will provide, via a secure FTP server, a paid claims file on or about the 7th day of each month for the preceding month and a provider file on or about the 1st day of each month. A list of data fields and a test file will be provided to the successful bidder. Describe your ability to receive these data files in this manner.

Q10. What investments in technology have you made in the past two years to improve efficiencies and enhance case identification?

Q11. MS-DRG Validation

- a. Describe your expertise in conducting inpatient claim audits.
- b. Explain in detail how you target and identify the claims and records to review.
- c. Do you provide on-site inpatient claim audits?

- d. If applicable, describe the process to schedule an on-site audit. Are there a minimum number of audits accumulated for a given hospital before an audit is scheduled at the hospital? How long does this process take on average?
- e. Describe your procedures and processes for MS-DRG validation audits.
- f. How many hospitals did your auditors perform reviews of in 2015 nationwide, and in Oklahoma? Break down between on-site and off-site audits.
- g. How many MS-DRG validation audits would you expect to perform in a calendar year for EGID?
- h. Provide data indicating the total dollar volume of MS-DRG audits conducted in the past year and the savings amount achieved. What is the average savings as a percentage of paid claims?
- i. Describe the exit interview process.
- j. Describe your standard process for collecting overpayments resulting from an audit.

Q12. Credit Balance Auditing

- a. Describe your expertise in conducting credit balance audits.
- b. Describe your experience and/or presence in Oklahoma hospitals for purposes of identifying and resolving credit balances on their accounts.
- c. Describe your procedures and processes for credit balance auditing.
- d. Describe the experience that each individual assigned to EGID's account has related to Coordination of Benefits issues.
- e. Describe your standard process for collecting overpayments discovered during an audit.
- f. How many hospitals did your auditors perform credit balance audits of in 2015 nationwide, and in Oklahoma?
- g. Provide data indicating the total dollar volume of credit balance audits conducted and resolved.

Q13. Describe the reporting process to be used to report the results for audited claims to EGID. Attach samples of reports.

Q14. The successful supplier must provide current contact information for the primary and secondary person responsible for day-to-day operations of the services included in their proposal. Provide a flow chart of how the work will progress within the company including identification of claims, assignment to field personnel, and interaction with EGID and its Third Party Claims Administrator ("TPA").

Q15. Describe the implementation process and timeline.

Q16. Describe any instances where you analyze and/or compile national data to provide benchmarks that would be relevant to EGID.

Q17. Describe your ability and time frame to create customized queries of EGID's paid claims database.

Q18. Interface with EGID and its TPA for purposes of adjusting claims: The successful supplier must provide a web based portal that will allow the current TPA and EGID staff access to all information identifying all audit results. The information must be sufficient to allow the TPA to make adjustments to claims as appropriate.

- a. Describe in detail your web based portal, functionality and security.
- b. Describe the process that you will follow to update this portal and the frequency for updating and posting claim information.
- c. Describe in detail how the TPA and EGID will access this portal, including the total number of authorized users allowed.
- d. Describe in detail how the TPA will update the portal to identify if the claim has been handled to completion by the TPA or that additional information is required.
- e. Describe in detail and provide a copy of your policies and procedures for this interface.
- f. Describe in detail and provide a copy of your Quality Assurance procedures and measurements.

Q19. Interface with EGID and its TPA for purposes of processing overpayments identified: The successful supplier must provide a web based portal that will allow the current TPA and EGID staff access to all information related to overpayments. The information must be sufficient to allow the TPA to process the overpayment against claims.

- a. Describe in detail and provide your policies and procedures for this interface.
- b. Describe in detail the frequency by which the Consultant will provide this information to EGID staff.
- c. Describe in detail and provide a copy of your Quality Assurance procedures and measurements for this interface.
- d. Describe your capability for recovering overpayments. Include a flowchart of this process and how you account for any payments made by the provider directly to EGID.

Q20. Include a complete description of any other claim audit and review services that may be provided by the Consultant in accordance with section C.9.

ATTACHMENT B
Price Sheet

MS-DRG VALIDATION OF INPATIENT HOSPITAL CLAIMS

Year 1

Year 2

Year 3

Year 4

Year 5

CREDIT BALANCE AUDITING

Year 1

Year 2

Year 3

Year 4

Year 5

SPECIAL PROJECTS FEES (SECTION C.6)

Year 1

Year 2

Year 3

Year 4

Year 5

HealthChoice
Attachment C
Network Facility Contract

This Network Facility Contract, hereinafter "Contract," is between the Oklahoma State and Education Employees Group Insurance Board, hereinafter "EGID," and the Network Facility, hereinafter "Facility," identified on the Signature Page.

I. RECITALS

- 1.1 EGID is a State of Oklahoma governmental agency that administers health, life, dental, and disability insurance benefits for State, education, local government, and other eligible employees and retirees, pursuant to the State and Education Employees Group Insurance Act, 74 O.S. (2001) § 1301 et seq.
- 1.2 The Facility is duly licensed by the state of residence and is certified to participate in the Medicare program under Title XVIII of the Social Security Act, and/or certified by The Joint Commission or Accreditation Association for Ambulatory Health Care, hereinafter "AAAHC", if applicable, and shall comply with all applicable federal, state, and local laws regulating such a Facility.
- 1.3 EGID administers self-funded health plans that are identified by the trade name "HealthChoice." HealthChoice Plans are intended to financially encourage the population of EGID Members, retirees and dependents to utilize Network Providers.

In consideration of the mutual covenants, promises and other good and valuable consideration, EGID and the Facility agree as follows:

II. DEFINITIONS

- 2.1 "Allowable Fee" means the maximum amount payable to a Facility by EGID and Member for Covered Services furnished pursuant to this Contract.
- 2.2 "Base Rate" means a dollar amount established by EGID by which the MS-DRG Relative Weight is multiplied to obtain the MS-DRG Allowable Fee.
- 2.3 "Certification" means a function performed by EGID to review and certify services for medical necessity in identified areas of practice prior to services being rendered.
- 2.4 "CMS" means Centers for Medicare and Medicaid Services.
- 2.5 "Concurrent Review" means a function performed by EGID that determines and updates medical necessity for continued inpatient hospitalization.
- 2.6 "Covered Services" means Medically Necessary services delivered by a Facility pursuant to this Contract and for which a Member is entitled to receive coverage by the terms and conditions of a HealthChoice Plan.
- 2.7 "Emergency" means a sudden and unexpected symptom that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical attention would result in placing the health of the individual or others in serious jeopardy.
- 2.8 "Facility Services" means those acute care inpatient and outpatient Facility Services that are covered by the HealthChoice Plan.

- 2.9 "Geometric Mean Length of Stay" (GMLOS) means the current version of the Geometric Mean Length of Stay published by CMS for each MS-DRG.
- 2.10 "HealthChoice Plan" means the HealthChoice benefit plan designed to maximize Member's insurance benefit and financially encourage Members to use Network Providers.
- 2.11 "Marginal Cost Factor" means a factor used in the Outlier Allowable Fee calculation.
- 2.12 "Medically Necessary" means services or supplies which are provided for the diagnosis and treatment of the medical and/or mental health/substance abuse condition and complies with criteria adopted by EGID. Direct care and treatment are within standards of good medical practice within the community and are appropriate and necessary for the symptoms, diagnosis or treatment of the condition. The services or supplies must be the most appropriate supply or level of service which can safely be provided. For hospital stays, this means that inpatient acute care is necessary due to the intensity of services the member is receiving or the severity of the Member's condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting. The services or supplies cannot be primarily for the convenience of the member, caregiver or provider. The fact that services or supplies are Medically Necessary does not, in itself, assure that the services or supplies are covered by the HealthChoice Plan.
- 2.13 "Medical Services" means the professional services provided by a Network Provider and covered by a HealthChoice Plan.
- 2.14 "Members" means all persons covered by the EGID HealthChoice Plans, including eligible current and qualified former employees of participating entities and their eligible covered dependents. Qualified former employees include those who have retired or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of services, or who have other coverage rights through COBRA or the Oklahoma Personnel Act.
- 2.15 "MS-DRG" means Diagnosis Related Groups and is an inpatient Facility classification, as published by the CMS. The current version of the CMS MS-DRG grouper will be used to determine the MS-DRG.
- 2.16 "MS-DRG Allowable Fee" means the MS-DRG Relative Weight multiplied by the Base Rate for non-transfer cases. For the purposes of this Contract, the MS-DRG Allowable Fee, as published by EGID, shall serve as the payment rate due hereunder unless the reimbursement is to be on a per diem basis.
- 2.17 "MS-DRG Relative Weight" means the current version of the Relative Weight published by CMS for each MS-DRG.
- 2.18 "Network Provider" means a practitioner or Facility that is duly licensed under the laws of the state in which the Network Provider operates and/or is accredited by a nationally recognized accrediting organization approved by State or Federal guidelines, and have entered into an agreement with EGID to accept scheduled reimbursements for Covered Services and supplies provided to HealthChoice Members.
- 2.19 "Non-covered Services" are those services a) excluded from coverage by the HealthChoice Plan, in which case the Member is liable for the charges; or b) covered by the HealthChoice Plan but inappropriately billed and therefore excluded for reimbursement based on the clinical editing software.

- 2.20 "Outlier" means a discharge which has unique characteristics and is considered to be outside established parameters for each MS-DRG. A discharge is considered an Outlier if the billed charges exceed the sum of the Outlier Threshold plus the MS-DRG Allowable Fee.
- 2.21 "Outlier Allowable Fee" means $[\text{Billed Charges} - (\text{MS-DRG Allowable Fee} + \text{Outlier Threshold})] \times \text{Marginal Cost Factor}$.
- 2.22 "Outlier Threshold" means a dollar amount by which the total billed charges on the claim must exceed the MS-DRG Allowable Fee in order to qualify for an additional Outlier amount.
- 2.23 "Outpatient Service(s)" means Medically Necessary Facility Services for treatment rendered by a Facility to a Member, including, but not limited to, Emergency room care, clinic care, ambulatory surgery, radiology, pathology and other services which are provided without the admission of the Member.
- 2.24 "Residential" means an approved treatment Facility which provides temporary accommodations. It is a structured, safe, and therapeutic environment in which residents receive psychotherapy appropriate to an individualized treatment plan.
- 2.25 "Skilled Nursing Facility" means an approved treatment Facility rendering services prescribed by a physician that could not be given safely or reasonably by a person who is not medically skilled and would need continuous supervision of the effectiveness of the treatment and progress of the condition of the Member. These services are not custodial in nature.
- 2.26 "Transfer Allowable Fee" means $(\text{MS-DRG Allowable Fee} / \text{Geometric Mean Length of Stay}) \times (\text{Length of Stay} + 1 \text{ day})$.

III. RELATIONSHIP BETWEEN EGID AND THE FACILITY

- 3.1 EGID negotiated and entered into this Contract with the Facility on behalf of the Members of an EGID HealthChoice Plan. The Facility is an independent contractor that has entered into this Contract to become a Network Facility and is not, nor is intended to be the agent or other legal representative of EGID in the performance of the provisions of this Contract. Nothing in this Contract shall be construed or be deemed to create a relationship contrary to that of independent contractor for the purposes of this Contract.
- 3.2 EGID and the Facility agree that all of the parties hereto shall respect and observe the facility/patient relationship which will be established and maintained by the Facility. The Facility may choose not to establish a facility/patient relationship if the Facility would have otherwise made the decision not to establish a facility/patient relationship had the patient not been a Member. The Facility reserves the right to refuse to furnish services to a Member in the same manner as they would any other patient.
- 3.3 Nothing in this Contract is intended to be construed, or be deemed to create any rights or remedies of any third party, including but not limited to, Network Facilities that are not identified by this Contract, except EGID Members defined in this Contract.

IV. FACILITY SERVICES AND RESPONSIBILITIES

- 4.1 The Facility shall provide quality, Medically Necessary Facility Services to Members, in a cost efficient manner, when such services are ordered by a licensed practitioner, who is a member of the Facility's medical staff and has been awarded the prerequisite clinical privileges to order and/or perform such services. Nothing in this Contract shall be

construed to require the medical staff of the Facility to perform any procedure or course of treatment which the staff deems professionally unacceptable or is contrary to Facility policy.

- 4.2 The Facility shall provide Facility Services to Members in the same manner and quality as those services are provided to all other patients of the Facility.
- 4.3 The Facility has, and shall maintain, in good standing while this Contract is in effect, all licenses required by law, and if applicable, certification to participate in the Medicare program under Title XVIII of the Social Security Act and/or The Joint Commission and AAAHC certification.
- 4.4 The Facility agrees to make reasonable efforts to refer covered Members to other Network Facilities with which EGID contracts for Medical Services that the Facility cannot or chooses not to provide.
- 4.5 The Facility shall participate in the Certification and Concurrent Review procedures provided in Article VII and for purposes of reimbursement to abide by decisions resulting from that review subject to the Dispute Resolution rights provided in Article X.
- 4.6 The Facility shall furnish, at no cost to EGID, any medical and billing records covering any Medical Services, for any Member, with the understanding that each Member, as a condition of enrollment in the HealthChoice Plan, has authorized such disclosure.
- 4.7 The Facility shall accurately complete the Network Facility Application which is attached to and made part of this Contract. The Facility shall notify EGID of any change in the information contained in the Network Facility Application within fifteen (15) days of such change, including resolved litigation listed as "pending" on the original Network Facility Application.
- 4.8 The Facility shall reimburse EGID for any overpayments made to the Facility within sixty (60) days of the Facility's receipt of the written overpayment notification or shall respond with detail within said time if Facility disputes the request for additional payment. EGID shall provide the Facility individual letters of retraction for each patient sixty (60) days prior to the retraction being made.

As an exception EGID will immediately deduct overpayments due to resubmission of a corrected claim, or if information is received for a claim pending additional information that subsequently impacts a paid claim or a mutually agreed to audit adjustment.

EGID shall be entitled to additional payment if, within two years from the date of payment, EGID notifies Facility, in writing of the overpayment.

If Facility disputes the request for additional payment, the Parties shall work cooperatively and in good faith to resolve the payment issue on an informal basis within sixty (60) days of the first notification of the overpayment. If the Parties' attempt to resolve the issue is unsuccessful, then the dispute concerning the incorrect payment shall be resolved in accordance with the Dispute Resolution Process provided in Article X.

- 4.9 The Facility shall submit to a Member record audit upon fourteen (14) business days advance notice.
- 4.10 The Facility shall comply with the national standards for the electronic exchange of administrative and financial health care transactions required by the Health Insurance Portability and Accountability Act of 1996, hereinafter "HIPAA".

V. EGID SERVICES AND RESPONSIBILITIES

- 5.1 EGID agrees to pay the Facility compensation pursuant to the provisions of Article VI.
- 5.2 EGID agrees to grant the Facility the status of "Network Facility" and to identify the Facility as a Network Facility on informational materials disseminated to Members.
- 5.3 EGID agrees to continue listing the Facility as a Network Facility until this Contract terminates.
- 5.4 EGID agrees to provide the Facility with access to a listing of all Network Facilities via the Internet.
- 5.5 EGID agrees to provide appropriate identification for Members at the time of enrollment in a HealthChoice Plan and the effective date of coverage by EGID. The ID card shall provide an address and/or telephone number for verifying eligibility and benefits.
- 5.6 EGID agrees to acknowledge the confidentiality of patient's records and to only release pertinent clinical information in accordance with state and federal guidelines.
- 5.7 EGID shall give fourteen (14) business days notice prior to an audit. Under no circumstances shall an audit of medical records by EGID delay payment to Facility under Article VI.
- 5.8 EGID shall maintain Certification and Concurrent Review programs in accordance with the Utilization Review Accreditation Commission's, "URAC," standards in order to aid its Member in making decisions that will maximize medical benefits and reduce their financial risk.
- 5.9 EGID shall reimburse the Facility for any underpayments made to the Facility within thirty (30) days of EGID's receipt of the underpayment notification, or shall respond with detail within said time if EGID disputes the request for additional payment. Facility shall be entitled to additional payment if, within two (2) years from the date of payment, Facility notifies EGID in writing of the underpayment. If EGID disputes the request for additional payment, the Parties shall work cooperatively and in good faith to resolve the payment issue on an informal basis within sixty (60) days of the first notification of underpayment. If the Parties attempt to resolve the issue is unsuccessful, then the dispute concerning the payment shall be resolved in accordance with the Dispute Resolution Rights provided in Article X.
- 5.10 EGID shall comply with the national standards for the electronic exchange of administrative and financial health care transactions required by HIPAA.
- 5.11 EGID shall review the Base Rate Marginal Cost Factor, Outlier Threshold and Certification procedure list, notifying the Facility of changes by a general mailing sixty (60) days prior to implementation.

VI. COMPENSATION AND BILLING

- 6.1 The Facility shall only seek payment from EGID for the provision of Covered Services. The Facility agrees to accept the amount of the Allowable Fee for Covered Services as payment in full and agrees to only request payment from the Member for deductible, co-insurance and amounts for defined Non-Covered Services attributable to the Member's Health Choice Plan. The payment shall be calculated and limited to the methodologies defined by this Contract.

- 6.2 When the Allowable Fee exceeds billed charges, EGID shall pay the appropriate percentage of the Allowable Fee and Member shall pay the appropriate percentage of billed charges unless the Member has met the stop loss limitation and then EGID shall pay the Allowable Fee and the Member has no liability.
- 6.3 When processing inpatient claims, EGID shall determine the MS-DRG Allowable Fee for non-transfer cases according to the following formula:

$$\text{MS-DRG Allowable Fee} = \text{MS-DRG Relative Weight} \times \text{Base Rate}$$

Skilled Nursing Facility Services, Day Treatment and Residential treatment will be reimbursed utilizing the per diem methodology. In no event shall a per diem qualify as an Outlier. These benefits shall be allowed when the Member has received Medically Necessary Covered Services subject to the following policy limitations and conditions:

- a) EGID shall pay the appropriate percentage of the MS-DRG Allowable Fee and the Member shall pay the remainder of the MS-DRG Allowable Fee unless the Member has met the stop loss limitation, and then EGID shall pay one hundred percent (100%) of the MS-DRG Allowable Fee and the Member has no liability.
- b) The MS-DRG shall be controlling, subject to EGID's approval and Article X of the Contract.
- c) The MS-DRG Allowable Fee does not include any physician professional component fees, which are considered for payment according to separately billed Current Procedural Terminology code Allowable Fees.
- d) EGID may reduce its payment by any deductibles, coinsurance and co-payments owed by the Member.
- e) EGID shall include the day of admission but not the day of discharge when computing the number of facility days provided to a Member. Observation Facility confinements for which a room and board charge is incurred shall be paid based on inpatient benefits.
- f) In the case of a transfer, the Transfer Allowable Fee for the transferring Facility shall be calculated as follows:

$$\text{Transfer Allowable Fee} = (\text{MS-DRG Allowable Fee} / \text{Geometric Mean Length of Stay}) \times (\text{Length of Stay} + 1 \text{ day})$$

The total Transfer Allowable Fee paid to the transferring Facility shall be capped at the amount of the MS-DRG Allowable Fee for a non-transfer case. EGID shall allow payment to the receiving Facility, if it is also the final discharging Facility, at the MS-DRG Allowable Fee as if it were an original admission.

- g) EGID shall use the current version of the CMS MS-DRG grouper to categorize what shall constitute a procedure. EGID's and the Member's financial liability shall be limited to the Allowable Fee as determined by EGID.

- h) The Facility agrees not to charge more for Medical Services to Members than the amount normally charged by the Facility to other patients for similar services.
- i) For Outlier cases, EGID shall base its payment to the Facility using an Outlier Allowable Fee plus the MS-DRG Allowable Fee. The following formula shall be utilized to calculate the Outlier Allowable Fee:

$$\text{Outlier Allowable Fee} = [\text{Billed Charges} - (\text{MS-DRG Allowable Fee} + \text{Outlier Threshold})] \times \text{Marginal Cost Factor}$$

6.4 When processing Outpatient claims, EGID agrees to pay the Facility the Allowable Fee based on appropriate billing according to the following:

- a) If a procedure does not have an Allowable Fee, EGID will allow a percentage of the billed charges for Covered Services.
- b) EGID shall pay the appropriate percentage of the Allowable Fee and the Member shall pay the remainder based on the Member's plan of benefits unless the Member has met the stop loss limitation, and then EGID shall pay 100% of the Allowable Fee and the Member has no liability.
- c) EGID shall reduce its payment to the Facility by any deductibles, coinsurance and copayments owed by the Member.
- d) The Facility agrees not to charge more for Medical Services to Members than the amount normally charged by the Facility to other patients for similar services.
- e) The Facility agrees that EGID utilizes a comprehensive claims editing system to assist in determining which charges for Covered Services to allow for payment and to assist in determining inappropriate billing and coding. Said system shall rely on Medicare and other industry standards in the development of its mutually exclusive, incidental, rebundling, age conflict, gender conflict, cosmetic, experimental and procedure editing. EGID shall provide the Facility, upon request from Facility, detailed information about the processes employed in the claims editing system adopted by EGID.

A list of the CPT/HCPCS codes and the Allowable Fee for each can be found at the EGID website at www.sib.ok.gov/Providers. It is EGID's intent to review and update the fee schedule annually, in accordance with current methodologies. It is EGID's further intent to update the list as necessary when new CPT/HCPCS codes are identified by the American Medical Association or CMS.

6.5 A Facility's urban/rural status is determined by the county in which the Facility operates. Counties which are designated by the U.S. Census Bureau as a part of a Metropolitan Core Based Statistical Area (CBSA) are considered urban.

6.6 The Facility shall not charge the Member for Medical Services denied by the Certification or Concurrent Review procedures described in Article VII, unless the Facility has obtained a written waiver from that Member. Such a waiver shall be obtained only upon the denial of Medical Services and prior to the provision of those Medical Services. The waiver shall clearly state that the Member shall be responsible for payment of Medical Services denied by EGID.

- 6.7 The Facility shall not collect amounts in excess of the HealthChoice Plan limits unless the Member has exceeded his/her annual or lifetime maximum.
- 6.8 The Facility shall refund to the Member within thirty (30) days of discovery any overpayment made by the Member.
- 6.9 In a case in which EGID is primary under applicable coordination of benefit rules, EGID shall pay the amounts due under this Contract. In a case in which EGID is other than primary under the EGID coordination of benefit rules, EGID shall pay the Member's liability for out of pocket expenses such as deductibles, copayments or coinsurance, under the primary policy, up to EGID's maximum liability under the terms of this Contract. No payment will be made for any charge that is not an allowed expense or an amount for which the Member is contractually held harmless under any coordinating policy.
- 6.10 The Facility shall bill EGID on standard and customary forms acceptable to EGID within 120 days of providing the Facility Services, or receipt of primary payors explanation of benefits, or from discovery that EGID is responsible for payment. The Facility shall use the current CPT/HCPCS codes with appropriate modifiers and ICD diagnostic codes, when applicable. The Facility shall furnish, upon request at no cost, all appropriate medical and billing records, reasonably required by EGID to verify and substantiate the provision of Medical Services and the charges for such services if the Member and the Facility are requesting reimbursement through EGID. This provision shall not apply in cases involving litigation, multiple payers, or where the patient has failed to notify the Facility that they were a Member.
- 6.11 In accordance with 74 O.S. (2007) § 1328, EGID shall reimburse the Facility within forty-five (45) days of receipt of billings that are accurate, complete and otherwise in accordance with Article VI of this Contract. EGID will not be responsible for the delay of reimbursement due to circumstances beyond EGID's control.
- 6.12 The Facility agrees that EGID's subrogation rights or the existence of third party liability does not affect the Facility's agreement to accept the current Allowable Fee described in the Contract. Unrecorded alleged or recorded liens that are intended to secure charges for treatment rendered to or on behalf of a Member for amounts in excess of the Allowable Fee and/or which exceed the Member's deductible and coinsurance liability as required by the Contract, are rendered invalid by the Facility's submission of a Members' claims to EGID.

VII. UTILIZATION REVIEW

- 7.1 The Facility shall adhere to and cooperate with EGID's Certification and Concurrent Review procedures. These procedures do not guarantee a Member's eligibility or that benefits are payable, but assure the Facility that the Medical Services to be provided are covered by the HealthChoice Plan.
- 7.2 The Facility shall notify EGID, of any inpatient hospital admission, transplant procedure, specific outpatient Facility procedures or surgeries identified on the EGID website at <http://www.sib.ok.gov/precert>. EGID shall notify Facilities of changes to the Certification list by a general mailing sixty (60) days prior to implementing the change. A Facility shall request Certification at least three days prior to the scheduled admission, surgery and/or procedure. A request for Certification shall be made within one working day after an Emergency admission, Outpatient Services, or observation stay with duration greater than 24 hours. Such notification shall be at no charge to EGID or the Member. Failure to comply with the Certification or Concurrent Review requirements shall result in the Facility's Allowable Fee being reduced by ten percent (10%) if the procedure is confirmed as Medically Necessary retrospectively and, if not confirmed, there shall be no reimbursement.

- 7.3 The Certification and Concurrent Review requirements are intended to maximize insurance benefits assuring that Facility and Medical Services are provided to the Member at the appropriate level of care. In no event is it intended that the procedures interfere with the provider's decision to order admission to or discharge the patient from the Facility.
- 7.4 EGID shall maintain review procedures in accordance with standards established by the Utilization Review Accreditation Commission and screening criteria that take into account professionally acceptable standards for quality medical care in the community. EGID shall consider all relevant information concerning the Member before a determination is made regarding whether the service is Medically Necessary.
- 7.5 EGID, shall respond to requests for all Certifications by immediately assigning a code number to each request.
- 7.6 At the time of the Certification request the Facility should be prepared to give the following information:
- a) Member's name and identification number,
 - b) age and sex,
 - c) diagnosis,
 - d) reason for admission,
 - e) scheduled date of admission,
 - f) planned procedure or surgery,
 - g) scheduled date of surgery or procedure,
 - h) name of Facility,
 - i) name of physician, and
 - j) Member status (i.e., employee or dependent).
- 7.7 EGID shall not retrospectively deny any previously approved care. The Facility shall update EGID as the Member's condition or diagnosis changes. Updated information may result in a change of the originally approved length of stay.
- 7.8 Upon the Member's request, EGID shall reconsider any non-approved Medical Services. The Facility may submit a formal written appeal to EGID.
- 7.9 The Facility shall request Certification before the admission or referral of Members to non-network hospitals. EGID shall review Emergency referrals to non-network hospitals to determine whether the admission was Medically Necessary and an Emergency as defined in this Contract.

VIII. LIABILITY AND INSURANCE

- 8.1 Neither party to this Contract, EGID nor the Facility, or any agent, employee or other representative of a party, shall be liable to third parties for any act by commission or omission of the other party in performance of this Contract and the terms and provisions herein.
- 8.2 The Facility shall be required to obtain general and medical liability coverage's for claims of acts and omissions of the Facility and its employees and agents. Such coverage shall be maintained at a level of not less than that which is mandated by Oklahoma statute or less than One Million Dollars (\$1,000,000) per incident, when the Facility is not regulated

by statute. EGID shall be notified thirty (30) days prior to cancellation. If coverage is lost or reduced below specified limits, this Contract may be canceled by EGID.

IX. MARKETING, ADVERTISING AND PUBLICITY

- 9.1 EGID shall encourage its Members to use the services of the Network Facility.
- 9.2 EGID shall have the right to use the name, address, phone number and specialty of the Facility in a provider listing for purposes of informing Members and prospective Members of the identity of the Facility, and otherwise carrying out the terms of this Contract.
- 9.3 The Facility shall have the right to publicize its status as a Network Facility.

X. DISPUTE RESOLUTION

- 10.1 The Facility may participate in the Dispute Resolution Process as established by EGID and detailed in the provider manual. Permitted Facility disputes include: clean claims; untimely claim submission; disagreements in regard to the amount paid on a claim; clinical editing; medical necessity; Certification; and other disagreements relating to contractual provisions and issues. Issues not subject to the Dispute Resolution Process include, but are not limited to: Rights beyond the HealthChoice Plan's obligation to Members; EGID's Allowable Fee; coordination of benefits; application of Member co-payments, coinsurance, and deductibles; plan coverage and exclusions; and issues and disputes initiated by Members as a result of the Member's grievance hearing rights, established by 74 O.S. (2001) § 1306(6), which is the Member's exclusive remedy by law. In order to initiate the Dispute Resolution Process, Facilities shall contact EGID. Nothing in this Article shall interfere with either party's rights under Article XI.

XI. TERM AND TERMINATION

- 11.1 It is agreed by the parties that no changes to the Contract, which include coverages, fee schedule, or reimbursement methodologies, shall be made with less than sixty (60) days notice, except revisions to injectable medications, in which case EGID shall implement the revisions as soon as possible with proper and timely notification to the Facility.
- 11.2 Either party may terminate this Contract with or without cause, upon giving thirty (30) days written notice pursuant to 12.2 at any time during the term of this Contract.
- 11.3 Nothing in this Contract shall be construed to limit either party's remedies at law or in equity in the event of a material breach of this Contract.
- 11.4 Following termination of this Contract, EGID shall continue to have access, at no cost, to the Facility's records of care and services provided to Members for five (5) years from the date of provision of the Medical Services to which the records refer.
- 11.5 This Contract shall terminate with respect to a Facility upon:
 - a) the loss or suspension of the Facility's license to operate in the state of residence, The Joint Commission's or Medicare certification; or
 - b) failure to maintain Facility's professional and general liability coverage in accordance with this Contract;

c) insolvency of either party.

XII. GENERAL PROVISIONS

- 12.1 This Contract or any of the rights, duties, or obligations of the parties hereunder, shall not be assigned by either party without the express written consent and approval of the other party.
- 12.2 The termination notice required by the terms of this Contract, shall be provided in writing and (1) mailed by the United States Postal Service (USPS), postage prepaid, certified mail, return receipt requested; or, (2) delivered by an overnight delivery company with written delivery confirmation; or, (3) hand delivered with written delivery confirmation. Notice to EGID shall be to the attention of Provider Relations, 3545 N.W. 58th, Suite 600, Oklahoma City, Oklahoma 73112. Notice to the Facility shall be to the address listed on the HealthChoice Network Facility Contract Signature Page. The notice shall be effective on the date indicated on the return receipt or written delivery confirmation.
- 12.3 Notwithstanding the provisions in Section 12.1, EGID may designate an administrator to administer any of the terms of this Contract.
- 12.4 This Contract is the agreement between EGID and the Facility relating to the rights granted and the obligations assumed by the parties concerning the provision of Facility Services to Members. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Contract, not expressly set forth in this Contract, are of no force or effect.
- 12.5 This Contract, or any part or section of it, may be amended at any time during the term of the Contract by mutual written consent of duly authorized representatives of EGID and the Facility in accordance with 12.2.
- 12.6 This Contract is subject to all applicable Oklahoma State Statutes and Rules codified at the Oklahoma Administrative Code. Any provision of this Contract, which is not in conformity with existing or future legislation, shall be considered amended to comply with such legislation. Any interpretations or disputes with respect to contract provisions shall be resolved in accordance with the laws of the State of Oklahoma.
- 12.7 The terms and provisions of this Contract shall be deemed to be severable one from the other, and determination at law or in a court of equity that one term or provision is unenforceable shall not operate so as to void the enforcement of the remaining terms and provisions of this entire Contract, or any one provision, in accordance with the intent and purpose of the parties hereto.
- 12.8 EGID and the Facility agree that this Contract may be formed according to the Oklahoma Uniform Electronic Transactions Act, 12A O.S. § 15-101 et seq. (Act). The Facility acknowledges that the Contract terms are located in HCFCv1.1 at <http://www.sib.ok.gov/contracts> and after downloading the Contract, and submitting the completed Application, signed and returned the Signature Page to EGID, EGID will note its approval on the Signature Page and return to the Facility. The Contract terms, Application, Signature page and any required information submitted by the Facility are records that may be stored as EGID electronic records under the Act.

ATTACHMENT D FOR RFP #0900000215

Statement of Compliance

Certain conditions may preclude the Supplier's strict compliance with a term specified in this solicitation. The supplier may describe its method of compliance to accomplish the requirements of the specific term and EGID reserves its unrestricted discretion to determine, whether an alternative method offered by the supplier is acceptable to EGID.

Any alternative method or exceptions to terms, conditions or other requirements in any part of the solicitation must be clearly described in both the appropriate section of the solicitation and listed as an attachment to the Statement of Compliance and shall be made a part of this solicitation. Otherwise, EGID shall consider that all items offered are in strict compliance with the solicitation and the supplier shall be responsible for compliance. EGID shall specify at the time of the awarding of the contract what, if any, optional, alternative methods are accepted.

Notwithstanding anything to the contrary, EGID maintains the unrestricted discretion to make any decision as to suitability, competency, ability to perform, conflicts of interest or the appearance thereof, responsiveness of the supplier's proposal, acceptability of such proposal, or other decisions concerning qualifications.,

Each supplier shall be required to submit a response to this solicitation as it is written. Any supplier who wishes to propose exceptions or alternatives to any term, condition, or requirement of this solicitation must specify the exception and/or alternative and submit a response for each deviation. If a Statement of Compliance is not returned to EGID with the supplier's original proposal, the response may be excluded from further consideration. If a Statement of Compliance is submitted with deviations, EGID will consider such exceptions and/or alternatives in the evaluation process or such exception and/or alternative may constitute grounds for rejection of the proposal.

☐ The solicitation submitted to EGID is in strict compliance with this solicitation, and if selected as a supplier, the supplier will be responsible for meeting all requirements of this solicitation.

☐ The solicitation submitted to EGID contains deviations from the specifications of this solicitation. The deviations are attached.

Name: _____ Company: _____

Signature: _____ Address: _____

Title: _____

Phone: _____ Fax: _____

BUSINESS ASSOCIATE AGREEMENT BETWEEN THE OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES HUMAN CAPITAL MANAGEMENT EMPLOYEES GROUP INSURANCE DEPARTMENT (COVERED ENTITY) AND [REDACTED] (BUSINESS ASSOCIATE)

Definitions

Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean [REDACTED].

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Oklahoma **Office of Management and Enterprise Services Human Capital Management Employees Group Insurance Department**.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

Obligations and Activities of Business Associate

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by this Agreement or as required by law;

(b) 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 protected health information other than as provided for by this Agreement;

(c) Report to Covered Entity any use or disclosure of protected health information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware, provided however that Business Associate shall not be required to report any routine unsuccessful attempts to access, modify or destroy electronic data, or to interfere with an electronic data system, such as “pings” or other broadcast attacks on a firewall, port scans, routine unsuccessful log-on attempts, or denial of service attacks; breaches involving 100 or more affected individuals shall be reported within ten (10) days of discovery, and breaches involving less than 100 affected individuals shall be reported within thirty (30) days of discovery; Business Associate shall provide Covered Entity with information regarding the nature and extent of the improper use or disclosure and any additional information Covered Entity may reasonably request;

(d) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;

(e) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

(f) In accordance with 45 CFR 164.514(d)(3), only request, use and disclose the minimum amount of protected health information necessary to accomplish the purpose of the request, use or disclosure;

(g) Make available protected health information in a designated record set to the individual or the individual's designee as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(h) Provide access, at the request of Covered Entity and during normal business hours, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524, provided that Covered Entity delivers to Business Associate a written notice at least five (5) business days in advance of requesting such access. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information in a Designated Record Set of Covered Entity;

(i) Make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526, at the request of Covered Entity or an Individual. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information from a Designated Record Set of Covered Entity;

(j) Maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(k) Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Covered Entity or to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule or Security Rule. Business Associate shall have a reasonable time within which to comply with requests for such access and in no case shall access be required in less than five (5) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary;

(l) To the extent the Business Associate is to carry out one or more of Covered Entity'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) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

(a) Except as otherwise limited by this Agreement, Business Associate may make any uses and disclosures of Protected Health Information necessary to perform its services to Covered Entity and

otherwise meet its obligations under this Agreement, if such use or disclosure would not violate the Privacy Rule if done by Covered Entity. All other uses or disclosures by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.

(b) Business Associate may use or disclose protected health information as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for protected health information consistent with the minimum necessary policies and procedures of the HIPAA Rules.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

(e) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(f) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

Indemnification

Business Associate will indemnify, defend and hold harmless Covered Entity and its respective employees, directors, officers, subcontractors, agents and affiliates from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs or expenses (including without limitation reasonable attorneys' fees) suffered by Covered Entity arising from or in connection with any breach of this Agreement, or any negligent or wrongful acts or omissions in connection with this Agreement, by Business Associate or by its employees, directors, officers, subcontractors, or agents. Notwithstanding the foregoing, the Business Associate shall not be responsible or liable for following Covered Entity's instructions with regard to the protected health and/or confidential information or from and to the extent of any breach of contract or negligent actions or omissions by the Covered Entity. No person or entity is to be considered a third-party beneficiary under the agreement, nor shall any third party have any rights as a result of the agreement.

Term and Termination

(a) Term. This agreement shall be effective upon execution by both parties and will continue until terminated by either party for any reason with a written notice of 30 days, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement, and Business Associate agrees to such termination, if Business Associate has breached a material term of this Agreement and does not cure the breach or cure is not possible.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, at the option of Covered Entity, Business Associate shall do one or more of the following: 1) return all protected health information to Covered Entity, 2) transmit the protected health information to another business associate of the Covered Entity, and/or, 3) destroy all protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. Business Associate and its subcontractors shall retain no copies of the protected health information.

Miscellaneous

(a) Assignment. The Parties will not sublicense or assign this Agreement or any right or interest hereunder without prior written consent, and any attempted sublicense or assignment without such consent will be void. Subject to the foregoing restriction, this Agreement will bind and benefit the parties and their respective successors and assigns.

(b) Governing law; Severability. Except as preempted by federal law, this Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Oklahoma, without giving effect to its principles of conflict of laws. If any provision of this Agreement is determined to be invalid to any extent or in any context, such provision will be enforced to the extent and in the contexts in which it is valid, and the remaining provisions are severable and will not be affected by any such determination of invalidity.

(c) Entire Agreement. This Agreement sets forth the entire agreement, and supersedes any and all prior agreements, of the Parties with respect to the subject matter hereof. No amendment of this Agreement will be valid unless set forth in a writing signed by both Parties. No waiver will be binding unless signed by the party to be bound.

(d) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(e) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(f) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(g) **No Third-Party Beneficiaries.** Nothing express or implied in the PBM Agreement or in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

Agreed and Accepted

COVERED ENTITY - The Office of Management
and Enterprise Services Human Capital
Management Employees Group Insurance
Department

BUSINESS ASSOCIATE - [REDACTED]

By: _____

By: _____

Printed Name: Frank Wilson

Printed Name: _____

Title: Administrator

Title: _____

Date Signed: _____

Date Signed: _____

Address for Notices and Correspondence

Address for Notices and Correspondence

OMES – EGID
3545 NW 58th, Suite 110
Oklahoma City, OK 73112
