

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT (this "Agreement") is made and entered into as of December 16, 2020 (the "Effective Date"), by and between PRAIRIE ONE SOLUTIONS, INC., a wholly-owned not for profit subsidiary of the Oklahoma State University Research Foundation and the OKLAHOMA STATE DEPARTMENT OF HEALTH, an Oklahoma State agency. Prairie One Solutions, Inc. and OSDH are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. Prairie One Solutions, Inc. ("Manager") is an Oklahoma not-for-profit corporation incorporated to provide management and support services for entities engaged in the provision of health care and related services.

B. The Oklahoma State Department of Health ("OSDH") is a state agency created pursuant to Title 63, Oklahoma Statutes, Section 1-101 et seq. (the "Oklahoma Public Health Code") and owns the real property and improvements comprising the Oklahoma Pandemic Center for Innovation and Excellence ("OPCIE"), OSDH Public Health Laboratory ("Public Health Lab"), and related facilities located in Stillwater, Oklahoma.

C. The State Commissioner of Health constitutes the governing body of OSDH with full power and authority to operate the OPCIE and Public Health Lab.

D. Manager employs personnel capable of advising and managing health care entities.

E. The OPCIE is a Center within OSDH at the intersection of agriculture, animal and human medicine, food safety, public health testing and preparedness.

F. The Public Health Lab shall include a human diagnostic/public health laboratory, a genetic biorepository and a multi-disciplinary basic science lab for human, animal, plant and food-related bioterrorism research.

G. The OSDH needs executive and management services of the OPCIE and the Public Health Lab and the OSDH has determined that it is in the public interest to obtain the managerial and operational expertise of Manager to provide the "Management Services" to the OPCIE and Public Health Lab as more particularly set forth herein.

H. The Oklahoma Secretary of Health and Mental Health is the appropriate approval authority for this agreement.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants of the parties hereunder, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. RIGHTS AND RESPONSIBILITIES OF MANAGER.

1.1 Engagement. OSDH hereby engages Manager to provide the management services and perform the duties described in this Section 1 and as further described in Exhibit A attached hereto and incorporated herein by this reference (collectively, the "Management Services"). OSDH hereby grants to Manager the full and exclusive right and power to perform and furnish the Management Services and all other services related thereto as are reasonably necessary for the management of the OPCIE and Public Health Lab.

1.2 Scope of Engagement. The engagement of Manager hereunder is solely to provide the Management Services, subject at all times to the provisions of this Agreement and the oversight responsibilities reserved to the OSDH as set forth in Sections 2.1 and 2.2 below. Unless established by separate agreement(s), Manager shall have no rights to the use or possession of the OPCIE and/or Public Health Lab, and nothing in this Agreement shall be construed as granting Manager any rights to the continuing use or occupancy of the OPCIE and/or Public Health Lab or as granting a leasehold interest in the OPCIE and/or Public Health Lab.

1.3 Personnel Supplied by Manager. In addition to employees employed separately by OPCIE and the Public Health Lab, Manager shall provide the following personnel.

1.3.1 Key Personnel. During the term of this Agreement, Manager will provide five (5) positions responsible for operations (collectively the "Key Personnel"), reasonably acceptable to and approved by the OSDH, who will be employees of Manager and accountable to Manager, but who will provide services to OSDH at the Public Health Lab and the OPCIE. The Key Personnel will serve in the roles of Executive Director, Operations Director, information technology, outreach/partnerships, and facilities/infrastructure. The Key Personnel will oversee and direct the performance of Management Services under this Agreement.

1.3.2 Responsibility for Key Personnel. The Key Personnel supplied by Manager to provide services under this Agreement shall at all times remain employees of Manager and subject to the direction and control of Manager. OSDH shall have no liability to such persons for their welfare, salaries, fringe benefits, or legally required employer contributions and tax obligations by virtue of the relationships established under this Agreement.

1.3.3 Salaries and Benefits. Manager shall have sole responsibility for determining the compensation (i.e., salaries and fringe benefits) of and for paying the same to the Key Personnel hired by Manager and for withholding from

compensation the income tax, unemployment insurance, social security or any other withholding as may be required by applicable law, provided that the general level of compensation paid to the Key Personnel shall be reasonable and consistent with fair market value. OSDH shall have the discretion, acting reasonably and in good faith, to require that Manager remove any employee of Manager providing Management Services to OPCIE and/or the Public Health Lab pursuant to this Agreement (i) whose conduct, demeanor or cooperation with co-workers is unsatisfactory to OSDH or (ii) whose performance continues to fall below the level required to maintain professional standards established by the OSDH; provided that, in the case of Key Personnel, such right to require removal shall be exercised only after Manager has been notified of such unsatisfactory performance and been afforded an opportunity to engage in appropriate instruction or counseling with the affected employee and/or to provide an appropriate cure period.

1.3.4 Ineligible Persons. In the provision of Management Services under this Agreement, Manager shall not utilize an "Ineligible Person," as defined herein. An "Ineligible Person" shall be any person (individual or entity) that (i) is currently excluded, debarred, or otherwise ineligible to participate in federal procurement and/or non-procurement programs, or any federal health care programs, or (ii) has been convicted of a criminal offense relating to or arising out of the provision of health care services or items, whether or not such person has yet been excluded, debarred, or otherwise declared ineligible. Manager hereby certifies that it is not an Ineligible Person, and that neither it nor its employees used to provide any services under this Agreement are listed on the General Services Administration's List of Parties Excluded from Federal Programs or the List of Excluded Individuals/Entities maintained by the Office of Inspector General of the Department of Health and Human Services.

1.4 Standard of Care. Manager represents that its Key Personnel have expertise, and will maintain such expertise current while providing Management Services hereunder, with respect to the operation, licensure, accreditation, Medicare/Medicaid conditions of participation, coverage and payment rules, managed care contracting, and other third party payor matters, related to the operation of a health care entity in general. Manager agrees to secure such qualified professionals and other personnel required to provide the Management Services it is contracting to provide under this Agreement. Manager shall provide all Management Services for the development, operation and management of the OPCIE and Public Health Lab in a manner consistent with good business practices in the community served by the OPCIE and Public Health Lab and within the health care industry and in a manner consistent with state and federal law including not by way of limitation state and federal antitrust laws. In the performance of its Management Services, as provided for in this Agreement, the Manager shall exercise the same standards and degree of care used by an experienced professional manager of a public health entity of the same type as the OPCIE and Public Health Lab. The Manager shall act in good faith to perform its obligations hereunder.

1.5 **Conflict of Interest.** In addition to any requirement of law or of a professional code of ethics or conduct, the Manager, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the OSDH. 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 OSDH, its employees or any other third-party individual or entity awarded a contract with the OSDH. Further, as long as the Manager has an obligation under the Agreement, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the OSDH.

2. **RIGHTS AND RESPONSIBILITIES OF OSDH**

2.1 **Control Retained in OSDH.** Notwithstanding any grant of authority to Manager as contained herein, the OSDH shall at all times serve as the governing body of OPCIE and Public Health Lab with ultimate responsibility for the legal, financial and operational performance of the OPCIE and Public Health Lab. The OSDH shall retain the sole authority with respect to those matters described in Section 2.2 below ("OSDH Retained Authority"), and shall retain authority superior to that of Manager to make and implement other policies and procedures governing operation of the OPCIE and Public Health Lab as the OSDH determines are necessary, subject to the terms herein. The OSDH does not delegate to Manager any of the powers, duties and responsibilities required to be retained by OSDH under law (including, but not limited to, all certificates and licenses issued under authority of law for operation of the OPCIE and Public Health Lab). OSDH shall be the owner and holder of all licenses, provider numbers, accreditation certificates and contracts which OSDH obtains and shall be the "Provider" (or term of like import) providing analytical services for the OSDH, local government and tribal units, healthcare practitioners, and private citizens; providing specialized public health laboratory procedures and reference testing; training, technical assistance and consultation for private clinical laboratories; guidance and training for detection and identification of a terrorist event; applied research and university instruction related to the public health protection mission of the laboratory; and pharmacy services to State County Health Departments. All medical and quality assessment, peer review and credentialing matters shall be the responsibility of OSDH. Manager shall, however, consult with OSDH concerning such matters if requested to do so.

2.2 **OSDH Retained Authority.** Notwithstanding anything to the contrary within this Agreement or in the exhibits hereto, the following matters shall require the prior written authorization of the OSDH prior to being undertaken (collectively referred to herein as the "OSDH Retained Authority"):

2.2.1 Approval of the annual capital and operating budgets for the OPCIE and Public Health Lab;

2.2.2 Approval of the general operating policies, major policy matters and strategic plans of the OPCIE and Public Health Lab;

2.2.3 General oversight responsibility for the legal, operational, medical, professional and ethical affairs of the OPCIE and Public Health Lab;

2.2.4 Approval of and the execution and filing of all cost reports, tax returns and other corporate legal documents required to be filed by the OPCIE and Public Health Lab;

2.2.5 Approval or disapproval of managed care contracting strategies;

2.2.6 Approval or disapproval of the sale of OPCIE and Public Health Lab assets;

2.2.7 Adoption of, and approval of amendments, modifications or revisions to the OPCIE and Public Health Lab quality assurance and compliance plans;

2.2.8 Approval or disapproval of any debt incurred by OSDH except for those actions of Manager which fall within the scope of the contracting authority expressly delegated by OSDH to Manager in writing in compliance with applicable law;

2.2.9 Approval or disapproval of material capital improvements and expenditures associated therewith in excess of those set forth in the annual capital budget;

2.2.10 Approval or disapproval of plans to expand or reduce the size or business operations of the OPCIE and Public Health Lab;

2.2.11 Selection of an independent audit agency to conduct an annual year-end audit of the financial statements of OSDH and the OPCIE and Public Health Lab and approval or disapproval of the independent audit reports furnished by such firm.

2.2.12 OSDH is solely responsible for all of its employees and solely shall: pay, withhold, and transmit payroll taxes; provide unemployment insurance and workers' compensation benefits; and handle unemployment and workers' compensation claims involving OSDH's employees.

2.3 **Revenues and Payments.** Except as provided in Section 3.2 hereof, all income or other monies received from the operation of the OPCIE and Public Health Lab, together with all accounts and other receivables and all other

Manager shall be solely responsible for disaster recovery arrangements for Manager's business operations, including Manager's infrastructure and equipment used to provide the Management Services.

3. COMPENSATION TO MANAGER.

3.1 Reimbursement of Expenses. In addition to any other amounts payable to or reimbursable to Manager hereunder, OSDH shall reimburse Manager for expenses which shall include (1) all expenses of every nature incurred by Manager related to the management, repair and operation of OPCIE and Public Health Lab facilities, and (2) all other reasonable, documented out-of-pocket costs and expenses approved by OSDH that Manager may incur in providing Management Services pursuant to this Agreement. For the avoidance of doubt, the Parties expressly agree that salaries for Key Personnel are not a reimbursable expense. Manager will submit to OSDH on a monthly basis an invoice for the reimbursable expenses described in this Section 3.1 for the preceding month together with supporting documentation as reasonably requested by OSDH. The invoices submitted by Manager to OSDH pursuant to this Section 3.1 shall be paid no later than forty-five (45) days from the date of each invoice.

3.2 Management Fee.

3.2.1 As consideration for the services of Manager under this Agreement, OSDH will pay Manager (1) an amount equal to 15% of the operating budget of the PHL and OPCIE, plus (2) an amount equivalent to 15% of income derived from the following sources that are in excess of the determined baseline of the Public Health Lab and OPCIE based upon the five-year actual average of revenue collection of insurance billing: (a) revenue from insurance, and (b) any new revenue generating source(s) instituted by the OPCIE. This amount shall not include OSDH federal grants, state appropriations, or Health Care Authority payback match. The consideration payable by OSDH to Manager set forth in this Section 3.2 is referred to herein as the "Management Fee." The Management Fee is in addition to and not in lieu of all other payments and reimbursements to be made by OSDH to Manager under the terms of this Agreement. The Management Fee is more particularly described in Exhibit "B", attached hereto.

3.2.2 Manager will submit to OSDH on a monthly basis an invoice for the Management Fee described in this Section 3.2 for the preceding month together with supporting documentation as reasonably requested by OSDH. The invoices submitted by Manager to OSDH pursuant to this Section 3.2 shall be paid no later than forty-five (45) days from the date of each invoice.

3.2.3 A final calculation of the Management Fee payable to Manager will be made based on the independent audit report for each Fiscal Year and if the audit determines underpayment of the Management Fee, then OSDH shall pay such amount

within forty-five (45) days of acceptance of the independent audit report by the OSDH. If the audit determines overpayment of the Management Fee, then the difference should be deducted from a subsequent reimbursement invoice from Manager.

- 3.3 Late Payments.** OSDH shall pay Manager interest on all amounts due to Manager that are not paid when due. Interest shall accrue from the date the original payment was due at a rate of one (1) percent per month, or the rate allowed by law, whichever is lower, until the payment is made in full. OSDH shall bear the costs of all legal fees, costs and expenses of any kind incurred by Manager to enforce OSDH's payment obligations hereunder.
- 3.4 No Set Off.** Except as set forth in Section 3.2.3, the obligations under this Agreement shall not be subject to set-off for non-performance or any monetary or non-monetary claim by either Party under this or any other agreement between the Parties.
- 3.5 Periodic Review.** Manager shall meet monthly with the Chief Financial Officer of OSDH or his or her designee to review the reimbursable costs and expenses incurred by Manager in performing the Management Services and to determine if the scope of services and allocation of resources is meeting the needs of OSDH. The Parties will collaborate and use commercially reasonable efforts to control costs and the allocation of resources to best meet the needs of the OPCIE and Public Health Lab.
- 3.6 Change.** In the event OSDH or Manager reasonably suggests that there is a substantial risk that any compensation provision or other arrangement herein poses a significant risk under any law or regulation binding on OSDH or affecting its operations or reimbursements ("Regulatory Risk"), then all parties hereto shall (i) review the matter with legal counsel and (ii) if there is a significant risk, negotiate in good faith towards an alternative compensation provision or other arrangement that poses no significant Regulatory Risk but which, to the maximum extent possible within that limitation, places each Party as close as possible to the same position, with the same benefits and compensation, as it otherwise would have occupied and obtained under the provisions hereof.

4. MEETINGS AND COMMUNICATIONS WITH THE OSDH.

- 4.1 Regular Meetings.** The OSDH and Manager shall meet quarterly in person, by video conference or by telephonic means in order to discuss the OPCIE and Public Health Lab, Manager's performance under this Agreement, and the results of the preceding year, assist in establishing the budgets for the next Fiscal Year, and review the OPCIE and Public Health Lab strategic and operational initiatives for the current and upcoming Fiscal Year.
- 4.2 Budget Meetings.** Representative(s) of Manager shall meet with the OSDH in

order to assist in establishing the budgets for the next Fiscal Year. OSDH and Manager shall coordinate budget discussions to occur at periodic and special meetings to coincide with the State of Oklahoma's budgeting cycle. OSDH and Manager shall have budget frameworks for the Manager's Operating Budget, the OPCIE and the Public Health Lab ready at least thirty (30) days prior to the State of Oklahoma's budget creation. The Operating Budget, OPCIE budget and Public Health Lab budget shall be finalized as soon as practicably possible after the State of Oklahoma appropriation is confirmed.

- 4.3 **Special Meetings.** The OSDH and Manager shall be entitled to reasonably request meetings with appropriate key representatives of Manager and OSDH upon fourteen (14) days' written notice to discuss Manager's performance under this Agreement.

5. ACCOUNTING, COMMUNICATIONS AND REPORTS.

- 5.1 **Fiscal Year.** The fiscal year ("Fiscal Year") of the OPCIE and Public Health Lab shall be based on a fiscal year beginning on July 1 and ending on June 30 of the following year, unless the Internal Revenue Service shall require otherwise.
- 5.2 **Books and Records.** The books of account of the OPCIE and Public Health Lab shall be kept and maintained at all times at the offices of the OPCIE and Public Health Lab under the supervision of the executive appointed by Manager responsible for the financial reporting of the OPCIE and Public Health Lab. The books of account shall be maintained on an accrual basis in accordance with GAAP and shall show all items of income and expense. Manager agrees that promptly following its receipt of a written request from OSDH, it shall deliver copies of any records maintained by Manager in connection with the services it is providing or required to provide for the OPCIE and Public Health Lab.
- 5.3 **Financial Information and Auditing.** Manager shall prepare and furnish to the OSDH (i) a monthly unaudited income statement including a comparison to the Approved Budget with all variances from budget identified; (ii) for each quarter, an unaudited income statement, balance sheet and cash flow statement a comparison to the Approved Budget with all variances from budget identified and other information reasonably requested by the OSDH. After the close of each Fiscal Year of the OPCIE and Public Health Lab, Manager shall cause to be prepared and furnished promptly to the OSDH a balance sheet of the OPCIE and Public Health Lab dated as of the end of the Fiscal Year, a related statement of income or loss for the OPCIE and Public Health Lab for such Fiscal Year, the same information for the Fiscal Year as is required to be included in the aforementioned quarterly reports. All financial reports provided by Manager to the OSDH shall be prepared in conformity with GAAP. The Parties agree that an annual audit of the year-end financial statements for the OPCIE and Public Health Lab be performed at the OSDH's expense, by an independent accounting firm or the State Auditor to be

selected by the OSDH. Notwithstanding anything within this Agreement to the contrary, all financial books and records of the OPCIE and Public Health Lab prepared by, or at the request of, Manager shall remain the property of OSDH.

6. **TERM OF AGREEMENT.** The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue in full force and effect for a period of one (1) years with four (4) automatic renewal periods from the Effective Date, unless terminated sooner in accordance with the terms of this Agreement or unless extended by written agreement of the Parties.

7. **TERMINATION.**

7.1 **Events of Termination.** This Agreement may be terminated prior to expiration of the Term in accordance with the following:

7.1.1 upon the mutual written agreement of the Parties;

7.1.2 by either Party, upon written notice to the other Party, if such other Party materially breaches the Agreement and such breach remains uncured for a period of thirty (30) days following receipt of written notice from the non-breaching Party specifying the breach in reasonable detail. The cure period for non-payment defaults shall be extended up to a total cure period of ninety (90) days if the breaching Party has commenced a cure within the initial thirty (30)-day period and is working in good faith to cure the material breach as promptly as possible;

7.1.3 by either Party, upon written notice to the other Party, if such other Party files a proceeding in bankruptcy, receivership or reorganization, or for liquidation or dissolution or for similar relief, or there is a filing against such Party of any such proceeding which is not dismissed within thirty (30) days after the filing thereof;

7.1.4 by either Party, without cause, upon twelve (12) months' prior written notice to the other Party, provided that no such termination will be effective earlier than 12 months from the Notice of Termination of this Agreement;

7.1.5 by Manager, upon six (6) months' prior written notice to OSDH, in the event funding appropriated by the Legislature of the State of Oklahoma or received from an intended third-party funding source on an annual basis for the direct or indirect benefit of the OPCIE and Public Health Lab is reduced after the Effective Date of this Agreement below the State Appropriations Threshold or third-party funding source of 10%, based upon a rolling average of the previous three (3) years, and OSDH does not provide or cause to be provided funds to the OPCIE and Public Health Lab equal to the reduction in the State Appropriation Threshold within thirty (30) days of the effective date of such reduction and the Parties do not agree to a lower Management fee as a result thereof; or

7.1.6 if this Agreement, or any portion of this Agreement, subjects Manager or OSDH, or any of their respective affiliates, to the risk of non-compliance with applicable Legal Requirements, then the affected Party may provide written notice of termination to the other Party citing this Section. Upon receipt of such notice, the Parties and their respective legal counsel shall engage in good faith negotiations in an attempt to resolve the legal infirmity or otherwise amend the Agreement to comply with applicable Legal Requirements. If the parties are unable to resolve the legal infirmity within forty-five (45) days following the date on which such notice of termination is given, then this Agreement shall terminate with no further notice required of the noticing Party.

7.1.7 Any conflict of interest shall, at the sole discretion of the OSDH, be grounds for partial or whole termination of the Agreement.

7.1.8 The OSDH may terminate the Agreement in whole or in part immediately without a twelve (12) month written notice to Manager if Manager fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Manager's performance or obligations under the Agreement.

7.2 **Actions Upon Termination.** Upon termination of this Agreement, the OPCIE and Public Health Lab shall return to Manager all Documentation and other proprietary information and data (as defined and described in Section 10 below) of Manager, including, but not limited to, all administrative, accounting and personnel policy and procedure manuals prepared by Manager, all computer software and hardware systems owned by Manager, and all data accumulated through Manager's provision of Management Services or through its business administration, utilization management or quality improvement systems, programs, plans or procedures. Manager shall cooperate with the OPCIE and Public Health Lab to affect the transition to another administrative manager if one is appointed by OSDH to succeed Manager.

8. LIMITATION OF LIABILITY

8.1 **Exculpation.** A Party (the "non-performing Party") shall not be in breach of its obligations under this Agreement, and shall have no liability for claims or damages of any nature, to the extent any failure to perform, error in performing, or delay in performing the Management Services or other obligations under this Agreement (excluding, in the case of the OSDH as the non-performing Party, OSDH's payment obligations under this Agreement) is caused by: (a) any circumstance beyond its control, including, without limitation, strikes or civil disturbance, any statute, regulation or rule of the federal or any state or any local government, or any agency thereof, or with regard to anything in the sole control of the other Party, (b) the acts or omissions of the other Party or its or their Affiliates, employees, agents or independent contractors, or (c) any material failure

by the other Party to comply with its obligations under this Agreement.

8.2 Waiver of Incidental, Consequential or Punitive Damages.

8.2.1 In no event shall Manager nor OSDH be liable to the other Party or to any third party for any incidental, consequential or punitive damages, under or related to this Agreement, for loss of profits, loss of use, business losses or any other indirect, incidental, consequential, special or punitive damages arising out of or in connection with this Agreement, even if the other Party has been advised of the possibility of such damages.

8.2.2 Notwithstanding anything to the contrary in the Agreement, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Manager or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Agreement; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Manager or its employees, agents or subcontractors.

8.3 Limitation of Damages. Except for Manager's gross negligence, willful misconduct or bad faith in connection with this Agreement, Manager's aggregate and cumulative liability for damages arising out of or in connection with this Agreement shall not exceed the amount of the Management Fees paid to Manager during the two (2) years of the Term preceding the claim.

8.4 Disclaimer of Warranties.

8.4.1 OSDH ACKNOWLEDGES THAT MANAGER HAS NOT MADE AND WILL NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS THAT THE MANAGEMENT SERVICES WILL RESULT IN ANY PARTICULAR AMOUNT OR LEVEL OF INCOME TO BE DERIVED FROM THE OPERATIONS OF THE OPCIE AND PUBLIC HEALTH LAB. NO SUCH WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE MANAGEMENT SERVICES OR IN ANY OTHER MANNER ARE MADE BY MANAGER TO OSDH OR ANY THIRD PARTIES.

8.4.2 MANAGER MAKES NO REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED WITH RESPECT TO THE CONDITION OR SUITABILITY OF THE FACILITIES COMPRISING THE OPCIE AND PUBLIC HEALTH LAB BUILDING OR ANY EQUIPMENT, FIXTURES, FURNITURE, FURNISHINGS OR SUPPLIES WHICH MAY BE PROVIDED BY MANAGER PURSUANT TO THIS AGREEMENT. ALL WARRANTIES EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION WARRANTIES OF HABITABILITY, MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE OF ARE HEREBY DISCLAIMED BY MANAGER.

8.5 **Rights Cumulative; No Waiver.** Except as provided herein, no right or remedy herein conferred upon or reserved to either of the Parties hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an event of termination hereunder. The failure of either Party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the Parties hereto may be exercised from time to time and as often as may be deemed expedient by the Parties hereto.

9 INSURANCE.

9.1 **Requirements.** Manager shall procure at its own expense and provide proof of insurance coverage with the following applicable liability limits throughout the Term of this Agreement:

Workers Compensation	Statutory amount
Comprehensive General Liability (CGL)	\$1,000,000 per occurrence /\$3,000,000 aggregate
Automobile liability	\$1,000,000
Directors' and Officers' Liability	\$2,000,000
Property Insurance	Insurable Value

Manager agrees to indemnify the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) from any legal action filed by Prairie One Personnel relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with Manager's performance under the Agreement.

9.2 **Notice of Claims.** If any Party shall receive notice of any third-party claim, such Party shall promptly provide written notice of such claim to the other Party.

9.3 **Governmental Tort Claims Act.** Except to the extent of its insurance obligations to Manager set forth in this Section 9, OSDH does not expressly or impliedly waive any of the protections, procedures or limitations of any current or future law

including, without limitation, the Oklahoma Governmental Tort Claims Act. 51 O.S. § 151 et seq.

- 9.4 **No Personal Liability of OSDH Employees.** None of the officers, employees and agents of OSDH shall be personally liable for any of OSDH's obligations under this Agreement solely by virtue of serving in such capacity.
- 9.5 **No Personal Liability of Manager's Employees.** None of the officers, employees and agents of Manager, including not by way of limitation the Key Personnel, shall be personally liable for any of Manager's obligations under this Agreement solely by virtue of serving in such capacity.

10. LICENSE TO PROPRIETARY MATERIALS

- 10.1 **Definition of Documentation.** As used herein, "Documentation" means technical, procedural and administrative manuals, training materials, standard report forms and other materials that contain information regarding the delivery of the Management Services to the OPCIE and Public Health Lab together with the information contained therein and derived therefrom, which materials Manager delivers to OSDH under this Agreement and/or which Documentation and materials Manager may use in performing services under this Agreement. The term "Documentation" shall also include proprietary materials prepared by OSDH together with information contained therein and derived therefrom relating to the operations of the OPCIE and Public Health Lab.
- 10.2 **License.** The Parties hereby grant to each other, for the consideration recited elsewhere in this Agreement, a non-exclusive and non-transferable license, or sublicense, as the case may be, without right to further sublicense, to use the Documentation at the OPCIE and Public Health Lab (but not elsewhere) in accordance with the provisions of this Agreement.
- 10.3 **No Grant of Ownership.** Each Party is aware that this Agreement does not grant any title or rights of ownership in the other Party's Documentation and that the Documentation is the proprietary information, trade secret and valuable property of the Party who created it. Each Party further acknowledges that its license to use the Documentation shall terminate on the expiration or termination of this Agreement.
- 10.4 **Copying of the Documentation.** A Party who elects to make a reproduction of another Party's Documentation shall reproduce all copyright and other proprietary markings of the other Party and its suppliers contained in the Documentation. As provided herein, each Party agrees to maintain strict confidentiality with respect to the Documentation and all information contained therein.

11. NON-DISCLOSURE OF PROPRIETARY OR CONFIDENTIAL INFORMATION

11.1 Non-Disclosure and Non-Use. By operation of and performance under this Agreement, each Party may have access to information that is confidential or proprietary to the other Party. It includes both information that is marked as “Confidential” or “Proprietary” and also information or data of a Party disclosed to or learned by the other Party that a reasonable person in like circumstances would understand to be confidential or proprietary information of the disclosing Party. Without limitation, Manager's "Proprietary or Confidential Information" includes (a) the Documentation, all information contained therein or derived therefrom, and any trade secrets related thereto and (b) any trade secrets or confidential information of Manager, including information disclosed by Manager to OSDH or learned by OSDH as a result of its access to any personnel, systems, data, files, documents, offices, property or personnel of Manager. A disclosing Party's Proprietary or Confidential Information shall not include information that:

11.1.1 is or becomes a part of the public domain through no act or omission of the receiving Party;

11.1.2 was in the receiving Party's lawful possession prior to the time such information was disclosed to or learned by the receiving Party from or by access to the disclosing Party, and at the time of such prior possession the receiving Party was not under a duty of confidentiality to the disclosing Party with respect thereto;

11.1.3 is lawfully disclosed to the receiving Party by a third party without restriction imposed by the third party on the receiving Party's further disclosure of such information; or

11.1.4 is independently developed by the receiving Party by its personnel not having access to such Proprietary or Confidential Information.

11.2 When Required by Law. Nothing in this Agreement shall prohibit any disclosure of Proprietary or Confidential Information by the receiving Party when disclosure is required by law, regulation or court order, but only to the extent so required. The receiving Party shall inform the disclosing Party of the requirement in order to allow the disclosing Party to pursue obtaining a protective order and other reasonable protections for the Proprietary or Confidential Information subject to disclosure.

11.3 Reasonable Steps to Protect. Each Party agrees, both during the Term of this Agreement and for three (3) years after termination, to hold the other Party's Proprietary or Confidential Information in strict confidence. Each Party agrees not to make the other Party's Proprietary or Confidential Information available in any form to any third party or to use the other Party's Proprietary or Confidential Information for any purpose other than for the purposes explicitly permitted by this

Agreement. The receiving Party agrees to take all reasonable steps to ensure that Proprietary or Confidential Information of the disclosing Party is not disclosed or distributed by the receiving Party's employees, agents or consultants in violation of the provisions of this Agreement. Subject to the foregoing, the Parties may disclose any materials, including any Proprietary or Confidential Information of the other Party, their respective legal and financial advisers in order to provide advice to the Party about such Party's business and legal affairs, or when otherwise required by law.

11.4 Patient Data; HIPAA Compliance. Manager shall have access to patient data for patients who receive services from the OPCIE and Public Health Lab. Manager and OSDH will comply with all state and federal laws and regulations regarding the confidentiality and disclosure of patient records, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. parts 160 and 164 (the "Privacy Regulations"), promulgated thereunder, and the proposed Security and Electronic Signature Standards, 45 C.F.R. part 142 (the "Security Regulations"), to be promulgated thereunder. The Parties agree to enter into any subsequent agreements or addendums, and to take such other action, as may be necessary to comply or to come into compliance with HIPAA or the Privacy and Security Regulations promulgated thereunder, as amended, including but not limited to entering into the Business Associate Agreement attached hereto as Exhibit C. Notwithstanding the foregoing, any and all health, medical or billing records created by, maintained or retained by Manager during the term of this Agreement shall be the exclusive property of OSDH and shall remain the property of OSDH upon the termination or expiration of this Agreement and, upon termination or expiration of this Agreement, Manager shall have no further obligation to retain such records on OSDH's behalf.

11.5 Equitable Relief. Each Party acknowledges that any use or disclosure of the other Party's Proprietary or Confidential Information other than as specifically provided for in this Agreement will result in irreparable injury and damage to the disclosing Party not adequately compensable in monetary damages alone. Accordingly, each Party hereby agrees that, in the event of use or disclosure by the receiving Party of the disclosing Party's Proprietary or Confidential Information (other than as specifically provided for in this Agreement or in another written agreement between the Parties), the disclosing Party shall be entitled to preliminary and permanent injunctive relief and other equitable relief as granted by any court of competent jurisdiction.

12. MISCELLANEOUS.

12.1 Relationship of the Parties. Nothing contained in this Agreement shall create or be deemed to create an employment, agency, joint venture or partnership relationship between Manager and OSDH. Manager is acting solely as an

independent contractor in providing Management Services under this Agreement. The terms of this Agreement are not intended to cause either Party or any of its affiliated entities to become the employer or employee of the other, a joint employer or the joint venture or partner of the other. Each Party agrees that the provisions of this Agreement as a whole are not intended to and do not constitute control of the other Party or their affiliated entities and each Party expressly disclaims any right or power under this Agreement to exercise any power whatsoever over the management or policies of the other Party or its affiliated entities including, without limitation, with respect to employees.

12.1.1 Manager shall, at all times, comply with all applicable state and federal regulations regarding the management of compensation to Manager's employees, including but not limited to the Department of Labor Regulations, the Occupational Safety and Health Administrations rules and regulations and the Fair Labor Standards Act as it relates to its employees and or independent contractors.

- 12.2** **Change in Law.** If any law or governmental regulation is adopted or any court decision is promulgated after the date of this Agreement, and such law, regulation or court decision makes this Agreement or a provision hereof illegal, the Parties agree to use their best efforts to restructure this Agreement in such a manner that will avoid such illegality and, to the extent practicable, will preserve the existing financial and business relationships among them. In the event any provision contained herein is deemed by a court of competent jurisdiction to be illegal, then the Parties each agree that such provisions hereof may be reformed and modified and enforced by such court to the maximum extent permissible under applicable law and principles of equity.
- 12.3** **No Obligation to Make Referrals.** The Parties acknowledge that none of the benefits granted the Parties under this Agreement is conditioned on any requirement or expectation that the Parties make referrals to, be in a position to make or influence referrals to, or otherwise generate business for the other Party. The Parties further acknowledge that neither Party is restricted from referring any service to, or otherwise generating any business for, any other entity of its choosing.
- 12.4** **Open Records.** The Parties acknowledge and understand that, as public agencies, OSDH and Manager are obligated to comply with the Oklahoma Open Records Act, 51 Okla. Stat. §§ 24A.1 et seq., that persons who submit information to public bodies have no right to keep such information from public access nor have a reasonable expectation that such information will be kept from public access, and that all information and reports furnished by Manager to the OSDH pursuant to or in connection with this Agreement (other than confidential patient information) that becomes part of the OSDH record will be public records.
- 12.5** **Survival.** The following Sections shall survive the termination or expiration of this Agreement: Three (Fees), Eight (Limitation of Liability), Nine (Insurance), Eleven (Non-Disclosure of Proprietary or Confidential Information), and those Sections

which by their operation survive the termination or expiration of this Agreement.

- 12.6 No Assumption of Liabilities.** Manager shall not by virtue of its providing the Management Services to the OPCIE and Public Health Lab assume or become liable for any of the obligations, debts or liabilities of the OPCIE and Public Health Lab and/or OSDH and is entitled to reimbursement therefor as provided herein.
- 12.7 Access to the OPCIE and Public Health Lab.** Manager shall, at all times during the Term hereof, have complete access to the OPCIE and Public Health Lab, its records, offices, and facilities, in order to carry out its obligations hereunder.
- 12.8 Successors.** All the provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of Manager and OSDH. Manager may assign this Management Agreement and all duties hereunder to a third party upon the written consent of the OSDH, so long as such entity can provide the same or substantially similar services as Prairie One Solutions, Inc.
- 12.9 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior understandings between the Parties, whether written or oral, as to such subject matter. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the Parties. No waiver shall be binding unless executed in writing by the Party making the waiver.
- 12.10 Previous Agreements.** This Agreement shall in no way interfere with or supersede other Agreements between the parties, or their related entities in other areas, such as for COVID-19 testing and software.
- 12.11 Headings.** The headings to the various sections of this Agreement have been inserted for reference purposes only and shall not modify, define, limit or expand the expressed provisions of this Agreement.
- 12.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterpart shall together constitute but one and the same Agreement.
- 12.13 Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given when hand delivered or sent by facsimile (with receipt confirmed), one day after deposit with a recognized air courier or three business days after deposit in the United States mail, if mailed by certified or registered mail, return receipt requested, postage prepaid and addressed as follows:

If to Manager:

Prairie One Solutions, Inc.
1201 Innovation Way Dr
Stillwater, OK 74074
c/o Executive Director

With a copy to:

Oklahoma A&M Board of Regents
Office of Legal Counsel
5th Floor, Student Union
Stillwater, OK 74078

If to OSDH:

Oklahoma State Department of Health
Procurement Director
123 Robert S. Kerr
Oklahoma City, OK 73104

With a copy to:

Oklahoma State Department of Health
General Counsel
123 Robert S. Kerr
Oklahoma City, OK 73104

A Party may change its address by giving notice in the manner provided above.

- 12.14 Authorization for Agreement.** The execution and performance of this Agreement by the Parties hereto has been duly authorized by all necessary laws, resolutions or corporate or partnership action, and this Agreement constitutes the valid and enforceable obligations of the Parties in accordance with its terms.
- 12.15 Governing Law; Jurisdiction.** This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Oklahoma without regard to conflicts of law rules.
- 12.16 Gender and Number.** As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each include the others whenever the context so indicates.
- 12.17 Access to Books and Records.** To the extent required by applicable laws and

regulations, each of the Parties hereto shall make their respective books, documents, and records available upon written request to the Comptroller General of the United States, the Secretary of Health and Human Services, Oklahoma agencies, or the duly authorized representatives thereof to the extent required to verify the costs of services rendered by Manager pursuant to this Agreement for a period of four (4) years following the rendition of such services by Manager hereunder. In the event that Manager's obligations under this Agreement are carried out through a subcontractor with whom such Manager has contracted, to the extent required under applicable laws and regulations, Manager shall require such subcontractor to make its books, documents and records available in the same manner.

12.18 Attorneys' Fees. In the event of a material breach of this Agreement, the non-breaching party shall be entitled, in addition to any other remedy provided by law, to the recovery of all costs and attorneys' fees incurred in the enforcement of the non-breaching Party's rights hereunder.

12.19 Executive Director. The Executive Director, as an employee of Manager, and other designated employees of Manager, shall each be authorized to identify himself or herself as a representative of Manager when dealing with third parties as the agent of OSDH pursuant to the Management Services provided by Manager hereunder, including, without limitation, placing purchase orders for the purchase or lease of goods on behalf of OSDH, procuring warranty services for goods purchased or leased by OSDH through Manager, and otherwise in connection with such purchases or leases. All purchases made outside of the projected budget and purchasing plan shall be made in accordance with the Oklahoma Central Purchasing Act. All contracts (including amendments thereto and extensions thereof) between OSDH and third parties regarding the OPCIE and Public Health Lab must be approved by OSDH, subject to the contracting authority expressly delegated by OSDH to Manager from time to time in writing.

12.20 No Third-Party Beneficiaries. None of the provisions contained in this Agreement are intended by the Parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement.

12.21 Subcontractors. Manager may contract with as many subcontractors as it requires in order to fulfill its obligations hereunder. Manager must advise OSDH of any subcontractor relationships. If Manager utilizes subcontractors in support of the Agreement, Manager shall remain solely responsible for its obligations under the terms of the Agreement, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities.

12.22 Failure to Enforce. Failure by the Parties at any time to enforce a provision of, or exercise a right under, the Agreement shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of the

Agreement, or any part thereof, or the right of the Parties to enforce any provision of, or exercise any right under, the Agreement at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of the Agreement shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Agreement.

- 12.23 Severability.** If any provision of the Agreement, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this Agreement 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.
- 12.24 Sovereign Immunity.** Notwithstanding any provision in the Agreement, the Agreement is entered into subject to the State's Constitution, statutes, common law, regulations, and doctrine of sovereign immunity, none of which are waived by the OSDH nor any other right or defense available to the OSDH.

***{REMAINDER INTENTIONALLY BLANK; EXECUTION
PAGE FOLLOWS}***

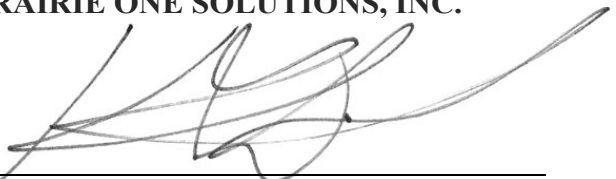
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**OKLAHOMA STATE DEPARTMENT
OF HEALTH**

Kim Bailey

By: KIM BAILEY

PRAIRIE ONE SOLUTIONS, INC.



By: KENNETH SEWELL

EXHIBIT A

MANAGEMENT SERVICES

1. Oversee the daily operation and management of the OPCIE and Public Health Lab and associated facilities;
2. Commit monies derived from the operation of the OPCIE and Public Health Lab to the purchase and lease of supplies, goods, services and other expenditures reasonably necessary to the operation of the OPCIE and Public Health Lab as needed within the Approved Budgets of the OSDH;
3. Negotiate, enter, supervise and terminate contracts relating to the operation and management of the OPCIE and Public Health Lab (consistent with the delegated contracting authority from time to time designated by the OSDH);
4. Supervise the business affairs and financial management and provide accounting support of the OPCIE and Public Health Lab;
5. Maintain the books and records of OPCIE and Public Health Lab and prepare monthly financial statements in conformity with GAAP;
6. Submit to the OSDH not less than monthly periodic reports showing the professional services and financial activities of the OPCIE and Public Health Lab, and prepare and submit special reports as may be required by the OSDH;
7. Attend meetings of the OSDH and its committees relating to the management and operation of the OPCIE and Public Health Lab upon request of the OSDH, and assist in the preparation of those meetings;
8. Review the operations of the OPCIE and Public Health Lab not less than monthly in accordance with its regular management practice, and advise and report accordingly to the OSDH regarding the status of the OPCIE and Public Health Lab property and operation;
9. Provide information for, and coordinate with OPCIE and Public Health Lab outside resources and consultants with respect to, the preparation of applicable regulatory filings, including tax returns and cost reports;
10. Oversee and make recommendations regarding the operational management systems of the OPCIE and Public Health Lab, including policies, procedures, processes, staffing, activities, competencies;
11. Participate in the planning, review, analysis and development of OPCIE and Public Health Lab strategic plans for consideration by the OSDH;
12. Develop and execute plans for external fund generation including, but not limited to,

state, federal and private grant applications, and corporate partnership development.

13. Assist on a timely basis in the preparation of annual operating and capital budgets (and any material changes to Approved Budgets) for consideration and approval by the OSDH;
14. Assistance with OSDH staff relations and recruitment, including staff development and staff communications plans;
15. Assistance with human resources consultation, including wage and salary market analyses, benefit design/cost analysis, employee relations strategies, policy review/design, recruitment strategies and assistance, and organization development;
16. Assistance with purchasing inventory management, including purchasing, distribution of medical supplies and pharmaceuticals and reduction of inventory for OPCIE and Public Health Lab;
17. Quality and safety, including CMS consultation, process improvement consultation, safety benchmarking reports;
18. Assistance with preparation of OSDH reports;
19. As requested, assistance with healthcare and legislative advocacy;
20. Leadership development, including training for OPCIE and Public Health Lab leaders, succession planning and talent management; and
21. Maintain and operate OPCIE and Public Health Lab facilities, including contracting with a facility management service to provide services including custodial services, lawn care, and routine building maintenance, if needed.

EXHIBIT B

MANAGEMENT FEE

The Management Fee for Fiscal Year 2021, shall be 15% of the Public Health Lab operating budget of \$11,984,896, prorated from the date of execution of this Agreement to the end of Fiscal Year 2021, plus an amount equivalent to 15% of income derived from the following sources that are in excess of \$7,675,603, the determined baseline: (a) revenue from insurance, and (b) any new revenue generating source(s) instituted by the OPCIE. This amount shall not include OSDH federal grants, state appropriations, or Health Care Authority payback match.

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

OKLAHOMA STATE DEPARTMENT OF HEALTH BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is effective as of December 16, 2020 (“Effective Date”), by and between the Oklahoma State Department of Health (“Covered Entity”) and Prairie One Solutions, Inc. (“Business Associate”).

WHEREAS, Covered Entity has determined that it has components covered by HIPAA;

WHEREAS, the purpose of the agreement is for Business Associate to provide executive and management services for the Oklahoma Pandemic Center for Innovation and Excellence (“OCPIE”), the Public Health Lab, and related facilities of which Covered Entity owns the real property and improvements.

WHEREAS, under HIPAA, Business Associate is classified as a business associate of Covered Entity and is to comply with the HIPAA Security and Privacy regulations pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), Title XIII, of the American Recovery and Reinvestment Act of 2009, including Sections 164.308, 164.310, 164.312 and 164.316 of title 45 of the Code of Federal Regulations.

NOW THEREFORE, in consideration of the foregoing and of the covenants and agreements set forth herein, the parties, intending to be legally bound, agree as follows:

I. DEFINITIONS. Unless otherwise defined in this BAA, all terms used in this BAA have the meanings ascribed to the same terms in HIPAA.

- (a) **“Breach”** shall have the meaning set forth in 45 CFR § 164.402, including, without limitation, the unauthorized acquisition, access, use, or disclosure of PHI in a manner not permitted by HIPAA.
- (b) **“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 the person or entity listed as the business associate on the signature page hereto.
- (c) **“Covered Entity”** shall generally have the same meaning as the term “Covered Entity” at 45 CFR § 160.103.
- (d) **“HIPAA”** shall mean: (i) the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, including the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR parts 160 and 164, and any subsequent amendments or modifications thereto, and (ii) the HITECH Act, and regulations promulgated thereunder, and any subsequent amendments or modifications thereto.
- (e) **“HITECH Act”** shall mean the provisions applicable to business associates under the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- (f) **“PHI”** shall mean Protected Health Information which Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity in connection with the performance of Services by Business Associate for Covered Entity.

- (g) “Privacy Rules” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, as may be amended, modified or superseded, from time to time.
- (h) “Protected Health Information” shall have the meaning set forth in 45 CFR § 160.103, including, without limitation, any information, whether oral, electronic or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; (ii) the provision of health care to an individual; or (iii) the past, present or future payment for the provision of health care to an individual; and (iv) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (i) “Required by Law” shall have the meaning set forth in 45 CFR § 164.103, including, without limitation, a mandate contained in law that compels Covered Entity or Business Associate to make a use or disclosure of Protected Health Information and that is enforceable in a court of law.
- (j) “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his/her designee.
- (k) “Security Incident” shall have the meaning set forth in 45 CFR § 164.304, including without limitation, the attempted or successful unauthorized access, use, disclosure, modification or destruction of electronic PHI.
- (l) “Security Rules” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, as may be amended, modified or superseded from time to time.
- (m) “Unsecured PHI” shall have the meaning set forth in 45 CFR § 164.402, including, without limitation, Protected Health Information not secured through the use of encryption, destruction or other technologies and methodologies identified by the Secretary to render such information unusable, unreadable, or indecipherable to unauthorized persons.

II. OBLIGATIONS OF BUSINESS ASSOCIATE.

(a) Permitted Uses: Business Associate may use PHI to provide the services requested by Covered Entity; provided, however, that Business Associate shall not disclose PHI in any manner that would constitute a violation of HIPAA. Business Associate may use PHI: (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; or (iii) as Required by Law.

(b) Permitted Disclosures: Business Associate may disclose PHI to provide the services requested by Covered Entity; provided, however, that Business Associate shall not disclose PHI in any manner that would constitute a violation of HIPAA. Business Associate may disclose PHI: (i) for the proper management and administration of Business Associate if such disclosure is Required by Law or if "Reasonable Assurances" are obtained; (ii) to carry out the legal responsibilities of Business Associate if such disclosure is Required by Law or if "Reasonable Assurances" are obtained; or (iii) as Required by Law. To the extent that Business Associate discloses PHI to a third party pursuant to Section II(b)(i) or (ii) above under Reasonable Assurances, Business Associate must obtain in writing, prior to making any such disclosure: (i) reasonable assurance from the third party that such PHI will be held in a confidential manner; (ii) reasonable assurance from the third party that such PHI will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to such third party; and (iii) an agreement from the third party to immediately notify Business Associate of any breaches of confidentiality of such PHI, to the extent the third party has obtained knowledge of such breach (collectively, “Reasonable Assurances”). Except as Required by Law, Business Associate shall not disclose PHI to a health plan for payment or healthcare operations if the individual subject to the PHI has requested such restriction, the individual (or designee) pays out of pocket in full for the health care item or

service to which the PHI relates, and the restriction has been made known to Business Associate in accordance with Section 3(b) of this BAA. Business Associate shall not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity.

(c) De-identification. Business Associate shall not de-identify PHI without Covered Entity's prior consent.

(d) Appropriate Safeguards. Business Associate shall comply with the applicable provisions of the Security Rules and shall implement appropriate administrative, technical, physical, and security safeguards in compliance with HIPAA that reasonably and appropriately safeguard and protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. As required by HIPAA, Business Associate shall maintain policies, procedures, and documentation that address the safeguards to prevent, detect, contain, and correct security violations in accordance with 45 CFR part 164. Business Associate shall make its policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA's compliance and the Secretary of the Department of Health and Human Services (HHS).

(e) Notification Obligations. During the term of this BAA, Business Associate shall notify Covered Entity as soon as is reasonably practicable but in no event later than five (5) calendar days after the discovery of any use and/or disclosure of PHI not permitted by this BAA, a Breach of Unsecured PHI, or any material Security Incident, and shall provide Covered Entity with information regarding the improper use and/or disclosure, Breach or Security Incident as required by law. In the event of a breach of Unsecured PHI, such notice shall include, to the extent possible, the name of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 CFR § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available.

(f) Mitigation. Business Associate shall take prompt corrective action to mitigate and cure, if possible, any harmful effect that is known to Business Associate of an improper use and/or disclosure of PHI, Breach, or Security Incident. Business Associate shall cooperate with Covered Entity regarding any Breach notification to third parties, and shall reimburse Covered Entity for any costs incurred by Covered Entity in complying with the applicable requirements of HIPAA resulting from a Breach of Unsecured PHI by Business Associate. To the extent allowed by law, Business Associate shall indemnify and hold Covered Entity harmless from all claims, liabilities, costs, and damages arising out of or in any manner related to the disclosure by Business Associate of any PHI or to the breach by Business Associate of any obligation related to PHI. Business Associate shall be deemed to discover a Breach of Unsecured PHI as of the first day on which such Breach is known, or should have been known, by Business Associate.

(g) Access to PHI. Within ten (10) days of receipt of a request, Business Associate shall make PHI maintained by Business Associate in a Designated Record Set, in Business Associate's possession or control, available to Covered Entity for inspection and/or copying to enable Covered Entity to fulfill its obligations under 45 CFR § 164.524. If a request for access to PHI is delivered directly to Business Associate, Business Associate shall as soon as possible, but no later than ten (10) days after receipt of the request, forward the request to Covered Entity. Business Associate shall provide access to a copy of electronic PHI maintained by Business Associate in a Designated Record Set to the Covered Entity in accordance with the provisions of this Section and HIPAA.

(h) Amendment of PHI. Within ten (10) days of receipt of a request, Business Associate shall make PHI maintained by Business Associate in a Designated Record Set, in Business Associate's possession or

control, available to Covered Entity for amendment to enable Covered Entity to fulfill its obligations under 45 CFR § 164.526. Business Associate shall amend PHI maintained by Business Associate in a Designated Record Set, in Business Associate's possession or control, as directed by Covered Entity to enable Covered Entity to fulfill its obligations under 45 CFR § 164.526. If a request for amendment of PHI is delivered directly to Business Associate, Business Associate shall as soon as possible, but no later than ten (10) days after receipt of the request, forward the request to Covered Entity.

(i) Accounting of PHI Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Within ten (10) days of receipt of a request by Covered Entity, Business Associate shall make available to Covered Entity the information required to provide an accounting of such disclosures. Any accounting information shall include the information described in 45 CFR § 164.528(b), including, without limitation: (i) the date of disclosure of PHI; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the written request for disclosure. If a request for an accounting of PHI is delivered directly to Business Associate, Business Associate shall as soon as possible, but no later than five (5) days after receipt of the request, forward the request to Covered Entity.

(j) Governmental Access to Records. Business Associate shall make PHI and its facilities, internal practices, books, records, accounts, and other information relating to the use and disclosure of PHI available to the Secretary, authorized governmental officials, and Covered Entity in a prompt and reasonable time and manner and shall cooperate with the Secretary concerning any investigation designed to determine Covered Entity's or Business Associate's compliance with HIPAA. Unless the Secretary directs otherwise, Business Associate shall promptly notify Covered Entity in writing of Business Associate's receipt of a request for information from the Secretary or notice concerning an investigation by the Secretary and shall provide Covered Entity with a copy of all documents made available to the Secretary.

(k) Business Associate's Agents and/or Subcontractors. To the extent Business Associate uses one or more subcontractors, vendors, or agents to provide Services to Covered Entity, and such subcontractors, vendors, or agents create, receive, maintain, or transmit PHI, Business Associate shall require in accordance with 45 CFR §§ 164.308(b) and 164.502(e) that each subcontractor, vendor, or agent agree in writing to be bound by the terms of this BAA and HIPAA to the same extent as Business Associate, including but not limited to the implementation of reasonable and appropriate safeguards to protect PHI. A fully executed copy shall be provided to Covered Entity. Following the discovery of non-compliance by a subcontractor, vendor, or agent of any of its obligations with respect to PHI, Business Associate shall promptly report such non-compliance to Covered Entity and shall ensure that, to the extent allowed by law, its subcontractors, vendors, or agents agree to indemnify or hold harmless Covered Entity from all claims, liabilities, costs, and damages arising out of or in any manner related to the non-compliance or breach by Business Associate of any obligation related to PHI.

(l) Compliance with Standard Transactions. If Business Associate conducts, in whole or in part, Standard Transactions (as such term is defined in the Standards for Electronic Transactions Rule at 45 CFR Parts 160 and 162, as may be amended, modified or superseded, from time to time) for or on behalf of Covered Entity, Business Associate will comply, and will require any of its subcontractors or agents involved with such Standard Transactions on behalf of Covered Entity to comply, with each applicable requirement of 45 CFR Parts 160 and 162. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that: (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is marked "not used" in a Standard Transaction or are not in the Standard Transactions' implementation

specification; or (iv) changes the meaning or intent of the Standard Transactions' implementation specifications.

(m) Additional Obligations. Business Associate shall comply with the requirements of HIPAA, which are applicable to Business Associate as a business associate of the Covered Entity, including all regulations which are issued to implement such requirements, as may be amended, modified or superseded from time to time. To the extent Business Associate carries out one or more of Covered Entity's obligation(s) under 45 CFR Part 164, Subpart E, in the performance of such obligations, Business Associate shall comply with the requirements of 45 CFR Part 164, Subpart E, that apply to Covered Entity to the same extent as required by Covered Entity.

(n) Ownership of Data. Business Associate acknowledges and agrees that Covered Entity is and shall remain the owner of all PHI created, received, or maintained by Covered Entity.

III. OBLIGATIONS OF COVERED ENTITY.

(a) Notice of Privacy Practices. ODSH's Notice of Privacy Practices is available on its website: www.ok.gov/health.

(b) Restrictions on Use or Disclosure. Covered Entity shall only disclose PHI to Business Associate or to others, pursuant to this BAA, in a manner and to an extent permitted by HIPAA. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individuals to use and/or disclose PHI, to the extent such changes or revocations may affect Business Associate's permitted or required uses and/or disclosures of PHI. Further:

- (i) Covered Entity shall notify Business Associate of any restriction to the use and/or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent such restriction may affect Business Associate's permitted or required uses and/or disclosures of PHI;
- (ii) Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity; and
- (iii) Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between OSDH and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.

IV. TERM AND TERMINATION.

(a) Term. This BAA shall commence on the Effective Date and shall remain effective for the entire term that Business Associate provides Services for Covered Entity, or until terminated by either Party upon thirty (30) days' written notice; or until terminated in accordance with the provisions in this BAA.

(b) Termination for Cause. Either party may terminate this BAA by notice in writing to the other party, if the other party materially breaches this BAA in any manner and such material breach continues for a period of thirty (30) days after written notice is given to the breaching party by the other party specifying the nature of the breach and requesting that it be cured. If termination of this BAA is not feasible, the non-breaching party shall report the breach to the Secretary if required by HIPAA.

(c) Severability: If any provision of this contract, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect.

(d) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, if feasible, will return or destroy all PHI received from, or created or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains in any form and retain no copies of such information or, if return or destruction is not feasible, extend the protections of the Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible in accordance with 45 CFR § 164.504(e)(2)(ii)(J). Business Associate may make a request for reimbursement for any expense associated with destroying or returning the PHI, and, if reasonable and/or feasible and to the extent allowed by law, Covered Entity may agree to such reimbursement. If destruction of PHI is permitted under this Subsection, Business Associate shall notify Covered Entity in writing that such PHI has been destroyed. All other obligations of Business Associate under this BAA shall survive termination.

V. CONSTRUCTION. This BAA shall be construed as broadly as necessary to implement and comply with HIPAA. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA.

VI. HEADINGS. The headings contained in this BAA are included only for convenience of reference and do not define, limit, explain or modify this BAA or its interpretation, construction or meaning and are in no way to be construed as part of this BAA.

VII. NOTICE. All notices and other communications required or permitted pursuant to this BAA shall be in writing, addressed to the party at the address set forth in the underlying agreement between the parties, or to such other address as any party may designate from time to time in writing in accordance with this Section. All notices and other communications shall be sent by: (i) registered or certified mail, return receipt requested, postage pre-paid; (ii) overnight mail by a reputable carrier; (iii) facsimile with a copy sent by First Class Mail, postage pre-paid; or (iv) hand delivery. All notices shall be effective when received

VIII. ASSIGNMENT. This BAA and the rights and obligations hereunder shall not be assigned, delegated, or otherwise transferred by either party without the prior written consent of the other party and any assignment or transfer without proper consent shall be null and void.

IX. GOVERNING LAW. Any claim, dispute, or litigation relating to the execution, interpretation, performance, or enforcement of this BAA shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles. Venue for any action, claim, dispute, or litigation relating in any way to the execution, interpretation, performance, or enforcement of the BAA shall be in the appropriate state or federal court in Oklahoma County, Oklahoma. Further, notwithstanding any provision in the BAA, Covered Entity, as an agency of the State of Oklahoma, does not waive the doctrine of sovereign immunity and immunity from suit to the extent authorized by the Constitution and laws of the State of Oklahoma nor any other right or defense available to the Department.

X. BINDING EFFECT; MODIFICATION. This BAA shall be binding upon, and shall enure to the benefit of the parties hereto and their respective permitted successors and assigns. This BAA may only be amended or modified by mutual written agreement of the parties; provided, however, that in the event any provision of this BAA shall conflict with the requirements of HIPAA, this BAA shall automatically be deemed amended as necessary to conform to such legal requirements at all times. To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to these revised obligations.

XI. NO THIRD-PARTY BENEFICIARIES. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person or entity other than Covered Entity, Business

Associate and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

XII. COUNTERPARTS. This BAA may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute but one BAA.


XIII. ENTIRE AGREEMENT. This BAA constitutes the entire agreement between the parties with respect to the matters contemplated herein and supersedes all previous and contemporaneous oral and written agreements, negotiations, commitments, and understandings.

XIV. AUTHORIZATION. The execution of this BAA is fully authorized by each party. No party is under any legal disability and the person(s) signing below have appropriate authority to bind their respective parties by execution of this BAA on their behalf.

OKLAHOMA STATE
DEPARTMENT OF HEALTH,
COVERED ENTITY

PRAIRIE ONE SOLUTIONS, INC.,
BUSINESS ASSOCIATE

By: Kim Bailey
(signature)

By: 
(signature)

Name: KIM BAILEY

Name: KENNETH SEWELL

Title: CHIEF OPERATING
OFFICER

Title: PRESIDENT

Date: December 16, 2020

Date: December 16, 2020