



Contract Number 155872

**STATE OF OREGON
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

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

Adara Oaks Manor, LLC
931 NE Linden Ave
Gresham, OR 97030
Telephone: 503-912-3211
Facsimile: 503-477-6547
E-mail address: larisa@adaraoaks.com

hereinafter referred to as "Contractor."

Work to be performed under this Contract relates principally to DHS'

Aging and People with Disabilities
500 Summer St NE
Salem, OR 97301
Contract Administrator: Erin Drake or delegate
Telephone: 503-945-5790
Facsimile: 503-945-5798
E-mail address: erin.l.drake@state.or.us

1. Effective Date and Duration.

Upon signature by all applicable parties, this Contract shall be effective on the later of: (i) July 1, 2018 or, (ii) when required, the date this Contract is approved by Department of Justice, regardless of the date it is actually signed by all other parties per the authority under OAR 125-247-0288. Unless extended or terminated earlier in accordance with its terms, this Contract shall expire on June 30, 2020, 2018. 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: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Provisions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Insurance Requirements
- (6) Exhibit D: Federal Terms and Conditions
- (7) Exhibit E: Resident Discharge Report

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, B, A, E, and C.

3. Consideration.

a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$TBD**. 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.

b. 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, "Payment and Financial Reporting."

c. DHS will only pay for completed Work under this Contract. For purposes of this Contract, "Work" means the tasks or services and deliverables accepted by DHS as described in Exhibit A, Part 1, "Statement of Work."

4. Vendor or Subrecipient Determination. In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, DHS' determination is that:

- Contractor is a subrecipient Contractor is a vendor Not applicable

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

5. Contractor Data and Certification.

- a. **Contractor Information.** This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(1).

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Contractor Name (exactly as filed with the IRS): _____

Street address: _____

City, state, zip code: _____

Email address: _____

Telephone: () _____ Facsimile: () _____

Is Contractor a nonresident alien, as defined in 26 U.S.C. § 7701(b)(1)?

(Check one box): YES NO

Business Designation: (Check one box):

- | | | |
|--|--|--|
| <input type="checkbox"/> Professional Corporation | <input type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Sole Proprietorship |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Partnership | <input type="checkbox"/> Other |

Contractor Proof of Insurance. Contractor shall provide the following information upon submission of the signed Contract. All insurance listed herein and required by Exhibit C, must be in effect prior to Contract execution.

Professional Liability Insurance Company: _____

Policy #: _____ Expiration Date: _____

Commercial General Liability Insurance Company: _____

Policy #: _____ Expiration Date: _____

Workers' Compensation: Does Contractor have any subject workers, as defined in ORS 656.027? (Check one box): YES NO If YES, provide the following information:

Workers' Compensation Insurance Company: _____

Policy #: _____ Expiration Date: _____

- b. **Certification.** Without limiting the generality of the foregoing, by signature on this Contract, the undersigned hereby certifies under penalty of perjury that:

(1) Contractor is in compliance with all insurance requirements in Exhibit C of this Contract and notwithstanding any provision to the contrary, Contractor shall deliver to the DHS Contract Administrator (see page 1 of this Contract) the required Certificate(s) of Insurance within 30 days of execution of this Contract. By certifying compliance with all insurance as required by this Contract, Contractor acknowledges it may be found in breach of the Contract for failure to obtain required insurance. Contractor may also be in breach of the Contract for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Contract;

(2) Contractor acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the Contractor and that pertains to this Contract or to the project for which the Contract work is being performed. Contractor certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Contractor further acknowledges that in addition to the remedies under this Contract, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Contractor;

(3) The undersigned is authorized to act on behalf of Contractor and that Contractor has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of Oregon. Contractor shall, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of Oregon. For the purposes of this Section, “tax laws” includes: (i) All tax laws of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of Oregon that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of Oregon that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Contractor acknowledges that the Oregon Department of Administrative Services will report this Contract to the Oregon Department of Revenue (ODOR). The ODOR may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor’s compensation under this Contract or (ii) exercising a right of setoff against Contractor’s compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the ODOR collects debts;

(4) The information shown in Section 5a, “Contractor Information” above is Contractor’s true, accurate and correct information;

(5) To the best of the undersigned’s knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;

(6) Contractor and Contractor’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:

<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;

(7) Contractor is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Non-procurement Programs” currently found at: <https://www.sam.gov/portal/public/SAM/>;

(8) Contractor is not subject to backup withholding because:

(a) Contractor is exempt from backup withholding;

(b) 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

(c) The IRS has notified Contractor that Contractor is no longer subject to backup withholding; and

(9) Contractor Federal Identification Number (FEIN) or Social Security Number (SSN) provided is true and accurate. If this information changes, Contractor shall 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

6. Signatures. 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.

Contractor: Adara Oaks Manor, LLC

By:

Authorized Signature

Printed Name

Title

Date

State of Oregon, acting by and through its Department of Human Services

By:

Authorized Signature

Printed Name

Title

Date

Approved by the Department of Administrative Services:

Exempt per OAR 125-246-0170(2)

Authorized Signature

Title

Date

Approved for Legal Sufficiency:

Not Required per OAR 137-045-0030(1)(a)

Department of Justice

Date

EXHIBIT A

Part 1 Statement of Work

1. Contractor shall provide complex behavioral services (the Work) as described herein to not more than TBD Medicaid-eligible Individuals at any one time who are authorized to receive services at the Contractor's owned and operated licensed Residential Care Facility located at:

Adara Oaks
931 NE Linden Ave
Gresham, OR 97030

2. **Definitions.**

In addition to all terms defined in this Contract, the definitions in OAR 411-54-0005 apply to this Contract. If a conflict exists between any terms defined in this Contract and the terms defined in OAR 411-54-0005, the conflicting term with the greater level of expectation or delivery shall take precedence.

- a. **“Activities of Daily Living” or “ADL”** means those personal, functional, activities required by an Individual for continued well-being, health, and safety. Activities consist of eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), cognition and behavior.
- b. **“Activity Plan”** means the plan that is developed for each Individual based on their activity evaluation. The plan should include strategies for how these activities can become part of the Individual's daily routines. For purposes of this Contract the plan is developed by the Activities Coordinator.
- c. **“Area Agency on Aging” or “AAA”** means the DHS designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults or Individuals with disabilities in a planning and service area. For purposes of these rules, the term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.
- d. **“Behavior Support Coordinator (BC)”** is the designated employee who passes the DHS Competency Exam, meets the requirements of OAR 411-046 and maintains continuing education requirements of a Behavior Consultant as defined in these rules.
- e. **“Behavior Support Plan”** means the written document that describes individualized proactive support strategies which are designed to replace challenging behaviors with functional, positive behaviors and which identifies caregivers interventions to help them deescalate, reduce or tolerate the challenging behavior. The strategies must focus on environmental, social, and physical factors that affect the behavior(s). All Behavior Support Plans must be aligned with the Individual's Service Plan required under licensing or Medicaid program rules and with the Activity Plan.
- f. **“Behavior Support Services (BSS)”** means a set of services that include assessment activities; the development of a Positive Behavior Support plan and Activity plan; teaching activities for designated caregivers on how to implement the plan; monitoring to evaluate the plans impact and as needed; reassessment and revision of the plan and updated teaching and coaching activities. BSS must be provided at the residence where the eligible person lives.
- g. **“Case Manager” and “Diversion/Transition Coordinator”** means the State or AAA worker who is responsible for authorizing the Individual's benefits, participating on the Individual's Service Planning Team and submitting rate adjustment requests. This person is the DHS liaison

between the Individual, their family, legal representative, nursing facility social worker and Contractor for all screening, admission and eligibility functions under this Contract.

- h. **“Individual”** means a DHS client being served under this Contract, in a licensed Residential Care Facility, who meets the Target Group.
- i. **“Community Attendants”** means the direct care staff or other employees who escort and assist an Individual with their ADL, communication, health and safety needs while they are engaging in activities outside of the residence. Family or natural supports can provide this function on behalf of the Contractor if they have necessary legal authority or Individual’s permission.
- j. **“Community Based Care”** means licensed facilities settings which include assisted living facilities, residential care facilities, memory care communities, and adult foster homes.
- k. **“Complex Behavioral Needs”** means the individual:
 - (1) Requires a behavior support plan that describes daily interventions and which is monitored on a weekly basis; and
 - (2) Has either Level 1 or 2 Behaviors:
 - (a) Level 1- Currently exhibits or has exhibited in past year one of the following high-risk behaviors:
 - i. Dangerous or criminal behavior which has resulted in hospitalization, criminal charges or which has caused injury to self or others.
 - ii. Physical or sexual aggression to staff or individuals.
 - (b) Level 2- Currently exhibits or has exhibited in past 90 days two or more of the following behaviors:
 - i. Disruptive or agitated behaviors which occur on a daily basis.
 - ii. Verbally abusive behaviors to staff or individuals which occur on daily basis.
 - iii. Refuses medications or health care services creating legal or healthcare risks to themselves or other individuals.
 - iv. Uses PRN psychiatric medications for specific behaviors.
 - v. Requires monitored exits to prevent eloping into community without staff supervision.
 - vi. Addiction to cigarettes, food, prescription narcotics, alcohol, medical marijuana or illegal substances requiring special care planning or staff training.
 - vii. Actual or threats of self-harm behaviors which require staff monitoring on a daily basis
- l. **“DHS Designee”** refers to the staff person identified and authorized by the Referring Agency as the employee primarily responsible for coordinating the Individual’s care with the Contractor, Case Manager, or the Diversion/Transition Coordinator.
- m. **“Diversion”** means services are appropriate when individuals are at high risk for admitting in to long term care nursing facility and case management involves finding appropriate community alternatives. A person could be residing in the community or be receiving skilled services (prior to Medicaid covering the cost of care) in a nursing facility.

- n. **“Nursing Service Plan”** means the plan that is developed by the registered nurse based on an Individual’s initial nursing assessment, reassessment, or updates made to a nursing assessment as a result of monitoring visits. Nursing Service Plan must be in alignment with the individual's service plan.
- o. **“On-Call”** means available to participate in discussion or for inquires, even when not present at the service location.
- p. **“On-Site”** means on or at the specific service location of the Adult Foster Home.
- q. **“PRN”** means according to necessity, when needed.
- r. **“Program Director”** means Contractor’s full-time position responsible for program coordination
- s. **“Referring Agency”** means either the Department of Human Services (DHS) or an Area Agency on Aging (AAA).
- t. **“RN”** means Contractor’s Registered Nurse
- u. **“Residential Care Facility”** means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.
- v. **“Service Planning Team” (SPT)** means a team of members who meet weekly and who include at a minimum, the individual and/or the Individual’s legal representative, RN, Behavior and Activity Coordinators, Administrator and DHS Designee. The team is responsible for overseeing the Individual’s Service Plan and all other services in this Contract.
- w. **“Service Plan”** is the document required by OAR 411-054-0036. For purposes of this Contract, each Individual must have a Service Plan that is in alignment with a separate Positive Behavior Support Plan and a separate Activity Plan. Each person must have these plans reviewed by the Service Planning Team weekly or more frequently if an Individual is being considered for eviction; a crisis plan is needed or has been activated; or the Individual has experienced an ER visit or hospitalization.
- x. **“Specific Needs Services”** refers to the payment process and standards identified in OAR 411-027-0075(1) (4). Programs with Specific Needs Services contracts provide specialized services designed to meet the needs of Individuals in a specific Target Group which exist as the result of a condition or dysfunction resulting from a physical disability or a behavioral disorder which requires more than the minimum scope of services of this Contract.
- y. **“Target Group”** Target Group for the purposes of this Contract means an individual who meets all four of the following requirements.
 - (1) Be eligible for Medicaid Long-Term Care Services per OAR 411-15;
 - (2) Currently residing in a nursing facility or being diverted from nursing facility placement;
 - (3) Has a history of failed placements in other home and Community Based Care settings;
 - (4) Has ‘Complex Behavioral Needs’ as defined in this Contract.
- z. **“Transition Care Conference”** means a conference arranged by Contractor prior to placement. The following persons must attend or participate by phone: Diversion/Transition Coordinator,

Contractors Registered Nurse (RN), Behavior Coordinator, the Individual or Individual's designated representative, and Contractor or their designated representative.

3. Services.

- a. Contractor shall perform all Work and operate its Residential Care Facility in accordance with the DHS Residential Care and Assisted Living Facilities Administrative Rules, OAR 411-54-0000 through OAR 411-54-0300, and all applicable federal laws.
- b. Contractor shall designate a staff person as Contractor's primary contact for communications between Contractor and DHS. Contractor shall provide its designated staff person information and any changes of this staff designee to DHS within ten (10) days of Contract execution or change of staff designee by Contractor.
- c. Contractor shall ensure that all Medicaid-Eligible individuals will meet the Target Group requirements.
- d. Contractor's designated staff person shall notify DHS Designee of all issues, including any absence of any Medicaid-Eligible Individual from the Residential Care Facility which may affect Contractor's Work or payment for Contractor's Work.
- e. Contractor shall participate with DHS or DHS Designee review of Contractor's facility within 90 days of Contract execution, prior to the renewal of Contract period and provide DHS with any business records requested for evaluation of Contractors performance.
- f. Contractor shall perform the services described in the DHS Residential Care and Assisted Living Facilities Administrative Rules, OAR 411-54-0000 through OAR 411-54-0300, and all applicable federal laws,

4. Eligibility & Admission Process.

- a. Contractor shall ensure that all persons eligible for Specific Needs Services meet the Target Group definition and are eligible for DHS services under the currently funded service priority levels in Long Term Care Service Priorities for Individuals Served under OAR 411-015-0000 through 411-015-0100.
- b. Contractor's designated staff person shall notify the DHS Designee of all queries, referrals or potential placements and provide DHS Designee at least ten (10) business days in advance of an admission date all information necessary for DHS approval of the admission.
- c. Contractor shall screen all potential placements and assure that Contractor's Behavior Support Coordinator and RN participates in a minimum of one pre- placement or Transition Care Conference to determine the appropriateness of placement and to coordinate transition planning.
- d. Contractor shall not provide services until all Medicaid placements are approved by DHS. DHS will not pay Contractor for placements not prior approved under this Contract.

5. Discharge Process.

- a. Contractor shall ensure that no Individual served under this Contract is discharged from Contractor's facility without the prior review and approval by DHS Designee and the Individual's Service Planning Team.

- b. Contractor shall ensure its Program Director convenes the Service Planning Team in a timely manner to conduct discharge reviews.
 - (1) The Service Planning Team must document all attempts to provide supports needed to maintain the Individual's placement in the home.
 - (2) The Service Planning Team must develop a discharge or transition plan to support the Individual, regardless of whether the discharge is voluntary or involuntary.
 - (3) Documentation of (1) and (2) above, must be implemented prior to and attached to any move out notice(s) required under licensing rules.
- c. Contractor shall ensure that involuntary moves, transfers and discharges must be in accordance with the OAR 411-054-0080.
- d. Contractor shall complete a Form 492 – Resident Discharge Report Specific Needs Contract, attached hereto as Exhibit E, documenting all discharges.

6. Service Planning Team (SPT).

- a. Contractor shall ensure:
 - (1) Designation of a Program Director who is responsible for scheduling, facilitating, coordinating, overseeing and documenting monthly Service Planning Team (SPT) meetings.
 - (2) Diversion/Transition Coordinators, APD or AAA Case Managers, health care providers are invited to participate in the SPT meeting or telephonically as needed. Those team members who are unable to attend the meeting must receive copies of the updated Service Plans for review.
 - (3) All changes to the Service Plan are documented and a system for communicating the changes to direct care staff must be identified and documented.
 - (4) The SPT reviews each Individual's Service Plan on a weekly basis or more frequently if the Individual's health or behavior deteriorates.
- b. Contractor shall ensure that Contractor's SPT must:
 - (1) Develop an initial Service plan based on the Individual's assessment, in accordance with the facility's licensure. Within 15 calendar days of admission, a Positive Behavior Support plan, an individualized Activity Plan and a Nursing Plan must be attached to and aligned with the Service Plan.
 - (2) Develop and oversee implementation of an individualized Positive Behavior Support plan which is reviewed weekly by the Behavior Coordinator and updated as needed.
 - (3) Develop and oversee implementation of the individualized Activity Plan that identifies activities the Individual finds meaningful and which can be provided onsite as well as in the community.
 - (4) Develop and oversee implementation of a Nursing Service Plan addressing any health conditions, delegated or non-delegated nursing tasks, medical treatments, PRN medications, ADL needs which require caregiver teaching. The Nursing Service Plan must also identify all coordination necessary with the Individual's health providers.
 - (5) Designate a SPT member to review the Service Plan and treatment goals with the Individual in a manner that allows the Individual to maximize the services provided by the SPT. The Individual's response to the Service Plan must be documented.

7. **Staffing.**

a. **Staffing Generally.**

Contractor shall ensure staffing levels comply with the licensing rules of the facility, OAR 411-054-0070 and are sufficient to meet the scheduled and unscheduled needs of Individuals as follows:

- (1) Contractor shall hire qualified staff and assure coverage to meet the needs of each Individual.
- (2) All staff hired or who work with Individuals are experienced, qualified, well-trained persons who have completed, submitted and passed a criminal history check.
- (3) Copies of completed criminal history checks are made available to the state or AAA Case Manager or DHS Contract Administrator upon request.
- (4) Job descriptions are kept and are available to DHS Contract Administrator upon request.
- (5) Supervisory and emergency staff are identified and available to direct care staff on a 24-hour basis.
- (6) Emergency backup and on-call information for the RN, Behavior Coordinator (either the Program Director or Facility Administrator as defined in RCF rule) are posted and available to direct care staff on all shifts to minimize avoidable emergency placements and to provide crisis management.

b. **Direct Care Staffing.**

- (1) When contract Individual census is 5 residents or fewer there shall be no less than two (2) direct care staff workers at all times in the building. When contract Individual census is 6 to 10 residents, Contractor shall provide three (3) direct care staff on Contractor's day-time shifts, three (3) on Contractor's evening shifts and two (2) on Contractor's night shifts. When contract Individual census is 11 or more, Contractor shall provide four (4) direct care staff on Contractor's day-time shifts, four (4) on Contractor's evening shifts and three (3) on Contractor's night shifts. Contractor shall ensure one (1) designated Medication Aide on each shift to dispense medications. Contractor shall add staffing when it is warranted by Individual acuity.
- (2) Contractor shall carry out the services described in this Contract and in the Individual's Service Plan. Contractor's direct care staff must assist Individuals with activities in Contractor's facility as well as in the community and must be trained in accordance with Section 9. Training, below.

c. **Program Director.**

Contractor shall provide a 0.5 FTE Program Director position for program coordination. Contractor's Program Director must have experience with operational aspects of running a residential program for Individuals in the Target Group, supervising Contractor's direct care staff and understand quality assurance procedures.

Contractor's Program Director responsibilities include:

- (1) Screening of referrals and other activities related to admission;
- (2) Providing or ensuring availability of continuous supervision, as well as, direction and access to emergency backup for Contractor's direct care staff;
- (3) Develop and provide of Individual-specific training and review of Individual Service Plans with Contractor's direct care staff;

- (4) Manage staffing decisions such as hires and training, performing staff screening, staff scheduling, conducting initial staff on-site training, and scheduling on-call coverage for all Contractor's staff;
- (5) Respond to Individuals needs and issues while on site;
- (6) Conduct, record, review, and perform quality assurance checks of staff documentation;
- (7) Schedule and provide facilitation of monthly Service Planning Team meeting;
- (8) Review each Individual's Service Plan with direct care workers at least quarterly;
- (9) Ensure that Contractor's staff and program has all supplies necessary for daily life as well as emergency events; and
- (10) Liaison with DHS Contract Administrator.

d. **Activity Coordinator.**

Contractor shall provide one (1) FTE position for activity development, training and support called the Activity Coordinator. Contractor shall ensure its direct care staff are trained on the Activity Plan, and that Individuals can participate in activities seven days per week, even if the Activity Coordinator is not on site or available. Contractor's Activity Coordinator must provide services and tasks defined under OAR 411-054 and as described in this Contract. Contractor's Activity Coordinator services must include:

- (1) An activity evaluation for each Individual that addresses the following:
 - (a) Past and current interests;
 - (b) Current abilities and skills;
 - (c) Emotional and social needs and patterns;
 - (d) Physical abilities and limitations;
 - (e) Adaptations necessary for the Individual to participate; and
 - (f) Identification of activities needs to supplement the Individual's Behavior Support Plan.
- (2) Develop an individualized Activity Plan within 15 days of admission based on the Activity Plan evaluation for each Individual. The resulting Activity Plan must include structured and non-structured activities which meet the preferences of each Individual and are available on day and evening shifts, seven days per week. Activities may include, but are not limited to:
 - (a) Occupation or chore related tasks;
 - (b) Scheduled and planned events (e.g. entertainment, outings);
 - (c) Spontaneous activities for enjoyment or those that may help diffuse a behavior;
 - (d) One-to-one activities that encourage positive relationships between Individuals and Contractor's staff (e.g. life story, reminiscing, music);
 - (e) Spiritual, creative, and intellectual activities;
 - (f) Sensory stimulation activities;
 - (g) Physical activities that enhance or maintain a Individual's ability to ambulate or move; and

- (h) Outdoor activities.
- (3) Activity Plans must be reviewed, documented and updated on a monthly basis.
- (4) Contractor's direct care staff must receive training, as needed or as requested by DHS, to implement current Activity Plans.

e. **Behavior Coordinator.**

Contractor shall provide one (1) FTE Behavior Support Coordinator position for behavior consultation and support. Contractor's Behavior Support Coordinator must provide on-call services and be on-site at a minimum of five (5) days per week. Contractor's Behavior Support Coordinator is responsible for evaluating, developing, documenting, training, and providing Behavior Support Services, including but not limited to:

- (1) A behavior assessment which is started at screening and completed 10 business days after admission.
- (2) A Behavior Support Plan dedicated for each Individual within 15 days of admission. The Behavior Support Plan must:
 - (a) Address at a minimum the behaviors noted as referenced in the definition for Target Group;
 - (b) Identify, as needed, a crisis stabilization and emergency plan to prevent or minimize injuries, property damage, placement failure and emergency hospitalizations;
 - (c) Identify Individual-specific intervention and strategies that caregivers can implement; and
 - (d) Be reviewed each week by Contractor's Behavior Support Coordinator and modified as needed based on feedback from the direct caregivers, SPT and the Individual's responses.
- (3) Contractor's Behavior Support Coordinator is responsible for overseeing Behavior Support Plans and must:
 - (a) Be a member of the Service Planning Team;
 - (b) Assist in the screening of all admissions to the home;
 - (c) Provide Individual-specific coaching and group teaching for Contractor's direct care staff to ensure that direct care staff can implement the strategies defined in each Individual's Behavior Support Plan;
 - (d) Complete mandatory Behavior Support Plan forms including:
 - i. Progress Notes: SDS 0311; and
 - ii. Behavior Support Plan: SDS 0310

f. **Nursing.**

Contractor shall, in addition to nursing requirements of OAR 411-054-0447(4):

- (1) Provide one (1) FTE Registered Nurse (RN) and one (1) FTE Licensed Practical Nurse (LPN), with current Oregon licensure. Contractor shall ensure the RN and LPN provide an adequate number of nursing hours relevant to the census and acuity of the Individual population.
- (2) Ensure the following tasks are performed by Contractor's RN who is available continuously on call. Contractor's RN must:

- (a) Assist with screening prospective Individuals to determine if their needs can be met by the direct care staff and services, and assist in the development of the initial Service Plans.
 - (b) Ensure that each Individual receives a Nursing Service Plan that is aligned and embedded within the required Service Plan;
 - (c) Review each Nursing Service Plan monthly or more frequently if the Individual experiences a change of condition;
 - (d) Provide or ensure that each direct care staff has the training needed to support each Individual's Nursing Service Plan;
 - (e) Ensure delegation, teaching and documentation of tasks of nursing care as regulated by OAR Chapter 851, Division 047;
 - (f) Provide a review of Contractor's pharmacy and medication system and ensure OAR 851-047-0000 compliance regarding the teaching of medication administration.
- (3) Ensure Contractor's RN provides focused assessments per 851-045-0030(f) to assist with development of initial Service Plan, admits, discharge, MARS, TARS and implementation of Individual Nursing Service Plans.
 - (4) Ensure Contractor's RN provides 'intermittent direct' nursing services within the scope of their license(s) to Individuals who require nursing services and the task cannot be delegated to caregivers until Contractor can arrange to have the nursing need provided by hospice, home health, a licensed health care provider or until the Individual is moved to a placement that can provide the required service.
 - (5) Contractor's LPN shall provide a review of Contractor's pharmacy and medication system and ensure OAR 851-047-0000 compliance regarding the teaching of medication administration. Contractor's LPN shall provide 'intermittent direct' nursing services within the scope of their license to Individuals who require nursing services and the task cannot be delegated to caregivers until Contractor can arrange to have the nursing need provided by hospice, home health, a licensed health care provider or until the Individual is moved to a placement that can provide the required service.

d. Social Services Worker.

Contractor shall provide one (1) FTE Social Services Worker for the provision of social services. This person must provide the following services:

- (1) Family support services, in-house peer support groups.
- (2) Coordinate with Case Manager to ensure smooth transitions into the community or other residential care settings.
- (3) Assistance with legal and financial issues including but not limited to court issues, representative payee services, and if needed providing application for guardianship.
- (4) Advocacy to assist Individuals in need of obtaining legal identification, immigration status resolution, hearings, starting or retaining benefits and access to needed community services including vocational or educational opportunities, volunteer groups, support groups and transportation.
- (5) Be a member of the Service Planning Team.
- (6) Evaluate each Individual to determine the severity of the addiction and where that individual falls in their recovery.

- (7) Make recommendations for the course of treatment required to assist the Individual in the recovery process which may include, but is not limited to, educational programs, one-on-one counseling, group counseling, or referrals for further intervention.
- (8) Collaborate with the Behavior Coordinator on behavior strategies specific to substance addiction.

8. General Health Service.

Contractor shall, through its Program Director, RN, or LPN, ensure:

- (1) Policy and protocols exist and are followed to ensure that an Individual's change of condition, and any required interventions are communicated to caregivers on each shift;
- (2) Individuals are assisted in accessing the health care services needed or to which Individuals are entitled from outside providers;
- (3) Transportation for local non-emergent transports are arranged or provided for by Contractor's facility as needed to meet health care needs, activity needs or to support interventions identified in the Service Plan; and
- (4) Community Attendants are arranged or provided during all local community activities and health related appointments to ensure the Individual's safety and that information needed for the Individual's Service Plan is exchanged.

9. Training.

Contractor shall, in addition to facility licensing requirements OAR 411-054 for training, provide:

- a. Individual-specific orientation to direct care staff, SPT members and other Contractor's staff to ensure that such staff are oriented to the Individuals service needs prior to an Individuals first day of placement.
- b. Person-centered training necessary to provide ADL care, medication administration, delegated nursing tasks, implement Behavior Support Plans, assist with activities and act as community attendants.
- c. A minimum of four (4) hours new employee orientation to all new Contractor's staff before such staff provide services.
- d. Line of sight supervision and orientation to new Contractor's staff for the first seven (7) days of on-site work with Individuals.
- e. Sixteen (16) hours total per year of in-service training on clinical and care giving practices that are relevant to the Individuals served and are above the training standards and hours required for Contractor's licensed service facility location. Hours spent on Individual-specific teaching needed for Service Plan implementation or training on regulatory, administrative or general safety issues such as infection control, or fire safety must not count towards the annual training hours required.

Contractor's Administrator, RN, LPN, Activity Coordinator, Social Services Worker, and Behavior Support Coordinator must receive a minimum of 16 hours Positive Behavior Support or Person-Centered Care Training within 60 days of hire by a DHS-approved training provider.

Contractor's Behavior Coordinator must meet the qualifications outlined in OAR 411-046-0180(5) and the continuing education requirements outlined in OAR 411-046-0210.

Contractor shall submit verification of completion of staff training with topics and presenters noted to the DHS Contract Administrator annually, or more frequently, as requested by DHS.

10. Coordination with Other Agencies.

Contractor shall ensure that Services are provided in compliance with pertinent regulations of other agencies which include but are not limited to OAR 411-054 and OAR 411-027.

11. Confidentiality.

Contractor shall ensure that a HIPAA-compliant release of information is signed by each Individual or their legal representative to ensure all members of the Service Planning Team have access to the information necessary to provide appropriate treatment Services.

12. Administrative Requirements.

- a. Contractor shall prepare and submit written notification to the DHS at least 90 days prior to a voluntary termination of this Contract to assure a smooth, safe transition of Individuals to another care setting.
- b. Contractor shall participate in DHS or DHS Designee review of Contractor's facility as requested by DHS.
- c. Contractor shall, in addition to "Exhibit B. 13. Records Maintenance, Access", ensure that all records are available for DHS review upon request.

13. 90 Day Review.

Contractor shall participate in initial program review 90 days after either Contract execution, an individual specific rate adjustment, or Contract amendment which may result in modifications to the rates, staffing and services described in this Contract.

EXHIBIT A

Part 2 Payment and Financial Reporting

1. Payment for Services.

- a. Payments shall be made to Contractor for services rendered to eligible DHS clients. The service reimbursement for each DHS clients shall be \$**TBD** per month for no more than **TBD (TBD)** clients per month.
- b. DHS will pay only for completed Work under this Contract.
- c. Subject to the conditions of this paragraph 1.c., DHS guarantees a minimum payment to the Contractor of one day at the rate described in DHS' Policy Transmittal for the acceptance of referrals made by DHS or its designee. Contractor agrees to provide services to at least one client eligible to receive services referred by DHS to Contractor during the term of this Contract. Contractor shall be entitled to payment of the guaranteed minimum amount as follows:
 - (1) If DHS fails to make any referrals to Contractor during the term of this Contract; or
 - (2) If, through the provision of services to any client referred to Contractor under this Contract, Contractor is not due an amount equal to at least the guaranteed minimum payment amount, thenContractor may, within 30 days of the expiration or termination date of this Contract, submit an invoice to DHS for payment which totals the guaranteed minimum amount, taking into account any moneys previously paid by DHS or due to the Contractor for services provided by Contractor to a client. However, if Contractor fails to submit an invoice to DHS within the required time, or Contractor has not fulfilled Contractor's obligation to provide services to at least one client referred to Contractor under this Contract, DHS shall have no further obligation to Contractor for payment of the guaranteed minimum amount.
- d. Contractor will neither accept nor solicit additional consideration from any source for services purchased under this Contract for eligible DHS or Area Agency on Aging (AAA) clients.
- e. Maintenance costs include rent, utilities and food (room and board). Payment for maintenance costs and any other authorized special needs are the responsibility of each client and are not a part of the purchases under this Contract. Clients, whose monthly income exceeds the maintenance total, as published by DHS, plus standard personal incidental allowance, must apply any balance to the cost of the

authorized service payment. ~~The service rate for DHS clients may not be more than rates charged private paying clients with the same service needs.~~

- f. Regardless of facility location, no payment to buyer or lessee of the facility will be made until buyer or lessee has received a license and a contract from DHS. DHS will continue payment for Contractor's services no more than 30 days following termination of licensure.

- 2. **Travel and Other Expenses.** DHS shall not reimburse Contractor for any travel or additional expenses under this Contract.

EXHIBIT A

Part 3 Special Provisions

1. Confidentiality of Information.

a. Client Information:

- (1) All information as to personal facts and circumstances obtained by the Contractor on the client ("Client Information") shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her guardian, or the responsible parent when the client is a minor child, or 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.
- (2) The use or disclosure of Client Information shall be limited to persons directly connected with the administration of this Contract. Confidentiality policies shall be applied to all requests from outside sources.
- (3) If Contractor, or any of its officers, directors, employees, agents, or subcontractors receives or has access to confidential Social Security Administration (SSA), Federal Tax Information (FTI) or Criminal Justice Information System (CJIS) records in the performance of Work under this Contract, Contractor shall comply, and ensure that all of Contractor's officers, directors, employees, agents and subcontractors comply, with the following provisions:
 - (a) With respect to SSA records:
 - (i) Provide a current list of employees and employees of any agent or subcontractor with access to SSA records;
 - (ii) Adhere to the same security requirements as employees of DHS;
 - (iii) Abide by all relevant Federal laws, restrictions on access, use, disclosure, and the security requirements contained within DHS' agreement with SSA;
 - (iv) Provide its employees and agents the same security awareness training as DHS employees; and
 - (v) Include the provisions of this Section 1.a.(3)(a) in any subcontract.
 - (b) With respect to Federal Tax Information (FTI), as defined in IRS Publication 1075:
 - (i) Contractor and its officers, directors and employees with access to, or who use FTI provided by DHS must meet the background check requirements defined in IRS Publication 1075;
 - (ii) Any FTI made available to Contractor shall be used only for the purpose of carrying out the provisions of this Contract. Contractor shall treat all information contained in FTI as confidential and that information shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited;
 - (iii) Contractor shall account for all FTI upon receipt and shall properly store all FTI before, during, and after processing. In addition, all FTI related output and products will be given the same level of protection as required for the source material;

- (iv) No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the IRS;
 - (v) Maintain a list of employees who are authorized access to FTI. Such list will be provided to DHS and, upon request, to the IRS reviewing office; and
 - (vi) Include the provisions of this Section 1.a.(3)(b) in any subcontract.
- (c) With respect to Criminal Justice Information Services (CJIS) information, Contractor shall:
- (i) Meet the same training and certification criteria required by governmental agencies performing a similar function, and shall be subject to the same extent of audit review as are local user agencies;
 - (ii) Acknowledge, via signing of the CJIS Security Addendum Certification page, and abide by all aspects of the CJIS Security Addendum approved by the Director of the FBI, acting for the U.S. Attorney General, as referenced in Title 28 CFR 20.33 (a)(7). Modifications to the CJIS Security Addendum shall be enacted only by the FBI; and
 - (iii) Include the provisions of this Section 1.a.(3)(c) in any subcontract.
- (d) Failure to abide by any of the requirements in this subsection could result in criminal or civil penalties and result in termination of this Contract.
- (e) Contractor may be subject to periodic and ongoing security reviews to ensure compliance with the requirements of Section 1.a.(3).

(4) Except as prohibited by Section 1.a.(3) above, DHS, Contractor and any subcontractor will share information as necessary to effectively serve DHS clients.

b. Non-Client Information:

- (1) Each Party acknowledges that it and any of its officers, directors, employees and agents may, in the course of performing its responsibilities under the Contract, be exposed to or acquire information that is confidential to the other Party. To the extent permitted by law, any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of the Contract that reasonably could at the time of its disclosure be understood to be confidential shall be deemed to be confidential information of the originating Party (“Confidential Non-Client Information”).
- (2) Confidential Non-Client Information shall be deemed not to include information that:
 - (a) Is or becomes (other than by disclosure by the Party acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;
 - (b) Is furnished by the originating Party to others without restrictions similar to those imposed on the receiving Party under the Contract;
 - (c) Is rightfully in the receiving Party’s possession without the obligation of nondisclosure prior to the time of its disclosure by the originating Party under the Contract;
 - (d) Is obtained from a source other than the originating Party without the obligation of confidentiality;
 - (e) Is disclosed with the written consent of the originating Party; or

- (f) Is independently developed by the receiving Party's officers, directors, employees and agents who can be shown to have had no access to the Confidential Non-Client Information.
- (3) Nondisclosure. The receiving Party shall hold all Confidential Non-Client Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; shall not sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Non-Client Information to third parties; shall not use Confidential Non-Client Information for any purposes whatsoever other than as contemplated by this Contract or reasonably related thereto; and shall advise any of its officers, directors, employees and agents that receive or have access to the Confidential Non-Client Information of their obligations to keep Confidential Non-Client Information confidential. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Non-Client Information if the receiving Party can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, in which case the receiving Party shall notify the originating Party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.410 to 192.505. The receiving Party shall notify the originating Party of a public records request five days prior to the disclosure.
- c. Upon request and pursuant to the instructions of DHS, Contractor shall return or destroy all copies of Confidential Information, and Contractor shall certify in writing the return or destruction of all Confidential Information.
- d. "Client" means any individual, family or Provider:
 - (1) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;
 - (2) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;
 - (3) Who is under the custody, care, or both of the Agency; or
 - (4) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

2. 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 may 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 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. Upon identification, by any party to this Contract, of any circumstance which may require an amendment to this Contract, 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 24. "Amendments; Waiver; Consent." of this Contract.

3. Contractor Requirements to Report Abuse of Certain Classes of Persons.

- a. Contractor shall comply with, and cause its employees, agents and subcontractors to comply with, the applicable laws for mandatory reporting of abuse including but not limited to abuse of the following classes of persons in Oregon:
 - (1) Children (ORS 419B.005 through 419B.045);
 - (2) Elderly Persons (ORS 124.055 through 124.065);
 - (3) Residents of Long Term Care Facilities (ORS 441.630 through 441.645);
 - (4) Adults with Mental Illness or Developmental Disabilities (ORS 430.735 through 430.743).
- b. In addition to the requirements of Section 3.a., if law enforcement is notified regarding a report of child abuse, Contractor shall also notify the local Child Protective Services Office of DHS within 24 hours. If law enforcement is notified regarding a report of abuse of elderly, long term care facility residents, adults with mental illness or developmental disabilities, the Contractor shall also notify the local Aging and People with Disabilities Office of DHS within 24 hours.
- c. If known, the abuse report should contain the following:
 - (1) The name and address of the abused person and any people responsible for that person's care;
 - (2) The abused person's age;
 - (3) The nature and the extent of the abuse, including any evidence of previous abuse;
 - (4) The explanation given for the abuse;
 - (5) The date of the incident; and
 - (6) Any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.

4. Background Checks.

Contractor shall verify that any employee working with DHS clients referred by DHS has not been convicted of any of the following crimes: child or elderly abuse, offenses against persons, sexual

offenses, child neglect, or any other offense bearing a substantial relation to the qualifications, functions or duties of an employee scheduled to work with DHS' client. Contractor shall establish verification by:

- (1) Having the applicant as a condition of employment, 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 an "Oregon only" 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 employee has listed convictions, and whether these convictions pose a risk to working safely with DHS clients. If Contractor notes a conviction from any of the above listed crimes on the applicant/employee's record, and Contractor chooses to hire the employee/applicant, Contractor shall confirm in writing, the reasons for hiring the individual.

These reasons shall address how the applicant/employee is presently suitable or able to work with referred DHS clients in a safe and trustworthy manner. Contractor will place this information, along with the applicant/employee's criminal history check, in the employee's personnel file.

The criminal history check procedures listed above also apply to Contractor. Contractor shall establish a personal personnel file and place Contractor's criminal history check in named file for possibility of future DHS review.

5. **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.
6. **Media Disclosure.** The Contractor will not provide information to the media regarding a recipient of services purchased under this Contract without first consulting the DHS office that referred the child or family. The Contractor will make immediate contact with the DHS office when media contact occurs. The DHS office will assist the Contractor with an appropriate follow-up response for the media.
7. **Nondiscrimination.** The Contractor must provide services to DHS clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

EXHIBIT B

Standard Terms and 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. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. This Section shall survive expiration or termination of this Contract.
- 2. Compliance with Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor and the Contract. Agency's performance under the Contract is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, incorporated by reference herein. This Section shall survive expiration or termination of this Contract.
- 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, as defined in ORS 670.600. 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) The obligations set forth in this Contract, when executed and delivered, shall be valid and binding obligations 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. Payment Method. Payments under this Contract will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other DHS Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, Contractor shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. Contractor shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Contract. Contractor shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or the Contractor elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the Contractor shall provide the changed information or designation to DHS on a DHS-approved form. DHS is not required to make any payment under this Contract until receipt of the correct EFT designation and payment information from the Contractor.

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 UNLESS CONTRACTOR PROVIDES A WRITTEN OBJECTION WITHIN 14 CALENDAR DAYS FROM THE DATE OF THE NOTICE. ABSENT TIMELY WRITTEN OBJECTION, CONTRACTOR HEREBY REASSIGNS TO DHS ANY RIGHT CONTRACTOR MAY HAVE TO RECEIVE SUCH PAYMENTS. IF CONTRACTOR PROVIDES A TIMELY WRITTEN OBJECTION TO DHS' WITHHOLDING OF SUCH PAYMENTS, THE PARTIES AGREE TO CONFER IN GOOD FAITH REGARDING THE NATURE

AND AMOUNT OF THE OVERPAYMENT IN DISPUTE AND THE MANNER IN WHICH THE OVERPAYMENT IS TO BE REPAID. DHS RESERVES ITS RIGHT TO PURSUE ANY OR ALL OF THE REMEDIES AVAILABLE TO IT UNDER THIS CONTRACT AND AT LAW OR IN EQUITY INCLUDING DHS' RIGHT TO SETOFF.

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 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- c. In the event that Work Product 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.
- d. In the event that Work Product 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. CONTRACTOR SHALL DEFEND (SUBJECT TO ORS CHAPTER 180), 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.

THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS CONTRACT.

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; or
 - (4) exercise of its right of recovery of overpayments under Section 7 of Exhibit B.

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 recipient of services under this Contract "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 to Contractor, or at such later date as DHS may establish in such notice, if Contractor is in default under Section 10.a.
 - (3) **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract upon 30 days written notice to DHS, or at such later date as Contractor may establish in such notice, if DHS is in default under Section 10.c. and DHS fails to cure such default within 30 calendar days after DHS receives 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 DHS' property that is in the possession or under the control of Contractor at that time. This Section 10.e.(5) survives the expiration or termination of this Contract.
- (6) Effect of Termination: Upon receiving a notice of termination of this Contract, or upon issuing a notice of termination to DHS, Contractor shall immediately cease all activities under this Contract, unless in a notice issued by DHS, DHS expressly directs otherwise.

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. INDEMNITY, 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.

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 longest 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.** No party is responsible for delay or default caused by an event beyond its reasonable control. DHS may terminate this Contract, without liability to Contractor, upon written notice after reasonably determining the delay or default reasonably prevents performance of 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. **Subcontracts; Assignment; Successors.** Contractor shall not assign, transfer, or subcontract rights or responsibilities under this Contract in whole or in part, without the prior written approval of DHS. This Contract’s provisions are binding upon and inure to the benefit of the parties to this Contract and their respective successors and assigns.
19. **No Third Party Beneficiaries.** DHS and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. 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. This Section shall survive expiration or termination of this Contract.
20. **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. This Section shall survive expiration or termination of this Contract.
21. **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. 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 of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

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

This Section shall survive expiration or termination of this Contract.

22. **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.
23. **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.

- 24. 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 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. This Section shall survive the expiration or termination of this Contract.
- 25. Contractor's Failure to Perform.** Contractor's failure to perform the statement of work specified in this Contract or to meet the performance standards established in this Contract, may result in consequences that include, but are not limited to:
- a.** Reducing or withholding payment under this Contract;
 - b.** Requiring Contractor to perform at Contractor's expense additional work necessary to perform the statement of work or meet performance standards; and
 - c.** Declaring a default of this Contract and pursuing any available remedies for default, including termination of the Contract as permitted in Section 10. Default; Remedies; Termination of this Contract.

EXHIBIT C

INSURANCE REQUIREMENTS

Contractor shall obtain at Contractor's expense the insurance specified in **this section prior** to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide 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. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** per occurrence. Annual aggregate limit shall not be less than **\$1,000,000**

PROFESSIONAL LIABILITY:

Required **Not required**

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than **\$1,000,000** per occurrence. Annual aggregate limit shall not be less than **\$1,000,000**. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED:

The Commercial General Liability insurance and Automobile liability insurance required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, (iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The contractor or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Section.

EXHIBIT D

Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45 CFR 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 require 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, as amended, (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, and (j) 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 U.S.C. 14402.
2. **Equal Employment Opportunity.** If this Contract, including amendments, is for more than \$10,000, then Contractor shall comply and require 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 require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), 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, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and require 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 require 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 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Contract, 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 require 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.
- d. 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.
- e. No part of any federal funds paid to Contractor under this Contract shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.
- f. No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

- 6. Resource Conservation and Recovery.** Contractor shall comply and require 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 U.S.C. 6901 et. seq.). Section

6002 of that Act (codified at 42 U.S.C. 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.

7. Audits.

- a. Contractor shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
- b. If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year, Contractor shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to DHS within 30 days of completion. If Contractor expends less than \$750,000 in a fiscal year, Contractor is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, "Records Maintenance, Access".

8. 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.

9. 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) Require 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; and (x) Violation of any provision of this subsection may result in termination of the Contract.

10. **Pro-Children Act.** Contractor shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
11. **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 U.S.C. 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 U.S.C. Section 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
 - b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 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 U.S.C. § 1396a(a)(68).
12. **Agency-based Voter Registration.** If applicable, 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.
13. **Disclosure.**
 - a. 42 CFR Part 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or

sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. Contractor shall make the disclosures required by this Section 13. to DHS. DHS reserves the right to take such action required by law, or where DHS has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

14. Federal Intellectual Property Rights Notice. The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Contract, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The Contractor agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

EXHIBIT E



**Resident Discharge Report
Specific Need Contract**

This form is to be completed electronically by the Specific Need provider and emailed to apd.admissions@state.or.us

Completing this form does not negate providers from contacting their local office, including the Case Management and Licensing Unit. Submit this form within **three (3) days** following the resident's move, in the event of **death** or **consumer choice**. For Involuntary Evictions, submit this form within **24 hours** of issuing the involuntary notice. By submitting this form, the provider is in agreement that the Specific Need discharge process has been followed.

Provider information					
Date of submission:	Provider name:			Provider medicaid no.:	
Name of person submitting form:			Phone/Email:		
New census:					
Vacancy is (<i>select all that apply</i>): Shared room Single room Male Female Either					
Case information					
Resident name:			Medicaid prime no.:		
Medicaid case manager:					Case manager notified
Notification has been made to:					
Resident	Guardian/representative	Other:			
Reason for discharge					
Mark one of these three areas:					
Death	Date of death:				
Consumer choice	Date of move:		New location:		
Involuntary move-out	Date notice was served:				
Name of local office staff who received notice:					

Resident Discharge Report Instructions

1. The provider completes the Resident Discharge Report, form number 492, and submits it by email to the APD admissions mailbox (apd.admissions@state.or.us).
2. Submitting a 492 form notifies Central Office Medicaid contract team of the vacancy or potential vacancy in the Specific Need facility.
3. In addition to completing this form, providers will continue to contact Department of Human Services (DHS) designee regarding the individual's discharge status.
4. Providers will receive a timely e-mail acknowledgement from Central Office that the 492 was received.
5. The 492 form should be submitted within **3 days** of a discharge due to death or consumer choice; within **24 hours** if the provider is issuing an involuntary move-out notice.