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**The State of Oregon  
Department of Human Services  
Division of Medical Assistance Programs  
Issues the Following  
Request for Applications  
for  
Application Assistance Program  
RFA #3196**

Date of Issuance: February 16, 2011  
Applications Due by: Open until further notice at the issuing office

Issuing Office: Contracts and Procurement  
Jeri F. McGinnis, Procurement and Contracts Specialist  
250 NE Winter Street  
Salem, Oregon 97301  
Phone: (503) 947-5142  
Fax: (503) 373-7889  
Email: [jeri.f.mcginis@state.or.us](mailto:jeri.f.mcginis@state.or.us)

The parties acknowledge and agree that, effective July 1, 2011, all references herein to DHS shall mean OHA and any right or obligation of DHS under this RFA shall be a right or obligation of OHA.

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## Section 1 – Purpose

### 1.1. Introduction

The State of Oregon, Department of Human Services, (DHS) invites eligible organizations to submit an Application to enter into a Contract to become a Certified Application Assistance Organization. The purpose of the Contract is to assist families in enrolling in the Oregon Health Plan, employer-sponsored insurance program or a private insurance option, through Health Care for All Oregon Children program, hereinafter referred to as “Healthy Kids” program. Contracts will be entered into with each successful Applicant who meets the minimum qualifications, serves outside of Washington County, Multnomah County and Marion County, and who is willing to perform the services at the rate of pay established by DHS and stated in Attachment 2, Sample Contract. Contracts will be effective from the date all parties sign the Contract through June 30, 2011. DHS reserves the right to amend and increase or decrease the consideration for any resultant Contract according to the provisions as described in the Contract.

All organizations submitting Applications are referred to as Applicants in this Request for Applications (RFA); after execution of a Contract, those Applicants who execute a Contract will be designated as Contractors.

All Applications received in response to RFA 2924, RFA 3024 or RFA 3115 have no requirement to respond to this RFA 3196 and will continue the qualification and contract process.

DHS issues this RFA pursuant to its authority as an Authorized Agency, as set forth in the applicable sections of OAR 125-246-0170. “Client” shall have the meaning set forth in OAR 125-246-0100(24). The Services provided through this RFA and the Contract are Client Health Care Services, as defined in OAR 125-247-0288(2)(c)(B), which establishes the authority to contract for the Services to DHS.

## Section 2 – Minimum Qualifications

Applicants must meet all of the following minimum qualifications to enter into a Contract to provide application assistance as identified in the Sample Contract:

- 2.1 Meet the “responsible Proposer” requirements identified in Oregon Revised Statutes and Oregon Administrative Rules (ORS 279B.005) which includes being registered as a business with the Secretary of State. Access to the rule can be achieved at the following website: <http://www.leg.state.or.us/ors/279b.html>.
- 2.2 Must not be a managed care organization or medical care provider.
- 2.3 Must not be a Grantee in the Targeted Outreach and Enrollment Program or any other Healthy Kids Outreach and Enrollment grant through the State of Oregon.
- 2.4 Must not be serving Washington County, Multnomah County or Marion County. An entity based in one of these counties that serves statewide or combination of counties outside these three counties may apply, but may not perform application assistance within the three counties.

**Section 3 – Scope of Work**

All Services provided under any contract awarded through this RFA shall adhere to and comply with the provisions set forth in Attachment 2, Exhibit A, “Statement of Work.”

**Section 4 – Application Process**

**4.1 Sole Point of Contact (SPC)**

Communications with DHS concerning this RFA must be directed to:

Jeri F. McGinnis, Contracts Specialist or alternate  
DHS, Office of Contracts and Procurement  
250 NE Winter Street  
Salem Oregon 97301  
Telephone: (503) 947-5142  
Fax: 503- 373-7889  
E-Mail: [jeri.f.mcginis@state.or.us](mailto:jeri.f.mcginis@state.or.us)  
TTY: 503-947-5330

The Oregon Procurement Information Network (ORPIN) will be used to distribute information regarding this RFA.

**4.2 Timeline for RFA and Application Submission**

RFA Opens ..... February 16, 2011  
RFA Closes ..... Open Until Further Notice

**4.3 Closing Date for Submittal of Applications**

Applications will be received until further notice. When DHS has determined that sufficient Applications have been received, or for any other reason that DHS determines, DHS will issue notice, on ORPIN, specifying a date after which, Applications will no longer be received. Applications received after the date and time specified in that notice, shall be late and may not be evaluated.

APPLICATIONS MAY BE EVALUATED BY DHS ANY TIME AFTER RECEIPT.  
Applicants are encouraged to submit Applications as soon as possible.

**4.4 Addenda**

DHS will not automatically send copies of any Addenda but will publish any Addenda on ORPIN web site <http://orpin.oregon.gov/open.dll/welcome> first and then the Healthy Kids Website <http://www.oregonhealthykids.gov/>

## **Section 5 – Application Requirements**

### **5.1. Submittal of Application**

Applications must be submitted using the Application form incorporated into this RFA as Attachment 1. Submissions in response to this RFA must be in the form of an Application Package, which shall consist of the following:

#### **5.1.1. Application**

Complete all sections of the Application (Attachment #1), and include it as the top page of the Application Package.

#### **5.1.2. Written Assurance**

A statement that Applicant is registered with the Secretary of State as a business and that the Applicant meets the minimum insurance requirements as outlined in Exhibit C of this RFA or that the Applicant will meet those requirements prior to Contract award.

#### **5.1.3. Internal Revenue Form**

A completed Form W-9 “Request for Taxpayer Identification and Certification.”

Application Packets must be submitted to the Healthy Kids Contract Administrator as follows:

Perry DeJoode, Healthy Kids Program Coordinator  
500 Summer Street NE, E-49  
Salem, Oregon 97301-1077  
Phone: 503-945-6525  
Fax: 503-945-6871  
Email: [perry.b.dejoode@state.or.us](mailto:perry.b.dejoode@state.or.us)

Applications may be submitted by email, fax, mail or hand delivery and must be clearly marked "**APPLICATION FOR RFA #3196**".

### **5.2. Applicant Assurances**

Applicant by submitting an Application to this RFA, certifies that the following statements are true:

- 5.2.1.** No attempt has been made or will be made by the Applicant to induce any other person or organization to submit or not submit an Application, and
- 5.2.2.** Applicant does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin, nor has Applicant or will Applicant discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or a Disabled Veteran or a subcontractor that employs a Disabled Veteran, and

- 5.2.3. Information and costs included in this Application shall remain valid for 90 days after the Application is submitted or until a contract is approved, whichever comes first, and
- 5.2.4. The statements contained in this Application are true and complete to the best of the Applicant's knowledge and accepts as a condition of the contract, the obligation to comply with the applicable state and federal requirements, policies, standards, and regulations. The Applicant recognizes that this is a public document and open to public inspection, and
- 5.2.5. The Applicant acknowledges receipt of all addenda issued under this Procurement, and
- 5.2.6. If the Applicant is awarded a contract as a result of this RFA, the Contractor will be required to complete, and will be bound by, a Personal Services Contract (Attachment 2) or an Intergovernmental Agreement (available upon request). At the time of signing the contract with DHS the Contractor will be required to provide their Federal Employer Identification Number (FEIN) or Social Security Number (SSN) as applicable to DHS.

## **Section 6 – Application Evaluation**

Applications must be complete at the time of submission. DHS will conduct an evaluation of Applications on an ongoing basis until this RFA closes, to determine whether each Applicant meets the minimum qualifications. During the evaluation process, DHS reserves the right to obtain clarification from Applicants regarding their Application materials. Applicants whom DHS determines, at its sole discretion, to be a qualified to provide services pursuant to this RFA will be offered a Contract.

## **Section 7 – General Information**

### **7.1 Changes/Modification and Clarifications**

When appropriate, DHS will issue revisions, substitutions, or clarifications as addenda to this RFA. Changes/modifications to the RFA shall be recognized *only* if in the form of written addenda issued by DHS and posted on ORPIN Site.

### **7.2 Reservation of DHS Rights**

DHS reserves all rights regarding this RFA, including, without limitation, the right to:

- Amend or cancel this RFA without liability if it is in the best interest of DHS to do so;
- Reject any and all Applications received by reason of this RFA upon finding that it is in the best interest of DHS to do so;
- Waive any minor informality;
- Seek clarification of each Application;
- Reject any Application that fails to substantially comply with all prescribed procedures and requirements of the Application process;
- Amend or extend the term of any Contract that is issued as a result of this RFA as identified in Attachment 2, Exhibit A, Part 3;

- Engage Contractor by selection or procurement for different or additional services independent of this RFA process and/or any contracts/agreements entered into pursuant hereto;
- Reject any Application upon finding that to accept the Application may impair the integrity of the procurement process or that rejecting the Application is in DHS' best interest.

### **7.3 Modification or Withdrawal**

**7.3.1** Modifications. An Applicant may modify its Application in writing prior to the issuance of a Contract. An Applicant must prepare and submit any modification to its Application to the Contract Administrator identified in Section 5.1, above. The Applicant must mark the submitted modification "Application Modification RFA #3196.

**7.3.2** Withdrawals: An Applicant may withdraw its Application by written notice submitted on the Applicant's letterhead, signed by an authorized representative of the Applicant, delivered to the SPC identified in Section Paragraph 4.1. The Applicant must mark the written request to withdraw "Application Withdrawal to RFA #3196".

### **7.4 Notification of Application Evaluation Decision**

Applicants shall be notified in writing of the evaluation decision regarding their Application and, for successful Applicants, the time line to be issued a Contract.

### **7.5 Appeal of Evaluation Decision**

An Applicant may submit a written appeal of the evaluation decision no later than ten (10) calendar days from the date notification was sent regarding the evaluation decision and must include the following:

**7.5.1** Sufficient information to identify the Application and Application process that is the subject of the appeal; and

**7.5.2** The grounds that demonstrate how the Applicant met the minimum qualifications; and

**7.5.3** Evidence or documentation that supports the grounds on which the appeal is based.

The written appeal must be submitted to the Contract Specialist at the address in Section 4.1. The appeal will be reviewed and responded to within 10 working days of receipt. The review of the appeal and Application will determine if the Application contained sufficient information to demonstrate the Applicant meets the minimum qualifications as identified in Section 2.

### **7.6 Public Information**

**7.6.1** All Applications are public information after the Applications have been opened, and all protests are public information after the protest period ends. If any part of an Application or protest is considered a trade secret, the Applicant shall, at the time of

submission, clearly designate that portion as confidential in order to obtain protection, if any, from disclosure. See Oregon Revised Statutes 192.501(2) and 646.461 to 646.475. Application of the Oregon Public Records Law shall determine if the confidential information claimed to be exempt is in fact exempt from disclosure.

**7.6.2** Any person may request copies of public information. However, copies of Applications will not be provided until the evaluation process has been completely closed and an apparent successful Applicant has been selected. Requests for copies of public information shall be in writing. Requestors will be charged according to the current DHS policies and rates for public records requests in effect at the time DHS receives the written request for public information. Fees, if applicable, must be received by DHS before the records are delivered to the requestor.

## **7.7 Cost of Applications**

All costs incurred in preparing and submitting an Application in response to this RFA will be the responsibility of the Applicant and will not be reimbursed by DHS.

## **7.8 Contract Period**

Initial term of the Contract shall be for the period stated in Section 1.1. If DHS determines that the work performed has been satisfactory, DHS may at its option, amend or extend the Contract for additional time and for additional dollars without further solicitation up to total Contract period of five (5) years. Modifications or extensions shall be by written amendment duly executed by the parties to the original Contract see Sample Contract, Attachment 2, Exhibit A, Part 3.

## **7.9 Contractual Obligation**

All Applicants who submit an Application in response to this RFA understand and agree that DHS is not obligated thereby to enter into a Contract with any Applicant and, further, has absolutely no financial obligation to any Applicant.

## **7.10 Contract Documents**

The final Contract will be based on the Sample Contract, which is attached as Attachment 2 to this RFA, and hereby incorporated herein by this reference and will include all exhibits and attachments identified in the Contract, including this RFA and the successful Applicant's Application. The terms and conditions included in Attachment 2, other than Exhibit A, Parts 1 and 2, are not subject to negotiation. If Applicant is a governmental entity, Applicant must check the appropriate box on the Application. In the case of the Applicant being a governmental entity the Sample Contract in Attachment 2 will be replaced by a DHS Intergovernmental Agreement, which is available upon request to the SPC.

Attachment 1 – Application



*Important: You must complete a separate application for each site that has a different physical address or primary outreach contact.*

<b>1. Type of application:</b>	<input type="checkbox"/> New application <input type="checkbox"/> Application renewal – AA code:
<b>2. Organization Information:</b> <i>DHS will send checks to the mailing address.</i>	<u>Organization Name</u> <u>Physical address</u> <u>Mailing address</u> <u>City, State, Zip</u> <u>County</u> <u>Phone</u> <u>Fax</u> <u>Web. Site address</u> <u>Secretary of State #</u> <u>Tax ID #</u>
<b>3. Organization’s Contract Administrator:</b>	<u>Name</u> <u>Title</u> <u>Phone</u> <u>E-mail address</u>
<b>4. Primary Outreach Contact:</b>	<u>Name</u> <u>Title</u> <u>Phone</u> <u>E-mail address</u>
<b>5. Hours of operation:</b> <i>These are the hours you are available to help families complete applications.</i>	<u>Sunday</u> <u>Monday</u> <u>Tuesday</u> <u>Wednesday</u> <u>Thursday</u> <u>Friday</u> <u>Saturday</u> <u>By appointment</u> <input type="checkbox"/> <u>Appointment phone:</u>

**6. Translator/Interpreter:**

Tell us if your organization has staff that can translate or interpret languages other than English. Check all that apply.

- None
- Spanish
- Russian
- Vietnamese
- Chinese
- Braille
- Sign Language
- Other:

**7. Information posted on DHS Web site:**

Unless you check "no", the information you listed in question 2, 4, 5 and 6 will be posted on the DHS Healthy Kids Web site.

- No. Do not post our information on the DHS Healthy Kids Web site.

**8. Type of Organization:**

Please choose the one that best describes your organization.

- Advocacy Group
- Day Care Provider (licensed or registered)
- Insurance Agency
- Faith-based organization
- Financial service organization
- Fraternal/service organization
- Food bank
- Minority organization
- Tribal organization
- Managed care organization
- Medical care provider
- Other:
- Governmental
  - Education Service District (ESD)
  - Head Start
  - School
- Other Governmental:

**9. Health Service Providers:**

Does your organization or any of its affiliates provide health care services? Examples include managed care plans, insurance companies and health departments.

- Yes
- No

If Yes, please explain:

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**10. Region** – What region or area of the state do you intend to serve? Please be as specific as possible.

**Note: This RFA is not accepting applications that serve Washington, Multnomah or Marion Counties.**

<p><b>11. a. Insurance Requirements :</b>  <i>Does your organization comply with the Commercial General Liability insurance requirement as stated in Exhibit C of the Sample Contract (RFA page. 34)?</i></p>	<p><input type="checkbox"/> Yes, we currently meet the Commercial General Liability insurance requirement.  <input type="checkbox"/> Does not currently have the GL insurance and will meet that requirement prior to Contract award.</p>
<p><b>11. b. Insurance Requirements :</b>  <i>Does your organization comply with the Auto insurance requirement as stated in Exhibit C of the Sample Contract (RFA page 34)? – (Note: if you will not be traveling to assist families we may waive the auto insurance requirements; simply mark the appropriate box to the right).</i></p>	<p><input type="checkbox"/> Yes, we currently have the required Auto insurance, or will have at the time of contract award.  <input type="checkbox"/> Does not have Auto insurance and will not travel to assist Applicants for Healthy Kids services and will be fully responsible for any waiver DHS allows.</p>
<p><b>12. Volunteer CAAO :</b>  <i>Does your organization receive Medicaid or other grant funds for similar outreach efforts? (Note: if your organization already receives Medicaid funds or outreach grant funds, it may only contract as a Volunteer CAAO and cannot receive compensation).</i></p>	<p><input type="checkbox"/> No, this organization does not receive Outreach, Medicaid or similar grant funds.  <input type="checkbox"/> Yes, this organization is a Volunteer CAAO.</p>
<p><b><u>Organization/Applicant’s Contract Administrator’s Signature:</u></b> _____</p>	
<p><b><u>Date</u></b> _____</p>	

**Applicants must meet the Minimum Qualifications, as described in the RFA Section 2.**

**Applicants must comply with the RFA and submit the following (per RFA Section 5) for its application to be considered:**

- **Submit this completed Application** (3 pages, signed and dated);
- **Submit a completed Internal Revenue Service form W-9** “Request for Taxpayer Identification and Certification” (per RFA Section 5.1.3). This form can be found on the IRS website: [www.irs.gov](http://www.irs.gov); and
- The applicant organization must be actively registered with the Oregon Secretary of State, and a “responsible proposer” (per RFA Section 2.1).

**Submit RFA application and supporting documents to:**

Perry DeJoode, Contract Administrator or alternate  
DHS, Office of Healthy Kids  
500 Summer St. NE E-40  
Salem, OR 97301  
Phone: 503.945.6525  
Fax: 503.945-6871  
Email: [perry.b.dejoode@state.or.us](mailto:perry.b.dejoode@state.or.us)

If you have not done so already, please **register for an Application Assistance Training**. For a list of upcoming trainings and directions on registering please visit the Healthy Kids website: <http://www.oregonhealthykids.gov/DHS/healthykids/training>. For any questions regarding trainings please call our outreach coordinators listed on the training web site.

**Attachment 2 – Sample Contract**

**Contract Number XXXXXX**

**State of Oregon  
Personal/Professional Services Contract**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audiotape, oral presentation and electronic format. To request an alternate format, please send an e-mail to [DHS.Forms@state.or.us](mailto:DHS.Forms@state.or.us) or contact the Office of Document Management at 503-378-3523, and TTY at 503-378-3523.

This Contract is between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as “DHS,” and

**Contractor**  
**d.b.a. Facility or Assumed Name**  
**Address**  
**Address**  
**Telephone: (optional)**  
**Facsimile: (optional)**  
**E-mail address (optional)**  
**Contractor's home page URL, if applicable (optional)**

hereinafter referred to as “Contractor.”

Work to be performed under this Contract relates principally to the DHS’

**Division of Medical Assistance Programs**  
**Office of Healthy Kids**  
**500 Summer Street NE, E49**  
**Salem, Oregon 97301**  
**Contract Administrator: Perry DeJoode**  
**Telephone: 503-945-6525**  
**Facsimile: 503-945-6871**  
**Email: [perry.b.dejoode@state.or.us](mailto:perry.b.dejoode@state.or.us)**

The parties acknowledge and agree that, effective July 1, 2011, all references herein to DHS shall mean OHA and any right or obligation of DHS under this RFA shall be a right or obligation of OHA.

**1. Effective Date and Duration**

This Contract shall become effective on the date this Contract has been fully executed by every party and, when required, approved by Department of Administrative Services and Department of Justice or on (*enter date*), whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall expire on June 30, 2011. Contract termination shall not extinguish or prejudice DHS' right to enforce this Contract with respect to any default by Contractor that has not been cured

## 2. Contract Documents

- a. This Contract consists of this document and includes the following listed exhibits which are incorporated into this Contract:

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Consideration
- (3) Exhibit A, Part 3: Special Provisions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Insurance Requirements
- (6) Exhibit D: Required Federal Terms & Conditions

There are no other contract documents unless specifically referenced and incorporated in this Contract.

- b. This Contract and the documents listed in Section 2., Contract Documents, Subsection a. above, shall be in the following descending order of precedence: this Contract less all exhibits, Exhibits D, A, B, and C.

## 3. Consideration

- (1) The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$100,000. DHS will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination or expiration of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
- (2) Interim payments to Contractor shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Exhibit A, Part 2, Consideration.
- (3) DHS will pay only for completed Work under this Contract. For purposes of this Contract, "Work" means the tasks or services and deliverables accepted by DHS, and which are described in Exhibit A, Part 1, Statement of Work.

## 4. Vendor or Sub-Recipient Determination

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, and DHS procedure "Contractual Governance", DHS' determination is that:

Contractor is a sub-recipient; OR  Contractor is a vendor.

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Contract: CFDA 93.767 and CFDA 93.778.

**5. Contractor Data and Certification**

- (1) Contractor Insurance Information. Contractor shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0333(5).

**Please print or type the following information**

If Contractor is self-insured for any of the Insurance Requirements specified in Exhibit C of this Contract, Contractor may so indicate by: (i) writing "Self-Insured" on the appropriate line(s); and (ii) submitting a certificate of insurance as required in Exhibit C, section 7.

Name (exactly as filed with the IRS) \_\_\_\_\_

Address \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ - \_\_\_\_\_ Facsimile: ( ) \_\_\_\_\_ - \_\_\_\_\_

Email \_\_\_\_\_ DUNS # \_\_\_\_\_

Nonresident alien  YES  NO

Proof of Insurance:

Workers Compensation Insurance Company \_\_\_\_\_

Policy # \_\_\_\_\_ Expiration Date: \_\_\_\_\_

General Liability Insurance Company \_\_\_\_\_

Policy # \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Auto Insurance Company \_\_\_\_\_

Policy # \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Business Designation:

Professional Corporation  Partnership  Limited Partnership

Limited Liability Company  Limited Liability Partnership

Corporation  Sole Proprietorship  Other \_\_\_\_\_

The above information must be provided prior to Contract execution. Contractor shall provide proof of Insurance upon request by DHS or DHS designee.

- (2) Certification. By signature on this Contract, the undersigned hereby certifies under penalty of perjury that:

1. The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 401.792 to 401.816 (Tax for Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620;

2. The information shown in Section 5., Contractor Data and Certification, above is Contractor's true, accurate and correct information;

3. Contractor is not subject to backup withholding because:

i. Contractor is exempt from backup withholding;

- ii. Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends; or
- iii. The IRS has notified Contractor that Contractor is no longer subject to backup withholding; and
- iv. Contractor is an independent contractor as defined in ORS 670.600.

(3) Contractor is required to provide their Federal Employer Identification Number (FEIN) or Social Security Number (SSN) as applicable to DHS. By Contractor’s signature on this Contract, Contractor hereby certifies that the FEIN or SSN provided on the DHS CP385 form is true and accurate. If this information changes, Contractor is also required to provide DHS with the new FEIN or SSN within 10 days.

**CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS**

**Signatures:**

**Approved by Contractor:**

Authorized Signature	Title	Date

**Approved by DHS:**

Authorized Signature	Title	Date

**Approved by the Department of Administrative Services:**

*Exempt per OAR 125-246-0170(2)*

**Approved for Legal Sufficiency:**

*Exempt per OAR 137-045-0030*

**DHS Division of Medical Assistance Programs:**

Perry DeJoode, Contract Administrator	Date

**DHS Office of Contracts and Procurement:**

Jeri F. McGinnis, Contract Specialist	Date

## EXHIBIT A - Part 1 - Statement of Work

### 1. Definitions:

- a. **Application Assisters (AA):** Employees or volunteers who provide Application assistance on behalf of the Contractor, all of whom must receive required training prior to helping Applicants apply for Healthy Kids. This assistance includes help in filling out forms, obtaining necessary documentation, answering general questions and ensuring submission of the Application to DHS.
- b. **Applicants:** Oregon residents who have applied or may apply to receive medical services through the Healthy Kids Program.
- c. **Date Stamp/AA Code:** A stamp that allows the Application Assister to document the date an Application is requested, the Contractor's name, address and Contractor's unique code issued by DHS.
- d. **Application:** An Application that determines eligibility to participate in the Healthy Kids Program.

### 2. Eligibility and Continued Participation

- a. Contractor shall notify DHS of any changes to the information contained in the Contractor's application to RFA 2924, RFA 3024, RFA 3115, or RFA 3196 which ever applies, reports, and supporting documentation within 30 days of the date of the change.
- b. Contractor shall inform DHS of any changes to its status or the status of any individual performing under this Contract affecting its eligibility or ability to perform services in the Contract; and
- c. Any deliberate omission, misrepresentation or falsification of any information contained in the Contractor's application to RFA 2924, RFA 3024, RFA 3115, or RFA 3196 which ever applies, reports, or contained in any communication supplying information to DHS may be punishable by law, including but not limited to revocation of the DHS date stamp with AA code and recovery of payments made.

### 3. Services

The Contractor agrees to provide Application assistance to Healthy Kids Applicants in accordance with the terms and conditions of this Contract. The Statement of Work (The Work) is as follows:

- a. Contractor Responsibilities (the Work):
  - (1) Contractor shall ensure that all individuals performing work under this Contract on the Contractor's behalf receive training from DHS on procedures for providing technical assistance in the completion of a Healthy Kids Application.
  - (2) Training dates and times will be set by DHS. Potential Application Assisters must pass a test to become a Certified Application Assister.
  - (3) Contractor shall ensure that all certified individuals are recertified at the appropriate times as set forth by DHS.

- (4) Contractor shall provide Healthy Kids Application packets and enrollment assistance for anyone who requests to apply for Healthy Kids services including the Oregon Health Plan (OHP).
- (5) The Contractor shall encourage Applicants to provide accurate and truthful information, and shall not attempt to pre-determine any potential Applicant or Applicant's eligibility, or make any assurances regarding the eligibility of any potential Applicant or Applicant for the Healthy Kids program.
- (6) The Contractor shall establish a date of request for all Applicants by date stamping the Application in the appropriate place with the date the Applicant requested an Application. Once affixed to an Application, the date can never be changed, altered, or backdated. The date stamp must include the AA code number and name of the Contractor in addition to the date. DHS will provide the Contractor the information necessary for a Contractor to obtain a Date Stamp/AA Code. If Contractor is not in compliance with this Contract, DHS reserves the right to require the Contractor to desist in the use of the Date Stamp/AA Code.
- (7) The Contractor shall provide information to potential Applicants. Information provided shall explain the Healthy Kids program and will give the potential Applicant enough information to make informed choices when choosing an Oregon Health Plan managed care plan for health and dental services. The information shall, at a minimum, include explaining the significance of the Date Stamp/AA Code, answering questions and assisting in filling out Application forms. The Contractor shall use information produced by DHS or receive approval prior to using any other materials. The information provided at these sessions shall include information regarding Basic Healthy Kids program information; OHP eligibility criteria; OHP, managed health care; and reviewing the OHP managed care plans that are available;
- (8) The Contractor shall provide unbiased OHP managed care information using information provided by DHS.
- (9) The Contractor must make copies of original eligibility verification documentation required to accompany the Application to the DHS OHP Central Branch.
- (10) The Contractor shall complete an Application Assistance Reporting Form for each Applicant for whom the Contractor has provided assistance in completing a Healthy Kids Application. This form must be submitted to DHS within ten (10) days of the date stamped on the Application. In addition, the Contractor must provide monthly reports to DHS on the required monthly reporting form, provided by DHS. These monthly reports shall also list all employees who have been trained or need to be trained by DHS staff to perform the duties listed in this Statement of Work.

**b.** Contractor shall **NOT**:

- (1) Artificially divide families to submit more than one completed Application.
- (2) Offer or provide any gift, favors or other inducement to potential Applicants or Applicants without DHS approval.

- (3) Date stamp Applications without personally assisting the Applicant with the Application process.
- (4) Accept money or premium payments from Applicants.
- (5) Divulge to any unauthorized persons information obtained while assisting Applicants with their Application.
- (6) Invite or influence an Applicant or their dependents to separate from an employer-based group health coverage or arrange for this to occur.
- (7) Receive funding under the Healthy Kids Targeted Outreach and Enrollment Program.
- (8) Use any person who has not passed a criminal history check to perform any services under this Contract, (See Exhibit A, Part 3, Section 3).
- (9) Provide inaccurate, misleading or coercive oral or written information or materials.
- (10) Encourage Applicants to include on the Application any false or misleading information regarding income, residency, alienage and other eligibility information.
- (11) Transact insurance for any health insurance plan under Healthy Kids.
- (12) Provide application assistance within or for residents of Washington, Multnomah and Marion Counties.

**Note: Any of the actions in this section may be grounds for immediate termination of this Contract.**

**c. DHS Responsibilities:**

- (1) DHS will provide training to Contractor and it's staff on Healthy Kids eligibility, Application procedures and documentation requirements and provide additional training as needed following changes in policy or procedure. Training dates and times will be set by DHS.
- (2) DHS will make available to Contractor Healthy Kids Applications, (in English, Spanish, Russian and Vietnamese) OHP managed care information booklet, OHP Comparison charts, report templates, and other necessary forms.
- (3) DHS will process all Applications in accordance with DHS standards.
- (4) DHS will process completed Healthy Kids Applications that have satisfactory verification information within the time requirements set forth in DHS policy.
- (5) Determine whether any individual listed on the Application has already been enrolled into the Healthy Kids program.

## EXHIBIT A - Part 2 - Consideration

### 1. Payment Provisions:

No payment will be made to a Contractor that has been given the status of "Volunteer Organization" by DHS.

DHS will provide payment to Contractor as follows

- a. Contractor shall receive a payment of \$75 for every Application that is completed and leads to the successful enrollment of an Applicant under the age of 19 into the Healthy Kids program. Payment is made per Application, NOT per person enrolled.
- b. DHS will issue monthly aggregated payments for all enrolled Applications from the preceding month. Payment may be received up to 90 days after DHS finds that an Application has been successfully enrolled.
- c. DHS shall only make payments to Contractor, the Contractor is responsible for negotiating payment and making payment to Application Assisters.
- d. Any overpayment made to Contractor by DHS will be recouped by DHS, including withholding of future payments authorized by this Contract.
- e. In the event that more than one Application is submitted for the same Applicant, the payment will be made to the Contractor with the earliest date stamped on the Application provided the Application leads to the successful enrollment of an Applicant.
- f. No payment will be made if the Application results in an Applicant being added to an existing case.
- g. No payment will be made if the Application is performed in Washington, Multnomah or Marion County, or if applicant resides in any of these three counties.
- h. By accepting payment, Contractor certifies compliance with this Contract. Contractor understands that DHS has sufficient funds currently available and authorization to make payments under this Contract within DHS' biennial budget. Contractor further understands that payment for services performed after this biennium is contingent on DHS receiving from the Oregon Legislative Assembly appropriations or other expenditure authority sufficient to allow DHS, in its reasonable administrative discretion, to continue to make payments.

### 2. Contract Administrator

The DHS employee assigned to monitor Contract compliance, authorize payment, and act as DHS' Contract Administrator on matters concerning this Contract shall be:

Perry DeJoode, Healthy Kids Program Coordinator  
500 Summer Street NE, E-49  
Salem, Oregon 97301-1077  
Phone: 503-945-6525  
Fax: 503-945-6871  
Email: [perry.b.dejoode@state.or.us](mailto:perry.b.dejoode@state.or.us)

## **EXHIBIT A - Part 3 - Special Provisions**

### **1. Confidentiality of Client Information**

- a.** All information as to personal facts and circumstances obtained by the Contractor on the Applicant shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the Applicant, his or her attorney, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Contract. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- b.** The use or disclosure of information concerning Applicants shall be limited to persons directly connected with the administration of this Contract, DHS and Healthy Kids. Confidentiality policies shall be applied to all requests from outside sources.
- c.** DHS, Contractor and any subcontractor will share information as necessary to effectively serve DHS clients.
- d.** All Application and all information as to personal facts and circumstances obtained by the Contractor on any Applicant will be kept in a locked file cabinet and only be accessed by employees that have completed and passed criminal history check, signed a confidentiality agreement and been certified to be an Application Assister.
- e.** Contractor shall require all individuals who perform services under this Contract to sign a confidentiality agreement containing terms consistent with this Exhibit A, Part 3, Section 1 and retain copies of these agreements.

### **2. Anticipated Amendments**

- a.** DHS reserves the right to amend or extend the Contract under the following general circumstances:
  - (1)** DHS may extend the Contract for additional periods of time up to a total contract period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time will be based on DHS' satisfaction with performance of the work or services provided by the Contractor under this Contract.
  - (2)** DHS may periodically amend any payment rates throughout the life of the Contract proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if DHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.

- b. DHS further reserves the right to amend the Statement of Work based on the original scope of work of RFA # 2924, RFA #3024 or RFA 3115 for the following:
  - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Contract or previous amendments to the Contract;
  - (2) Implement additional phases of the Work; or
  - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Contract.
- c. Any amendment to this Contract that does not meet the intent of Section 2. Anticipated Amendments, Subsections a. or b., above, shall be deemed an unanticipated amendment and shall be handled according to Oregon Administrative Rules.
- d. Upon identification, by any party to this Contract, of any circumstance which may require an amendment to this Contract, either anticipated or unanticipated, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Contract before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 21. "Amendments; Waiver; Consent," of this Contract.

### **3. Criminal History Checks**

- a. Contractor shall perform criminal history checks on any person performing work under this Contract. "Subject Individual" ("Subject Individual" shall have the same meaning as defined in OAR 407-007-0010 (14)) in accordance with OAR Chapter 407 Division 7. Contractor shall establish verification by:
  - (1) Having the "Subject Individual" as a condition of employment or volunteer, apply for and receive a criminal history check from a local Oregon State Police (OSP) office, which will be shared with Contractor, OR
  - (2) Contractor as an employer will contact the local OSP for a criminal history check on the applicant/employee. Contractor will need to give to OSP the applicant's name, birth date and social security number.

Contractor shall determine after receiving the criminal history check, whether the Subject Individual has listed convictions, and whether these convictions pose a risk to working safely with DHS clients or potential DHS clients as described in OAR Division 407 Chapter 7. If Contractor notes a conviction and Contractor wishes to hire the Subject Individual,

Contractor must obtain DHS approval prior to hiring the subject individual. Contractor shall request in writing, approval to hire the Subject Individual and include the reasons the Contractor wishes to hire the Subject Individual. These reasons shall address how the Subject Individual is presently suitable to perform services under this Contract in a safe and trustworthy manner. Contractor will place this information, along with the Subject Individual's criminal history check and DHS' approval, in the personnel file.

**4. Equal Access to Services.** Contractor shall provide equal access to covered services for both males and females under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270.

**5. HIPAA Business Associate Requirements:**

- a.** The federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the federal regulations implementing the Act require that DHS obtain certain satisfactory assurances from its business associates. Such satisfactory assurances and the other business associate contracting requirements are contained in OAR 125, Division 55. Contractor is a business associate of DHS and desires to provide such assurances with respect to the performance of its obligations under this Contract. Contractor provides the satisfactory assurances contained in OAR 125, Division 55, which is incorporated herein by this reference, and Contractor and DHS agree to comply with the terms and conditions contained in OAR 125, Division 55.
- b.** In addition, the Health Information Technology for Economic and Clinical Health ("HITECH") Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("ARRA"), imposes additional requirements on DHS as a Covered Entity and Contractor as a Business Associate of DHS.
- c.** In the event of Discovery of a Breach of Unsecured Protected Health Information, Contractor shall:
  - (1)** Notify DHS of such Breach. Notification shall include the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Contractor to have been accessed, acquired or disclosed during such Breach;
  - (2)** Notify each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Contractor to have been accessed, acquired or disclosed as a result of such Breach;
  - (3)** Where the Breach involves more than 500 individuals, notify prominent media outlets within the State or as appropriate, local jurisdictions; and,
  - (4)** Notify the Secretary of DHHS of Unsecured Protected Health Information that has been acquired or disclosed in a Breach. If the

Breach was with respect to 500 or more individuals, such notice to the Secretary must be provided immediately. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log shall be provided to the Secretary annually documenting such Breaches occurring during the year involved.

- (5) Except as set forth in (7) below, notifications required by this section shall be made without unreasonable delay and in no case later than 60 calendar days after the Discovery of a Beach. The notice shall be provided in the manner required by the HITECH Act, sec 13402(e), Public Law 111-5.
  - (6) The content of any notification required by this section shall be in accordance with the HITECH Act, sec 13402(f), Public Law 111-5.
  - (7) Any notification required by this section may be delayed by a law enforcement official in accordance with the HITECH Act, sec 13402(g), Public Law 111-5.
  - (8) For purposes of this section, the terms “Unsecured Protected Health Information” and “Breach” shall have the meaning set forth in the HITECH Act, Public Law 111-5, and the regulations promulgated there under. A Breach will be considered as “Discovered” in accordance with the HITECH Act, sec 13402(c), Public Law 111-5.
- d.** Contractor shall comply with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316 and all requirements of the HITECH Act, Public Law 111-5, that relate to security and that are made applicable to Covered Entities, as if Contractor were a Covered Entity.

## **EXHIBIT B - Standard Terms & Conditions**

### **1. Governing Law, Consent to Jurisdiction**

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding collectively, "Claim" between DHS or any other agency or department of the State of Oregon, or both, and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. **CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

### **2. Compliance with Applicable Law**

- a. Contractor shall comply and cause all sub-contractors to comply with all state and local laws, regulations, executive orders and ordinances applicable to the Contract or to the performance of Work as they may be adopted, amended or repealed from time to time, including but not limited to the following: (i) ORS Chapter 659A.142 and (ii) all other applicable requirements of state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. DHS' performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).
- b. In compliance with the Americans with Disabilities Act, any written material that is generated and provided by Contractor under this Contract to DHS clients, including Medicaid-Eligible Individuals, shall, at the request of such DHS clients, be reproduced in alternate formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. DHS shall not reimburse Contractor for costs incurred in complying with this provision. Contractor shall cause all subcontractors under this Contract to comply with the requirements of this provision.
- c. Contractor shall comply with the federal laws as set forth or incorporated, or both, in this Contract and all other federal laws applicable to Contractor's performance under this Contract as they may be adopted, amended or repealed from time to time.

### **3. Independent Contractor**

- a. Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Work under

this Contract. If compensation under this Contract is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.

- c. Contractor is responsible for all federal and state taxes applicable to compensation paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, DHS will not withhold from such compensation any amounts to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Contractor under this Contract, except as a self-employed individual.
- d. Contractor shall perform all Work as an independent contractor. DHS reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product, however, DHS may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

#### **4. Representations and Warranties**

- a. Contractor's Representations and Warranties. Contractor represents and warrants to DHS that:
  - (1) Contractor has the power and authority to enter into and perform this Contract;
  - (2) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
  - (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession;
  - (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; and
  - (5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- b. Warranties cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

#### **5. Time is of the Essence**

Contractor agrees that time is of the essence under this Contract.

#### **6. Funds Available and Authorized; Payments**

- a. Contractor shall not be compensated for Work performed under this Contract by any other agency or department of the State of Oregon or the federal government. DHS certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within DHS' current biennial appropriation or limitation. Contractor understands and agrees that DHS' payment for Work performed is contingent on DHS receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.
- b. All billings and payments processed through the Medicaid Management Information System (MMIS) shall be processed in accordance with the provisions of Oregon Administrative Rules (OAR) 407-120-0100 through 407-120-0200, OAR 407-120-0300 through OAR 407-120-0380 and any other DHS Oregon Administrative Rules that are program specific to the billings and payments and, if applicable, to billing and payment of Medicaid services.

#### **7. Recovery of Overpayments**

If billings under this Contract, or under any other contract between Contractor and DHS, result in payments to Contractor to which Contractor is not entitled, DHS, after giving written notification to Contractor, may withhold from payments due to Contractor such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

## 8. Ownership of Work Product

- a. Definitions. As used in this Section 8, and elsewhere in this Contract, the following terms have the meanings set forth below:
- (1) “Contractor Intellectual Property” means any intellectual property owned by Contractor and developed independently from the Work.
  - (2) “Third Party Intellectual Property” means any intellectual property owned by parties other than DHS or Contractor.
  - (3) “Work Product” means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to DHS pursuant to the Work.
- b. Original Works. All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire,” shall be the exclusive property of DHS. DHS and Contractor agree that all Work Product is “work made for hire” of which DHS is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not “work made for hire,” Contractor hereby irrevocably assigns to DHS any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon DHS' reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in DHS. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that Work Product created by Contractor under this Contract is Contractor Intellectual Property, a derivative work based on Contractor Intellectual Property or a compilation that includes Contractor Intellectual Property, Contractor hereby grants to DHS an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Contractor Intellectual Property and the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on DHS' behalf.

In the event that Work Product created by Contractor under this Contract is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property or a compilation that includes Third Party Intellectual Property, Contractor shall secure on DHS' behalf and in the name of DHS an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property and the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on DHS' behalf.

## 9. Indemnity

- a. **GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND DHS AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE**

WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

- b. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 9.a., CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD DHS, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO DHS BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR DHS' USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT THE STATE OF OREGON SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.
- c. CONTROL OF DEFENSE AND SETTLEMENT. CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO THIS SECTIONS 9.a. OR 9.b.; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

## **10. Default; Remedies; Termination**

- a. Default by Contractor. Contractor shall be in default under this Contract if:
  - (1) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
  - (2) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after DHS' notice or such longer period as DHS may specify in such notice; or
  - (3) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and

such breach, default or failure is not cured within 14 calendar days after DHS' notice, or such longer period as DHS may specify in such notice.

b. **DHS' Remedies for Contractor's Default** In the event Contractor is in default under Section 10.a., DHS may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- (1) termination of this Contract under Section 10.e.(2);
- (2) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
- (4) exercise of its right of recovery of overpayments under Section 7 of this Contract or setoff, or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and DHS may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Section 10.a., then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 10.e.(1).

c. **Default by DHS.** DHS shall be in default under this Contract if DHS commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

d. **Contractor's Remedies for DHS' Default.** In the event DHS terminates the Contract under Section 10.e.(1), or in the event DHS is in default under Section 10.c. and whether or not Contractor elects to exercise its right to terminate the Contract under Section 10.e.(3), Contractor's sole monetary remedy shall be (i) with respect to Work compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (ii) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by DHS, less previous amounts paid and any claim(s) that DHS has against Contractor. In no event shall DHS be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 10.d., Contractor shall immediately pay any excess to DHS upon written demand. If Contractor does not immediately pay the excess, DHS may recover the overpayments in accordance with Section 7., Recovery of Overpayments, and may pursue any other remedy that may be available to it.

e. **Termination.**

- (1) **DHS' Right to Terminate at its Discretion.** At its sole discretion, DHS may terminate this Contract:
  - (a) For its convenience upon 30 days' prior written notice by DHS to Contractor;
  - (b) Immediately upon written notice if DHS fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or
  - (c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that DHS' purchase of the Work or

Work Products under this Contract is prohibited or DHS is prohibited from paying for such Work or Work Products from the planned funding source.

- (d) Immediately upon written notice to Contractor if there is a threat to the health, safety, or welfare of any DHS client, including any Medicaid Eligible Individual, under its care.
- (2) DHS' Right to Terminate for Cause. In addition to any other rights and remedies DHS may have under this Contract, DHS may terminate this Contract immediately upon written notice by DHS to Contractor, or at such later date as DHS may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 10.e.(2)(b) or Section 10.e.(2)(c) below, upon the occurrence of any of the following events:
- (a) Contractor is in default under Section 10.a.(1) because Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
  - (b) Contractor is in default under Section 10.a.(2) because Contractor no longer holds a license or certificate that is required for it to perform Work under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after DHS' notice or such longer period as DHS may specify in such notice; or
  - (c) Contractor is in default under Section 10.a.(3) because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after DHS' notice, or such longer period as DHS may specify in such notice.
- (3) Contractor's Right to Terminate for Cause. Contractor may terminate this Contract with such written notice to DHS as provided in this Section 10.e.(3), or at such later date as Contractor may establish in such notice, if DHS is in default under Section 10.c. because DHS commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and DHS fails to cure such failure within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.
- (4) Mutual Termination. The Contract may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.
- (5) Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to DHS all of the DHS' property (including without limitation any Work Products for which DHS has made payment in whole or in part) that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such DHS property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless DHS expressly directs otherwise in such notice of termination. Upon DHS' request, Contractor shall surrender to anyone DHS designates, all documents, research or objects or other tangible things needed to complete the Work Products.

## **11. Stop-Work Order**

DHS may, at any time, by written notice to the Contractor, require the Contractor to stop all, or any part of the work required by this Contract for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Contractor shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, DHS shall either:

- a. Cancel or modify the stop work order by a supplementary written notice; or
- b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 10., Default; Remedies; Termination.

If the Stop Work Order is canceled, DHS may, after receiving and evaluating a request by the Contractor, make an adjustment in the time required to complete this Contract and the Contract price by a duly executed amendment.

## **12. Limitation of Liabilities**

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 9. OR SECTION 10.e.(1), NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT.

## **13. Insurance**

Contractor shall maintain insurance as set forth in Exhibit C, attached hereto. Applicants who clearly will not travel for any portion of the Work, may request a waiver of Auto Liability, and will be fully responsible for any waiver DHS allows.

## **14. Records Maintenance, Access**

Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract, in such a manner as to clearly document Contractor's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Contractor whether in paper, electronic or other form, that are pertinent to this Contract, are collectively referred to as "Records." Contractor acknowledges and agrees that DHS and the Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all Records for the longer of:

- a. six years following final payment and termination of this Contract;
- b. the period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
- c. until the conclusion of any audit, controversy or litigation arising out of or related to this Contract.

## **15. Information Privacy/Security/Access**

If the Work performed under this contract requires Contractor or, when allowed, its subcontractor(s), to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants Contractor or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, Contractor shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 407-014-0300 through

OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, “Information Asset” and “Network and Information System” have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

**16. Force Majeure**

Neither DHS nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, power outage, government fiat, terrorist acts or other acts of political sabotage, civil unrest, labor unrest, or war, where such cause is beyond the reasonable control of DHS or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**17. Foreign Contractor**

If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract.

**18. Assignment of Contract, Successors in Interest**

- a. Contractor shall not assign or transfer its interest in this Contract without prior written consent of DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions as DHS may deem necessary. No approval by DHS of any assignment or transfer of interest shall be deemed to create any obligation of DHS in addition to those set forth in the Contract.
- b. The provisions of this Contract shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

**19. Subcontracts**

Contractor shall not enter into any subcontracts for any of the Work required by this Contract without DHS' prior written consent. In addition to any other provisions DHS may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that DHS will receive the benefit of subcontractor performance as if the subcontractor were the Contractor with respect to Sections 1, 2, 3, 4, 5, 8, 9, 14, 15, 17, 18, 19, and 20 of this Exhibit B. DHS' consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**20. No Third Party Beneficiaries**

DHS and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. The parties agree that Contractor's performance under this Contract is solely for the benefit of DHS to accomplish its statutory mission. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**21. Amendments; Waiver; Consent**

DHS may amend this Contract to the extent provided herein, the solicitation document, if any from which this Contract arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Contract shall bind either party unless it is in writing and signed by both parties and when required, the Department of Administrative Services and Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision.

**22. Severability**

The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**23. Survival**

Sections 1, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 20, and 23 of this Exhibit B shall survive Contract expiration or termination, as well as those provisions of this Contract that by their context are meant to survive. Contract expiration or termination shall not extinguish or prejudice DHS' right to enforce this Contract with respect to any default by Contractor that has not been cured.

**24. Notice**

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or DHS at the address or number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 24. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. Any communication or notice given by personal delivery shall be effective when actually delivered to the addressee. Notwithstanding the foregoing, to be effective against DHS, any notice transmitted by facsimile must be confirmed by telephone notice to DHS' Office of Contracts and Procurement number listed below or any such telephone number DHS may provide by written notice to Contractor.

DHS:                                   Office of Contracts & Procurement  
  Department of Human Services  
  250 Winter St. NE, Room 306  
  Salem, OR 97301-1080  
  Telephone: 503-945-5818  
  Facsimile: 503-378-4324

CONTRACTOR:    Entity Name  
                                  Contact Name (optional)  
                                  Street Address  
                                  City, State Zip  
                                  Telephone: 000-000-0000  
                                  Facsimile: 000-000-0000

**25. Construction**

The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Contract.

**26. Headings**

The headings and captions to sections of this Contract have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Contract.

**27. Merger Clause**

This Contract constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein, regarding this Contract.

**28. Counterparts**

This Contract and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract and any amendments so executed shall constitute an original.

**29. Contractor's Failure to Perform**

Contractors failure to perform the statement of work outlined in this Contract or to meet the performance standards established in this Contract in accordance with OAR 125-247-0255(3)(b), may result in consequences that include, but are not limited to:

- a. DHS' right to reduce or withhold payment under this Contract;
- b. DHS' right to require Contractor to perform at Contractors expense any additional work necessary to perform the statement of work or meet performance standards;
- c. DHS' right to assert individually or in combination, to declare a default of this Contract and utilize it's right to terminate as permitted in Section 10. Default; Remedies; Termination of this Contract.

## EXHIBIT C - Insurance Requirements

During the term of this Contract Contractor shall maintain in force at its own expense, each insurance noted below:

1. **Required by DHS of contractors with one or more workers, as defined by ORS 656.027.**  
**Workers' Compensation:** All employers, including Contractor, that employ subject workers who work under this Contract, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide the Workers' Compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.
  
2.  Required by DHS  **Not required by DHS.**  
**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.
  
3.  **Required by DHS**  Not required by DHS.  
**Commercial General Liability** insurance with a combined single limit, or the equivalent, of not less than \$200,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the State of Oregon, Department of Human Services (DHS) and its divisions, officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Contract.
  
4.  **Required by DHS**  Not required by DHS.  
Automobile Liability insurance with a combined single limit, or the equivalent, of not less than the Oregon Financial Responsibility Law (ORS 806.060), for each accident, for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
  
5. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to DHS;
  
6. **Certificates of insurance.** As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to DHS upon request. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, or self-insurance, as applicable.
  
7. **Self-insurance.** Contractor may fulfill its insurance obligations herein through a program of self insurance, provided that Contractor's self insurance program complies with all applicable laws, and provides insurance coverage equivalent in both type and level of coverage to that required in this Exhibit C. Notwithstanding section 6 of this Exhibit C, Contractor shall furnish an acceptable insurance certificate to DHS for any insurance coverage required by this Contract that is fulfilled through self-insurance.

## **EXHIBIT D - Required Federal Terms & Conditions**

Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Contract, to Contractor, or to the Work, or to any combination of the foregoing. For purposes of this Contract, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

### **1. Miscellaneous Federal Provisions**

Contractor shall comply and cause all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Contract or to the delivery of Work. Without limiting the generality of the foregoing, Contractor expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

### **2. Equal Employment Opportunity**

If this Contract, including amendments, is for more than \$10,000, then Contractor shall comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

### **3. Clean Air, Clean Water, EPA Regulations**

If this Contract, including amendments, exceeds \$100,000 then Contractor shall comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, HHS and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

### **4. Energy Efficiency**

Contractor shall comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

### **5. Truth in Lobbying**

The Contractor certifies, to the best of the Contractor's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. The Contractor shall cause that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **6. HIPAA Compliance**

DHS is a Covered Entity for purposes of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). DHS must comply with HIPAA to the extent that any Work or obligations of DHS arising under this Contract are covered by HIPAA. Contractor shall determine if Contractor is subject to HIPAA in the performance of any Work or other obligations under this Contract. To the extent that Contractor is subject to HIPAA, Contractor shall comply and cause all subcontractors to comply with the following:

- a. **Privacy and Security of Individually Identifiable Health Information.** Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and DHS for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate DHS Privacy Rules, OAR 407-014-0000 *et. seq.*, or DHS Notice of Privacy Practices, if done by DHS. A copy of the most recent DHS Notice of Privacy Practices is posted on the DHS web site at <http://dhsforms.hr.state.or.us/Forms/served/DE2090.pdf>, or may be obtained from DHS.
- b. **Data Transactions Systems.** If Contractor intends to exchange electronic data transactions with DHS in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDI Trading Partner Agreement with DHS and shall comply with DHS EDI Rules.
- c. **Consultation and Testing.** If Contractor reasonably believes that the Contractor's or DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the DHS Information Security Office. Contractor or DHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the DHS testing schedule.

## **7. Resource Conservation and Recovery**

Contractor shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

## **8. Audits**

- a. Contractor shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled “Audits of States, Local Governments and Non-Profit Organizations.”
- b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) sections and OMB Circulars governing expenditure of federal funds. State, local and Indian Tribal Governments and governmental hospitals must follow OMB A-102. Non-profits, hospitals, colleges and universities must follow 2 CFR Part 215. Sub-recipients shall monitor any organization to which funds are passed for compliance with CFR and OMB requirements.

## **9. Debarment and Suspension**

Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or Nonprocurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

## **10. Drug-Free Workplace**

Contractor shall comply and cause all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Contractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Contractor's workplace or while providing services to DHS clients. Contractor's notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Contractor's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Cause any

subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither Contractor, or any of Contractor's employees, officers, agents or subcontractors may provide any service required under this contract while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Contractor or Contractor's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Contractor or Contractor's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; (x) Violation of any provision of this subsection may result in termination of the contract.

## **11. Pro-Children Act**

Contractor shall comply and cause all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.).

## **12. Medicaid Services**

Contractor shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. seq., including without limitation:

- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 USC Section 1396a (a)(27); 42 CFR 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Contractor shall acknowledge Contractor's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
- e. Entities receiving \$5 million or more annually (under this contract and any other Medicaid contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).

## **13. Agency-based Voter Registration**

Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.