

**STATE OF OREGON CONTRACT FOR THE
PURCHASE OF SERVICES
("Contract")**

This Contract is between the State of Oregon acting by and through its Department of Consumer and Business Services, Oregon Health Insurance Marketplace, hereafter called **Agency**, and

Contractor
Contact
Address
City, OR XXXXXXX
Telephone: XXX-XXX-XXXXX
E-Mail: XXXXXXX

Hereafter called **Contractor** or Grantee

Agency's Contract Administrator for this Contract is:

XXXX
Department of Consumer and Business Services
Oregon Health Insurance Marketplace
350 Winter Street NE
Salem, OR 97301
Telephone: XXX-XXX-XXXX
E-Mail: xxxxxx.xxxx@oregon.gov

This Contract is effective on the date it has been signed by all parties and all required State of Oregon approvals have been obtained. This Contract expires on June 30, 2017. The parties may extend the term of this Contract.

Contractor agrees to perform, and Agency agrees to pay for, the services and deliverables described in section 1 (the "Services").

1. **GENERAL INFORMATION.**

The Agent Storefront Program will provide promotion, funding, and support for qualified, resident insurance agents and agent organizations with the goal of helping educate and enroll Oregonians in Oregon's Health Insurance Marketplace. The Marketplace will coordinate the efforts of grantees statewide.

Contractor shall perform Services as described below.

A. Services

Contractor Responsibilities

Contractor shall:

1. Endorsement Agents

Endorsement agents shall:

- a. Use their communication channels, such as email lists (etc.), to reach Oregonians with information about the importance, benefit, and process of shopping for and enrolling in health insurance through the Marketplace.
- b. Attend DCBS Agent Summit on [date] in Salem. Attendees will receive [five] hours of CE credits.
- c. Participate in monthly community partner collaborative meetings facilitated by the Oregon Health Authority. These calls will help agents establish and build relationships with community organizations that specialize in Oregon Health Plan outreach/sign-ups, encouraging warm hand-offs and referrals.
- d. Participate in virtual meetings and trainings. (The type and frequency of these meetings and trainings will be contingent on the category of grant(s) awarded.)
- e. Use and distribute DCBS-approved – and mostly customizable – educational materials.
- f. Track and report basic Storefront metrics to DCBS on a monthly basis. A survey form will be provided. Metrics requested may include but are not limited to: number of people assisted, number of QHP enrollees, number of OHP enrollees (if applicable), referral sources, marketing/promotion efforts conducted and results. (Metrics reported will be contingent on the category of grant(s) awarded.)
- g. Participate in DCBS-issued survey at the end of open enrollment to provide feedback on what worked, what didn't and what else DCBS should consider for future programs.
- h. Sign a code of conduct agreement. DCBS requires that grantees meet the highest standards in the industry or business most closely involved in providing the appropriate goods or services.

2. Outreach Agents

Outreach agents shall:

- a. Meet all requirements listed for “endorsement” agents (see above)
- b. Create a plan to reach and educate their community about the importance of shopping for, and enrolling in, health insurance.
 - o Outreach should highlight the benefits of shopping on the Marketplace, including the opportunity to compare plans and access subsidies to help pay for coverage.
 - o The plan should identify priority audiences and outline strategies/tactics to reach them.
 - o The plan will need to be approved by DCBS.
- c. Implement the outreach plan with high-level support from the marketing and/or advertising firm(s).

3. Enrollment Agents

Enrollment agents shall:

- a. Meet all requirements listed for “endorsement” agents (see above)
- b. Provide a brick-and-mortar enrollment center during open enrollment (and through extended enrollment if necessary), which can be your current place of business. Enrollment centers must include private spaces for one-on-one consultations. Ideally, the Storefront will be located near public transportation, provide free parking and offer handicap accessibility.
- c. Prominently place co-branded signage to help visitors locate the enrollment facility.
- d. Have at least 12 designated storefront hours per week (with co-branded signage outside and during which walk-ins are welcome). Ideally, enrollment agents will be a storefront during all normal business hours.
- e. Provide clients free, confidential help to shop and enroll in private coverage through HealthCare.gov.

Agents are strongly encouraged to provide Medicaid enrollment assistance, but must, at a minimum, refer Oregon Health Plan-eligible clients to a designated OHP-enrollment assister (a list of local partners will be provided).

Agency Responsibilities

Agency responsibilities will vary depending upon categories awarded.

- 1. For endorsement agents, Agency shall provide key referrals, exposure and special programming and promotional materials.
- 2. For outreach agents, Agency shall provide the benefits offered to the endorsement agents and planning.

In addition, Agency shall provide planning and implementation counsel and support from a marketing and/or advertising firm and co-branded advertising on Twitter and Facebook targeting grantee’s community

- 3. For enrollments agents, Agency shall provide the benefits offered to the outreach agents. The main benefit is to help agents maintain an enrollment center, pay for staffing, and open door hours during open enrollment.

2. COMPENSATION

The maximum not to exceed amount available for payment to Contractor under this section is \$XXXXXX.

- A. Grantee shall only submit monthly invoices requesting payment to Contract Administrator.
- B. Each monthly invoice must provide full itemization and indicate cost per deliverable on each invoice.
- C. Agency shall pay Contractor following Agency's acceptance, review and approval of invoices submitted.
- D. Agency may pay for start up costs.
- E. Agency may make interim payments.

3. GENERAL TERMS AND CONDITIONS.

A. INTELLECTUAL PROPERTY & OPEN SOURCE; TITLE TO GOODS.

- 1. The Agency and Contractor each acknowledge that performance of this Contract may result in discovery, development of inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer related know how, data and original works of authorship (collectively, the "Work Product"). Contractor agrees that all Work Products which are protected by copyright are "works made for hire," as that term is defined in the United States Copyrights Act, with all copyrights in the Work Product owned by the Agency. Contractor hereby irrevocably assigns to the Agency all of its copy rights in and to all Work Products. Contractor shall execute such documents and instruments as the Agency may reasonably request in order to record or perfect the assignments required under this Section IIIA and to fully vest such rights in Agency. In the event any right (including without limitation, any moral right) in such Work Products cannot be assigned, Contractor hereby waives enforcement anywhere in the world of such rights against Agency and exclusively licenses such right to Agency.
- 2. If the Work Product is third party intellectual property, Contractor shall secure on the Agency's behalf and in the name of the Agency, 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 to authorize others to do the same on the Agency's behalf.

B. REPRESENTATIONS AND WARRANTIES.

- 1. Contractor has the authority to enter into and perform in accordance with this Contract and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;

2. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this Contract, faithfully has complied with:

(i) All tax laws of this state, 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 this state 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 this state 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.

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 and perform Services in a timely, professional and workmanlike manner in accordance with the highest standards applicable to Contractor's industry, trade or profession;

4. Contractor is and shall be, at all times during the term of this Contract, qualified, professionally competent, and duly licensed to perform Services; and

5. When used as authorized by this Contract, no Work Product infringes nor will Agency's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.

The warranties specified in this section are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and shall be interpreted broadly to give Agency the greatest warranty protection available.

C. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.

- i. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time. Not to limit the generality of the foregoing, Contractor expressly shall comply with the following laws, regulations and executive orders, if applicable to the Contract: Laws protecting privacy and security, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPPA). As amended by the American Recovery

and Reinvestment Act of 2009 (ARRA) and the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628, including but not limited to the notice of breach of security provisions; and all regulations and administrative rules established pursuant to the foregoing laws. Additionally:

ii.

1. a. Contractor certifies that it is in full compliance with the regulations protecting the privacy and security of individually identifiable health information under HIPPA and the federal privacy rule there under in 45CFR parts 160 through 164 (the Federal Privacy Rule)
- b. Contractor may provide Protected Health Information (PHI) to Agency consistent with subsections (c) through (f) in this Section III.C.1 in addition to summary information upon Agency's request. Summary information provided to Agency may only be use for the following purposes:
 - 1.1 Performing contract administration functions which Agency performs for the Contract; or,
 - 1.2 Modifying, amending or terminating the Contract.
- c. Agency may authorize Contractor to disclose PHI to Agency for the purposes related to reviewing potential conflicts of interest.
- d. Contractor may disclose PHI to Agency for purposes related to conflicts of interest resolution or performing contract administration functions.
- e. Contractor represents and warrants that its privacy practices are in compliance with Federal Privacy Rule and all other federal privacy law.
- f. If Agency notifies Contractor that Agency has elected to be a "covered entity" within the meaning of HIPPA, Contractor may disclose to Agency upon request such PHI as HIPPA permits to be disclosed to a covered entity.

iii. Agency's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

iv. Contractor's Compliance with Tax Laws.

1. Contractor must, 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 this state. For the purposes of this Section, "tax laws" includes all the provisions described in subsection B.2. (i) through (iv) of this Contract.
2. Any violation of subsection 1 of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty, in subsection B.2 of this Contract, that Contractor has complied with the tax laws of this state and the applicable

tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle [Agency/the State] to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- a. Termination of this Contract, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Agency shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing a replacement contractor.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

D. AMENDMENTS.

- i. All amendments to this Contract are subject to OAR 125-247-0805 and OAR 137-047-0800.
- ii. Agency anticipates extending this contract to continue Services beyond the initial term.
- iii. Agency anticipates adding funds.

E. TIME IS OF THE ESSENCE.

Contractor agrees that time is of the essence in the performance of this Contract.

F. FORCE MAJEURE.

Neither Agency nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. Agency may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

G. INSURANCE.

Contractor shall obtain the insurance required under section 4 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

H. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

i. Contractor shall perform all Services as an independent Contractor. Although Agency may (a) determine and modify the delivery schedule for Services to be performed and (b) evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. Contractor certifies, represents and warrants that Contractor is an independent contractor of Agency under all applicable State and federal law. Contractor is not an "officer", "employee", or "agent" of Agency as those terms are used in ORS 30.265.

ii. If Contractor is currently performing work for State or the federal government, Contractor by signature to this Contract represents and warrants: Contractor's performance of this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's performance of this Contract.

iii. Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract, and unless required by prevailing federal law or regulations, Agency will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

I. INDEMNIFICATION.

i. **GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.**

ii. **INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 3.I.i, CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY STATE, ITS AGENCIES, OFFICERS,**

DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEM DELIVERED UNDER THIS CONTRACT BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR AGENCY'S REASONABLE USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY ("INFRINGEMENT CLAIM"); PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

iii. STATE SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS AND INFRINGEMENT CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, STATE, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. STATE MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN CHOICE AND AT ITS OWN EXPENSE AT ANY TIME STATE DETERMINES IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF STATE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

J. ASSIGNMENT OF ANTITRUST RIGHTS.

i. CONTRACTOR IRREVOCABLY ASSIGNS TO STATE ANY CLAIM FOR RELIEF OR CAUSE OF ACTION WHICH CONTRACTOR NOW HAS OR WHICH MAY ACCRUE TO CONTRACTOR IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO CONTRACTOR FOR THE PURPOSE OF CARRYING OUT CONTRACTOR'S OBLIGATIONS UNDER THIS CONTRACT, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

ii. CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR'S DUTIES UNDER THIS CONTRACT TO IRREVOCABLY ASSIGN TO STATE, AS THIRD PARTY BENEFICIARY, ANY RIGHT, TITLE OR INTEREST THAT HAS ACCRUED OR WHICH MAY ACCRUE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE SUBCONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE SUBCONTRACTOR'S OBLIGATIONS TO CONTRACTOR IN PURSUANCE OF THIS CONTRACT, INCLUDING, AT STATE'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

K. EVENTS OF BREACH.

i. Breach by Contractor. Contractor breaches this Contract if:

- a. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- b. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice; or
- c. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, and Contractor fails to cure the breach within fourteen (14) calendar days after Agency delivers notice of breach to Contractor or a longer period as Agency may specify in the notice.

ii. Breach by Agency. Agency breaches this Contract if:

- a. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure its failure to pay within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice; or
- b. Agency commits any material breach of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and Agency fails to cure the breach within fourteen (14) calendar days after Contractor delivers notice of breach to Agency or a longer period as Contractor may specify in the notice.

L. REMEDIES.

i. State's Remedies. If Contractor is in breach under section 3.K.i, then in addition to the remedies afforded elsewhere in this Contract, State shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages. State may, at Agency's option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:

- a. Termination of this Contract under section 3.M.ii.;
- b. Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or
- d. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to State's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in breach under section 3.K.i, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to section 3.M.ii.a.

ii. Contractor's Remedies. If Agency terminates this Contract for convenience under section 3.M.ii.a, or if Agency is in breach under section 3.K.ii and whether or not Contractor elects to exercise its right to terminate this Contract under section 3.M.iii, Contractor's sole remedy is one of the following, as applicable:

- a. For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced, and authorized expenses for Services completed and accepted by Agency less any claims State has against Contractor.
- b. For deliverable-based Services, a claim against Agency for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claims State has against Contractor.

If previous amounts paid to Contractor for Services and Goods exceed the amount due to Contractor under this section 3.L.ii, Contractor shall pay the excess amount to Agency immediately upon written demand.

iii. ATTORNEYS' FEES.

Except for defense costs and expenses pursuant to section 3.I, neither Agency nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.

M. TERMINATION.

i. **MUTUAL CONSENT.** This Contract may be terminated at any time by mutual written consent of the parties.

ii. Agency:

a. Agency may, at its sole discretion, terminate this Contract for its convenience upon 30 days written notice by Agency to Contractor.

b. Agency may, in its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as Agency may establish in the notice, upon the occurrence of any of the following events:

A. Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for Services;

B. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by Agency under this Contract is prohibited, or Agency is prohibited from paying for Services from the planned funding source; or

C. Contractor is in breach under section 3.K.i.

d. Agency may terminate Contract if grantee is late submitting reports to Agency or does not otherwise comply with the responsibilities required in the statement of work or with the terms of Contract

Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor under this section 3.M.ii.

iii. Contractor: Contractor may terminate this Contract immediately upon written notice to Agency, or at a later date as Contractor may establish in the notice, if Agency is in breach pursuant to section 3.K.ii.

N. ACCESS TO RECORDS.

Contractor shall retain, maintain, and keep accessible all records relevant to this Contract ("Records") for minimum of six (6) years, or a longer period as may be required by applicable law, following Contract termination or full performance, the period required by applicable law following Contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract,

whichever ending is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. During this Record-retention period, Contractor shall permit State, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

O. NOTICES.

All notices required under this Contract shall be in writing and addressed to the party's authorized representative. For State, the authorized representative is the Agency contact person identified on page 1. Contractor's authorized representative is the contact person identified on page 1. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative.

P. GOVERNING LAW.

The Contract is governed by and construed in accordance with the laws of State, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Contract, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs the Goods sold under this Contract.

Q. VENUE; CONSENT TO JURISDICTION.

Any claim, action, suit or proceeding (collectively, "Proceeding") between State and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of State for Marion County; provided, however, if a Proceeding must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. **CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM.** Nothing in these provisions shall be construed as a waiver of State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

R. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.

- i. **SUBCONTRACTS.** Contractor shall not enter into any subcontracts for any of Services required under this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Contractor with respect to

sections 1, 3.A, 3.B, 3.E, 3.I, 3.J, 3.N, 3.P and 3.R. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

ii. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent. Agency's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.

iii. The provisions of this Contract are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.

S. THIRD PARTY BENEFICIARIES.

State and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Agency is an intended beneficiary of the terms of this Contract.

T. SEVERABILITY.

If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 this Contract did not contain the particular provision held to be invalid.

U. COUNTERPARTS.

This Contract 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 this Contract so executed shall constitute an original.

V. INTEGRATION AND MERGER.

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

W. AMENDMENTS; WAIVER.

This Contract may be amended to the extent permitted by applicable statutes and administrative rules and as the amendment scope and process may be further described in section 1, Statement of Services. No waiver, consent, or amendment of terms of this

Contract shall bind either party unless in writing and signed by Agency and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Contract shall not constitute a waiver by State of that or any other provision.

X. SURVIVAL.

In addition to all provisions which by their nature extend beyond Contract termination or full performance, the following provisions shall remain in effect beyond any Contract termination or full performance: sections 2, 3.A, 3.B, 3.G, 3.I, 3.J, 3.L, 3.N, 3.P, 3.Q, 3.S, 3.X and 4.

4 INSURANCE.

A. REQUIRED INSURANCE. Contractor shall obtain at Contractor's expense the insurance specified in this section 4 prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. 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.

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall 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.

ii. **PROFESSIONAL LIABILITY**

Required by Agency **Not required by Agency.**

Professional Liability. 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. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

\$1,000,000 Per occurrence limit for any single claimant; and

\$1,000,000 Per occurrence limit for multiple claimants

iii. **COMMERCIAL GENERAL LIABILITY.**

Required by Agency **Not required by Agency.**

Commercial General Liability. Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Bodily Injury/Death:

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants

AND

Property Damage:

- \$112,000 Per occurrence limit for any single claimant; and
- \$560,000 Per occurrence limit for multiple claimants

iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

Required by Agency **Not required by Agency.**

Automobile Liability. Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”).

v. POLLUTION LIABILITY.

Required by Agency **Not required by Agency.**

Pollution Liability Insurance covering Contractor’s liability for bodily injury, property damage and environmental damage resulting from either sudden or gradual accidental pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract.

w. EXCESS/UMBRELLA INSURANCE.

A combination of primary and excess/umbrella insurance is acceptable. If you are using excess/umbrella insurance to meet the minimum insurance requirement, your certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is “The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc.”

B. ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insured 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.

C. "TAIL" COVERAGE. If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either 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) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this section 4.C.

D. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days' written notice from this Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Agency.

E. CERTIFICATE(S) 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) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

5. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.

Contractor shall deliver Services in compliance with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). Contractor shall comply and cause all subcontractors to comply with the following:

A. Privacy and Security Of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and Agency for purposes directly related to the provision of Services. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate any applicable privacy rules.

B. Consultation and Testing If Contractor reasonably believes that Contractor's or Agency's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult with Agency. Contractor or Agency may initiate a request for testing of HIPAA transaction requirements, subject to available resources.

If Services performed or Goods delivered under this Contract require Contractor to have access to or use of any Agency computer system or other Agency Information Asset for which Agency imposes security requirements, Contractor shall comply and require subcontractors to comply with the information security requirements imposed under this section. "Information Asset" means all confidential information in any form (e.g., written, verbal, oral or electronic) which Agency determines requires security measures, including confidential information created by Agency, gathered for Agency, or stored by Agency for external parties. All other terms not defined in this section shall have the meaning used in 42 USC Section 17938 and 45 CFR Section 160.103.

C. All requirements imposed on Contractor under this section 5 shall also apply to its officers, employees, agents and subcontractors that have access to any Agency information computer system or other Agency Information Asset, and Contractor shall include these requirements in any subcontract that may provide such access by a subcontractor, its officers, employees or agents to any Agency computer system or other Agency Information Asset. Contractor shall:

- i. Cooperate with Agency in identifying Information Assets that will be utilized in the performance of Services or for the delivery of Goods and applicable security measures that will be undertaken to protect the Information Assets, and provide updated information to Agency within fourteen (14) calendar days of the date such information changes for any reason;
- ii. Implement security measures that reasonably and appropriately provide administrative, physical and technical safeguards that protect the confidentiality, integrity and availability of the Information Assets that it creates, receives, maintains or transmits on behalf of Agency. Contractor's security measures must be documented in writing and be available for review by Agency upon request. Agency's review of the reasonableness of security measures, as well as Contractor's compliance with Agency's assigned access control or security requirements, will take into account Contractor's physical, administrative, and technical capabilities related to security measures and the potential risk of unauthorized use or disclosure of Information Assets by Contractor, its officers, employees, agents or subcontractors.
- iii. Prevent any unauthorized access to or disclosure of Agency's information systems and information assets.
- iv. Take necessary actions to comply with Agency's determinations of the level of access that may be granted, as well as changes in level of access, or suspension or termination of access as determined by Agency;

- v. Keep any Agency-assigned access control requirements such as identification of authorized user(s) and access-control information in a secure location until access is terminated; monitor and securely maintain access by Contractor and its agents or subcontractors in accordance with security requirements or access controls assigned by Agency; and make available to Agency, upon request, all information about Contractor's use or application of Agency access-controlled computer systems or Information Assets.
- vi. Report to Agency any privacy or security incidents by Contractor, its officers, employees, agents or subcontractors that compromise, damage, or cause a loss of protection to Agency Information Assets. Contractor shall report in the following manner:
 - a. Report to Agency in writing within five (5) business days of the date on which Contractor becomes aware of such incident; and
 - b. Provide Agency the results of the incident assessment findings and resolution strategies

Contractor shall comply with Agency requests for corrective action concerning a privacy or security incident, and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information, if any.

D. If Agency determines that Contractor's security measures or actions required under section 5.C are inadequate to address the security requirements of Agency, Agency will notify Contractor. Agency and Contractor may meet to discuss appropriate security measures or action. If security measures or corrective actions acceptable to Agency cannot be agreed upon, Agency may take such actions as it determines appropriate under the circumstances. Actions may include but are not limited to restricting access to computer systems or Information Assets, or Agency amending or terminating the Contract.

E. Agency may request additional information from Contractor related to security measures, and may change, suspend or terminate access to or use of an Agency computer system or Information Assets by Contractor, its officers, employees, agents or subcontractors.

F. Wrongful use of Agency computer systems, wrongful use or disclosure of Information Assets by Contractor, officers, its employees, agents or its subcontractors may cause the immediate suspension or revocation of any access granted through this Contract, in the sole discretion of Agency. Agency may also pursue any other legal remedies provided under the law.

6. CONFIDENTIAL INFORMATION.

Contractor shall comply with ORS 646A and require subcontractors to comply with the information security requirements imposed under this section. "Information Asset" means all confidential information in any form (e.g., written, verbal, oral or electronic) which Agency

determines requires security measures, including confidential information created by Agency, gathered for Agency, or stored by Agency for external parties.

All requirements imposed on Contractor under this section 6 shall also apply to its officers, employees, agents and subcontractors that have access to any Agency information computer system or other Agency Information Asset, and Contractor shall include these requirements in any subcontract that may provide such access by a subcontractor, its officers, employees or agents to any Agency computer system or other Agency Information Asset. Contractor shall:

Cooperate with Agency in identifying Information Assets that will be utilized in the performance of Services or for the delivery of Goods and applicable security measures that will be undertaken to protect the Information Assets, and provide updated information to Agency within fourteen (14) calendar days of the date such information changes for any reason;

Implement security measures that reasonably and appropriately provide administrative, physical and technical safeguards that protect the confidentiality, integrity and availability of the Information Assets that it creates, receives, maintains or transmits on behalf of Agency. Contractor's security measures must be documented in writing and be available for review by Agency upon request. Agency's review of the reasonableness of security measures, as well as Contractor's compliance with Agency's assigned access control or security requirements, will take into account Contractor's physical, administrative, and technical capabilities related to security measures and the potential risk of unauthorized use or disclosure of Information Assets by Contractor, its officers, employees, agents or subcontractors.

Prevent any unauthorized access to or disclosure of Agency's information systems and information assets

Take necessary actions to comply with Agency's determinations of the level of access that may be granted, as well as changes in level of access, or suspension or termination of access as determined by Agency;

Keep any Agency-assigned access control requirements such as identification of authorized user(s) and access-control information in a secure location until access is terminated; monitor and securely maintain access by Contractor and its agents or subcontractors in accordance with security requirements or access controls assigned by Agency; and make available to Agency, upon request, all information about Contractor's use or application of Agency access-controlled computer systems or Information Assets.

Report to Agency any privacy or security incidents by Contractor, its officers, employees, agents or subcontractors that compromise, damage, or cause a loss of protection to Agency Information Assets. Contractor shall report in the following manner:

Report to Agency in writing within five (5) business days of the date on which Contractor becomes aware of such incident; and

Provide Agency the results of the incident assessment findings and resolution strategies.

Contractor shall comply with Agency requests for corrective action concerning a privacy or security incident, and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information, if any.

If Agency determines that Contractor's security measures or actions required under this section are inadequate to address the security requirements of Agency, Agency will notify Contractor. Agency and Contractor may meet to discuss appropriate security measures or action. If security measures or corrective actions acceptable to Agency cannot be agreed upon, Agency may take such actions as it determines appropriate under the circumstances. Actions may include but are not limited to restricting access to computer systems or Information Assets, or Agency amending or terminating the Contract.

AGENCY MAY REQUEST ADDITIONAL INFORMATION FROM CONTRACTOR RELATED TO SECURITY MEASURES, AND MAY CHANGE, SUSPEND OR TERMINATE ACCESS TO OR USE OF AN AGENCY COMPUTER SYSTEM OR INFORMATION ASSETS BY CONTRACTOR, ITS OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS.

WRONGFUL USE OF AGENCY COMPUTER SYSTEMS, WRONGFUL USE OR DISCLOSURE OF INFORMATION ASSETS BY CONTRACTOR, OFFICERS, ITS EMPLOYEES, AGENTS OR ITS SUBCONTRACTORS MAY CAUSE THE IMMEDIATE SUSPENSION OR REVOCATION OF ANY ACCESS GRANTED THROUGH THIS CONTRACT, IN THE SOLE DISCRETION OF AGENCY. AGENCY MAY ALSO PURSUE ANY OTHER LEGAL REMEDIES PROVIDED UNDER THE LAW.

7. CONTRACT DOCUMENTS.

This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits are attached hereto and incorporated herein by this reference.

8. CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;

B. The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403-200 to 403.250, ORS Chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

C. 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.

D. Contractor and Contractor’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;

E. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and

F. Contractor is / is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one). See section 2.D.ii.

Contractor (print Contractor’s name): _____

Authorized Signature: _____

By (print name): _____

Title: _____

Date: _____

Contact Person (Type or Print): _____

Contact Telephone Number: (_____) _____

Contact Fax Number: (_____) _____

Contact E-Mail Address: _____

9. SIGNATURE OF STATE’S AUTHORIZED REPRESENTATIVE.

State of Oregon acting by and through its Department of Consumer and Business Services
Oregon Health Insurance Marketplace

Reviewed By Signature: _____

By: Berri Leslie

Title: Administrator

Date: _____

Contract #: DCBS-XXXX-16

Contractor: XXXX

Executed By Signature: _____

By: Nancy A. Cody

Title: Designated Procurement Officer

Date: _____