

THIS CONSULTING SERVICES AGREEMENT (the "Agreement") is made effective this 1st day of March, 2021 (the "Effective Date"), by and between OKLAHOMA FOUNDATION FOR MEDICAL QUALITY, an Oklahoma not-for-profit corporation ("OFMQ") and Mangum City Hospital Authority DBA Mangum Regional Medical Center a hospital ("Customer").

## Recitals

A. Customer may, from time to time, request that OFMQ provide certain consulting services pursuant to a Work Order, which shall be in a form substantially similar to that attached hereto as Exhibit A (the "Work").

B. In the event Customer and OFMQ enter into a Work Order for OFMQ to perform Work for Customer, such Work and all rights and obligations of Customer and OFMQ concerning the Work shall be governed and controlled by this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Scope of Work. OFMQ shall provide the Work as specified in a Work Order. OFMQ shall be responsible for providing all services and materials necessary to complete the Work, unless agreed otherwise in writing between Customer and OFMQ.

2. Payment. Customer shall pay OFMQ the amount(s) set forth in the Work Order within thirty (30) days of OFMQ's invoice. OFMQ's invoices may be for partial or progress payments, if provided in the Work Order.

3. Independent Contractor. OFMQ is an independent contractor and shall have the right to control the manner in which the Work is performed. Neither OFMQ nor anyone employed by OFMQ shall be deemed for any purpose to be an employee, agent, servant or representative of Customer. Customer shall have no power or authority to direct, supervise or control OFMQ with respect to the means, manner or method of performance of the Work or services performed or rendered hereunder. Customer is not responsible for withholding, and shall not withhold, FICA or taxes of any kind from any payments it owes OFMQ.

4. Confidentiality. OFMQ acknowledges that in the course of its performance of the Work, it may receive information from Customer of a confidential or proprietary nature. Customer shall clearly mark such information as confidential on the document, material, or information itself in order to receive the protections set forth in this Section 4. OFMQ shall hold such confidential information in strict confidence and shall not disclose any such confidential information. Provided, however, OFMQ may disclose Customer's confidential information: (i) in the course of performing the Work; (ii) as authorized by Customer in writing; or (iii) as required by subpoena or applicable law.

5. Intellectual Property Rights and Ownership of the Work. OFMQ shall retain any all copyrights and intellectual property rights in the Work. Customer shall not assign or transfer the Work developed by OFMQ, in whole or in part, to any other party (including, without limitation, another hosting provider) absent OFMQ's written consent. All text, data, and imagery provided by Customer shall remain the property of Customer.

6. Term and Termination. The term of this Agreement shall commence on the Effective Date specified above. For each Work Order, the Work shall commence and terminate as set forth in the applicable Work Order. Provided, however, in the event OFMQ completes Work prior to the termination date in the applicable Work Order or if no terminate date is set forth in the Work Order, such Work Order shall automatically terminate upon OFMQ's completion of the Work provided for therein and Customer's payment of all outstanding amounts owed to OFMQ, without notice or action required of either party. The termination of any Work Order shall not operate as a termination of this Agreement, unless

expressly stated in writing and signed by both parties. This Agreement may be terminated without cause by mutual written agreement of OFMQ and Customer. In the event a party is in breach of this Agreement, the non-breaching party may terminate this Agreement upon thirty (30) days' written notice to the breaching party, which notice shall specifically identify the alleged breach and provide the breaching party an opportunity to cure the breach during such thirty (30) day period. OFMQ shall be compensated in full for all Work provided prior to the effective date of any termination. Notwithstanding the foregoing, in the event an invoice from OFMQ to Customer is past due, OFMQ may immediately suspend Work upon twenty-four (24) hours' prior notice to Customer, which notice may be given by way of email, telephone, or other written communication. Such suspension of Work shall not operate as a termination of this Agreement. This Agreement shall remain in effect until OFMQ has received full payment or until the invoice becomes thirty (30) days past due (sixty (60) days from the date of invoice), at which point OFMQ may immediately terminate this Agreement upon written notice to Customer.

7. Warranty. OFMQ shall perform the Work by and through personnel possessing competency consistent with applicable industry standards. This is the sole warranty provided by OFMQ and all other warranties, whether express or implied, are excluded.

8. Indemnification. Customer shall indemnify, release, defend, and hold OFMQ (including, its owners, officers, employees, agents, and representatives) harmless from and against any and all claims, losses, damages, causes of action, and liabilities of every kind (including, without limitation, interest, attorneys' fees, expert witness fees, and all expenses of litigation) arising from special, punitive, indirect, incidental or consequential damages including, without limitation, loss of profit or business or revenue, costs and expenses resulting from business interruptions, or cost of or loss of use of property, equipment, materials and services, including without limitation those provided by contractors or subcontractors of every tier or by third parties, without regard to the fault or negligence of any party.

9. Force Majeure. Each party shall be excused from performing its obligations under this Agreement, except as to payment, if and only to the extent that performance is delayed or prevented by an event of force majeure. In the event either party's performance hereunder is affected by an event of force majeure, it shall promptly notify the other party of the same.

10. Customer. The term "Customer" shall also include any person or entity: (i) which is at any time the parent, subsidiary, or affiliate of Customer, by virtue of common (although not identical) ownership; or (ii) for which OFMQ is providing Work under this Agreement.

11. Assignment. Neither party may assign any of its rights or duties under this Agreement without the prior written consent of the other party.

12. Severability. If a court of competent jurisdiction rules that any provision in this Agreement is unenforceable, it will not affect the enforceability of the remaining provisions. Such a court may enforce all remaining provisions to the extent permitted by law.

13. Attorney Fees. In any action brought by a party to enforce this Agreement against the other party, the prevailing party shall be entitled to collect from the other party the prevailing party's reasonable attorney fees, court costs, and other expenses reasonably incurred in connection with such action.

14. Notices. All notices and communications required or permitted to be given hereunder shall be given by delivering the same in hand, by electronic mail, or by mailing the same by certified or registered mail, return receipt requested, postage prepaid, as follows:



# Consulting Services Agreement

General

If to Customer:

**Customer Name:** \_\_\_\_\_

**Primary Contact:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

If to OFMQ:

**Name:** Oklahoma Foundation for Medical Quality

**Primary Contact:** \_\_\_\_\_ **Phone:** (405) 840-2891

**Address:** 515 Central Park Drive, Suite 101

**City:** Oklahoma City **State:** Oklahoma **Zip:** 73105

or such other address as either party furnishes to the other by like notice.

15. Cumulative Remedies. Each and all of the several rights and remedies provided for in this Agreement shall be cumulative. No one right or remedy shall be exclusive of the others or of any right or remedy allowed in law or in equity. No waiver or indulgence by either party of any failure by the other party to keep or perform any promise or condition of this Agreement shall be a waiver of any preceding or succeeding breach of the same or any other promise or condition. No waiver by either party of any right shall be construed as a waiver of any other right. Neither party shall be required to give notice to enforce strict adherence to all terms of this Agreement.

16. Entire Agreement. This Agreement constitutes the full, entire, integrated, and complete agreement of the parties respecting the subject matter addressed herein. No force or effect shall be given to prior written agreements between the parties or to representations, promises, agreements, or understandings, written or oral, not herein contained. This Agreement may not subsequently be amended or modified except by a writing signed by both parties hereto. This Agreement shall be binding upon, and inure to the benefit of, OFMQ and Customer and their respective heirs, representatives, successors and permitted assigns.

17. Governing Law. The validity, interpretation, enforceability, and performance of this Agreement must be governed by and construed in accordance with the laws of the State of Oklahoma, exclusive of its choice-of-law rules. Any action arising under or relating to this Agreement must be commenced and maintained in the federal or state courts as applicable in Oklahoma County, Oklahoma.

18. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.



# Consulting Services Agreement

General

## Authorization

IN WITNESS WHEREOF, the parties hereto have caused this Consulting Services Agreement to be executed and effective as of the day and year first above written.

“CUSTOMER”

\_\_\_\_\_  
Print Customer Name

By:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name and Title

“OFMQ”

Oklahoma Foundation for Medical Quality (OFMQ), an  
Oklahoma not-for-profit corporation

By: \_\_\_\_\_  
Authorized Signer Date