

Dental Carrier Contract

DCBS Oregon Health Insurance Marketplace

This Dental Carrier Contract (“Contract”) is by and between the State of Oregon, by and through its Department of Consumer and Business Services, Health Insurance Marketplace (“DCBS” or “Marketplace”) and Dental Health Services (“Carrier”), a Washington for profit corporation located at 100 W. Harrison Street, Suite S440, South Tower, Seattle, Washington.

I. EFFECTIVE AND TERMINATION DATE

This Contract is effective January 1, 2020. It terminates December 31, 2020. DCBS and Carrier may, at any time by execution of a mutually agreed upon amendment to this Contract, extend the Contract beyond the termination date listed.

II. PURPOSE

The purpose of this Contract is to set forth terms and conditions under which Carrier will offer DCBS-certified Stand Alone Dental Plans (SADPs) for dental coverage during calendar year 2020.

III. CONTRACT DOCUMENTS

1. This Contract consists of this document together with the following exhibits and appendices, which are attached and incorporated into this Contract by this reference:

Exhibit A: Statement of Work

Exhibit B: Standard Terms and Conditions

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

2. In interpreting this Contract, its terms and conditions shall be construed as much as possible to be complementary. In the event of any conflict, the Contract documents shall be interpreted in the following descending order:
 - a) This Contract less all Exhibits,
 - b) Exhibit A (Statement of Work), and
 - c) Exhibit B (Standard Terms Conditions).

IV. CONTRACT ADMINISTRATORS

The Contract Administrator for DCBS is: Anthony Behrens; Senior Policy Advisor and Carrier Liaison; PO Box 14480 Salem, OR 97309-0405; (503) 983-1299; anthony.a.behrens@oregon.gov.

The Contract Administrator for Carrier is Tim Nekuza, Director of Compliance, Governance and Exchange Operations; Dental Health Services; 3833 Atlantic Avenue, Long Beach, CA 90802; (562) 276-1214; tnekuza@dentalhealthservices.com.

V. TAX CERTIFICATION

I, the undersigned representative of Carrier, hereby certify and swear under penalty of perjury that I am authorized to act on behalf of Carrier, that I have the authority and knowledge regarding Carrier’s payment of taxes, and that to the best of my knowledge, Carrier is not in violation of any Oregon Tax Laws.

For purposes of this certificate, “Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) 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.

Dental Health Services

By: Date:
Peter Richards, Chief Financial Officer
(This signature is for tax certification only; contract signature is below)

VI. CONTRACT SIGNATURES

In witness, the parties have caused this Contract to be executed by their duly authorized representatives.

Dental Health Services

By: Date:
Josh Nace, Vice President of Sales and Service

Oregon Department of Consumer and Business Services

By: Date:

EXHIBIT A
Statement of Work

1. DEFINITIONS

The following are definitions that apply to this Contract:

- 1.1.** “Affordable Care Act” or “ACA” means the provisions of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), together with any interim final or final federal regulations implementing the foregoing statute.
- 1.2.** “American Indian/Alaska Native” means a person who is a member of an Indian Tribe.
- 1.3.** “Benefit Design Standards” means coverage that provides for all of the following:
 - 1.3.1.** Essential Health Benefits as defined by OAR 836-053-0012; and
 - 1.3.2.** Cost-Sharing as described in 45 CFR 156.150.
- 1.4.** “Carrier” means the party to this Contract described in the opening paragraph of the Contract.
- 1.5.** “Carrier Intellectual Property” means any intellectual property owned by Carrier.
- 1.6.** “Certification” means the certification of a Dental Plan by the Marketplace as an SADP.
- 1.7.** “CMS” means the United States Department of Health and Human Services, Center for Medicare and Medicaid Services.
- 1.8.** “Cost-Sharing” means any expenditure required by, or on behalf of, an Enrollee with respect to EHBs; Cost-Sharing includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance-billing amounts for non-network providers, visit limits, and non-covered services.
- 1.9.** “DCBS” means the State of Oregon, Department of Consumer and Business Services.
- 1.10.** “Decertification” means the removal of an SADP’s Certification, making the Dental Plan ineligible for sale through the Marketplace.
- 1.11.** “Dental Plan” means a Health Plan offered in Oregon that offers a limited scope of dental benefits.
- 1.12.** “Division of Financial Regulation” or “DFR” means the Division of Financial Regulation of DCBS.
- 1.13.** “Eligible Employee” has the meaning given to the term in ORS 743B.005.
- 1.14.** “Enrollee” means a person enrolled in an SADP.
- 1.15.** “Essential Health Benefits” or “EHBs” has the meaning given that term in OAR 836-053-0012.
- 1.16.** “Federally Facilitated Marketplace” or “FFM” means the entity and health insurance exchange platform operated by CMS through which the Marketplace makes SADPs available for sale to Individuals, determines their eligibility, and enrolls them in SADPs.

- 1.17.** “Health Plan” has the meaning given to the term in ORS 741.300.
- 1.18.** “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- 1.19.** “Individual Plan” means an SADP for Qualified Individuals including dependents.
- 1.20.** “Individual Product Line” means Carrier’s entire line of Individual Plans.
- 1.21.** “Marketplace” means the health insurance exchange administered by DCBS in accordance with ORS 741.310.
- 1.22.** “Oregon Insurance Laws” means:
- 1.22.1.** The Oregon Insurance Code as defined in ORS 731.004 and its implementing administrative rules in OAR 836; and
 - 1.22.2.** DFR Bulletins implementing or interpreting the laws described in section 1.23.
- 1.23.** “Oregon Marketplace Laws” refers to laws of the state of Oregon pertaining to the establishment and operation of the Marketplace. The term includes, but is not limited to:
- 1.23.1.** Senate Bill 1 enrolled (2015), Chapter 3, 2015 Oregon Laws;
 - 1.23.2.** ORS chapter 741 as amended through 2018; and
 - 1.23.3.** All implementing administrative rules (including OAR chapter 945) related to the Marketplace.
- 1.24.** “Plan Year” means the consecutive 12-month period during which a Small Employer Plan provides coverage for dental benefits.
- 1.25.** “Policy Year” means the calendar year for which an Individual SADP provides coverage for dental benefits.
- 1.26.** “Producer” means a person who is licensed by DFR to sell, solicit, or negotiate the sale of an SADP.
- 1.27.** “Qualified Individual” means a person who has been determined eligible to enroll through the FFM in an Individual Plan.
- 1.28.** “Recertification” means the process of obtaining certification of an SADP for the calendar year immediately following a Certification or Recertification.
- 1.29.** “Records” means all financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Carrier, whether in paper, electronic or other form, that are pertinent to this Contract.
- 1.30.** “Service Area” means the geographic area or areas described in OAR 836-053-0063 in which Carrier offers an SADP.

- 1.31. “Small Business Health Options Program” or “SHOP” means a health insurance exchange for small employers as described in 42 U.S.C. 18031.
- 1.32. “Small Employer” has the meaning given that term under the ORS 743B.005.
- 1.33. “Small Employer Plan” means an SADP issued to a Small Employer.
- 1.34. “Small Employer Product Line” means Carrier’s entire line of SHOP-certified Small Employer Plans
- 1.35. “Stand-Alone Dental Plan” or “SADP” means a Dental Plan that is certified by the Marketplace and offered for sale through the FFM or Small Employer Health Options Program (SHOP).
- 1.36. “Third Party Intellectual Property” means any intellectual property owned by parties other than DCBS or Carrier.
- 1.37. “Work Product” means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Carrier delivers to DCBS pursuant to the work performed under this Contract.

2. STATE AND FEDERAL REQUIREMENTS

- 2.1. Carrier shall comply with the applicable provisions of the following:
 - 2.1.1. The ACA;
 - 2.1.2. Oregon Marketplace Laws;
 - 2.1.3. Oregon Insurance Laws;
 - 2.1.4. Any state or federal regulations implementing the foregoing laws; and
 - 2.1.5. Any other state and federal laws, regulations, or official agency written guidance applicable to Carrier as the issuer of an SADP.
- 2.2. Throughout the term of this Contract, Carrier shall hold a Certificate of Authority in good standing from DFR to offer Dental Plans in Oregon.
- 2.3. Carrier shall not, with respect to its SADPs, discriminate on the basis of race, color, national origin, disability, age, sex, gender identity or sexual orientation. Carrier will not have marketing practices or benefit designs that will discourage the enrollment of Individuals or Eligible Employees with significant health needs in its SADPs.

3. BENEFIT DESIGN STANDARDS AND SADPs

- 3.1. **Benefit Design** – Carrier shall ensure that each of its SADPs complies with the Benefit Design Standards, including the actuarial value requirements and the pediatric dental component of federally approved EHBs.
- 3.2. All SADPs must include, at minimum, coverage of the pediatric dental component of EHBs.
- 3.3. Cost-sharing for the pediatric dental component of EHBs in an SADP must be held to a separate out of pocket maximum that does not cross-accumulate to an Enrollee’s

qualified health plan.

- 3.4. Carrier may offer through the Marketplace up to six SADPs.
- 3.5. Carrier may submit for Certification an unlimited number of Dental Plans to offer outside the Marketplace.

4. SADP CERTIFICATION

4.1. *SADP Submission Process*

4.1.1. **DFR Approval** – Carrier shall obtain DFR’s approval of:

- 4.1.1.1. Rates, forms, and binders for each Individual Dental Plan for which Carrier seeks Certification.
- 4.1.1.2. Forms and binders for each Small Employer Dental Plan for which Carrier seeks Certification.

4.1.2. **Rate Adjustments** – Carrier may not adjust Individual Product Line rates during a Policy Year. Carrier may adjust Small Employer Product Line rates on a quarterly basis.

4.2. *Marketplace Certification Requirements*

At the request of Carrier, the Marketplace will certify an Individual Dental Plan as an SADP if Carrier obtains approval from DFR of the rates, forms, and binder and will certify a Small Employer Dental Plan as an SADP if Carrier obtains approval from DFR of the forms and binders.

4.3. *SADP Recertification*

Carrier shall follow the SADP Submission Process described in Section 4.1 for all SADPs for which it seeks Recertification.

4.4. *Marketplace Decertification of SADP*

The Marketplace may at any time decertify an SADP if the Marketplace determines that Carrier or SADP is no longer in compliance with the Marketplace’s Certification criteria.

4.4.1. Carrier may appeal Decertification of an SADP through the following process. Appeal requests must be submitted within 15 days the notice from DCBS informing Carrier of the Decertification. Carrier’s appeal request must be made in writing, and must provide thorough explanation of the grounds for appeal along with any supporting information. Valid appeal requests will be reviewed and decided upon by the Administrator of the Marketplace, within 14 days of receipt of the request. If Carrier is unsatisfied with the Administrator’s decision on its appeal, Carrier may seek additional review through a contested case hearing as provided under ORS 183.411 to 183.471.

4.4.2. Upon Decertification of an SADP, the Marketplace will provide notice of Decertification to:

- 4.4.2.1. Carrier;
 - 4.4.2.2. Enrollees in the SADP;
 - 4.4.2.3. The United States Office of Personnel Management if Carrier offers a multi-state QHP;
 - 4.4.2.4. CMS; and
 - 4.4.2.5. DFR.
- 4.4.3. In the event of a Decertification, Carrier shall not terminate coverage before giving notice to Enrollees, including information that displaced Enrollees will be given a special enrollment period to allow them to enroll in new SADPs.

5. STAFFING

- 5.1. Carrier shall identify key staff as primary Marketplace contact(s) responsible for oversight of Carrier's SADPs and shall provide the Marketplace with the name and contact information of such staff.
- 5.2. Carrier shall provide and maintain direct communication with Marketplace staff during the pendency of this Contract.
- 5.3. The Marketplace will identify and provide Carrier with the contact information of key staff.

6. AMERICAN INDIAN AND ALASKA NATIVE REQUIREMENT

- 6.1. Carrier shall comply with all applicable federal laws and regulations and all applicable requirements related to the provision of Dental Plan coverage to American Indians/Alaska Natives, including but not limited to the requirement to:
 - 6.1.1. Provide monthly enrollment periods for an American Indian/Alaskan Native enrolled in an Individual Plan;
 - 6.1.2. Treat health programs operated by the Indian Health Services, Indian tribes, tribal organizations, and Urban Indian organizations as the payer of last resort for services provided by such programs notwithstanding any federal, state, or local law to the contrary; and
 - 6.1.3. Comply with the Indian Health Care Improvement Act Sections 206 (25 USC 1621e) and 408 (25 USC 1647a).
- 6.2. If Carrier contracts with a federally recognized Indian Tribe or Indian health provider, Carrier shall provide a copy of the contract to the Marketplace.

7. PRODUCERS

Within seven business days of a request by the Marketplace, Carrier shall provide to the Marketplace:

- 7.1. The list of appointed producers maintained by Carrier pursuant to ORS 744.078(2).

- 7.2. The email address and telephone number for each of the producers on the list described in subparagraph 7.1.
- 7.3. A written explanation of Carrier's policies and procedures pertaining to the appointment of producers.

8. ADMINISTRATIVE CHARGE

- 8.1. The Marketplace will assess an administrative charge on Carrier on the tenth business day of each month following receipt of enrollment data reported by Carrier and verified by DFR. The Marketplace will calculate the administrative charge as set forth in OAR 945-030-0030(5)(b). Carrier shall pay the administrative charge as billed via electronic funds transfer to the Marketplace no later than the last business day of the month in which Carrier is billed. The Marketplace may offset overpayments against future assessments and may increase future monthly assessments to offset underpayments.
- 8.2. Carrier may not allocate the Administrative Charge only to those Enrollees who enroll through the Marketplace unless Carrier's Dental Plan business is limited to the Marketplace.

9. NONDISCRIMINATION

Carrier certifies that Carrier has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Carrier agrees, as a material term of the Contract, to maintain the policy and practice in force during the entire Contract term.

EXHIBIT B

Standard Terms and Conditions

1. Term

- 1.1.** Unless otherwise renewed, this Contract terminates December 31, 2020. Carrier is responsible for processing and payment of all claims with dates of service on or prior to the date of termination, including applicable grace periods and run out periods.
- 1.2.** DCBS and Carrier may, at any time and in the manner permitted by section 13, extend the Contract beyond the termination date listed.

2. Controlling Law/Venue

This Contract is to be construed according to the laws of the State of Oregon without regard to principles of conflicts of law, and applicable federal law. Any action or suit brought by the parties relating to this Contract must be brought and conducted exclusively in the Circuit Court of the State of Oregon for Marion County in Salem, Oregon or, if a claim must be brought in a federal forum, in the United States District Court for the District of Oregon. Carrier hereby consents to the personal jurisdiction of these courts, waives any objection to venue in these courts, and waives any claim that either forum is an inconvenient forum. Neither this section nor any other term of this Contract may be construed as a waiver by DCBS or the State of Oregon of any form of defense or immunity, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court.

3. Compliance with Applicable Law

- 3.1.** Carrier shall comply with all state and local laws, regulations, executive orders, administrative bulletins, and ordinances applicable to the Contract or to the performance of the work as they may be adopted, amended or repealed from time to time, including but not limited to the following:
 - 3.1.1.** Civil rights and employment laws including, but not limited to Titles VI and VII of the Civil Rights Act of 1964, Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, Executive Order 11246, the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975;
 - 3.1.2.** Laws protecting privacy and security, including, but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
 - 3.1.3.** Laws protecting benefits rights of veterans, including, but not limited to the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the Uniformed Services Employment and Reemployment Rights Act of 1994;
 - 3.1.4.** Laws providing for continuation and portability of benefits, including, but not limited to the Consolidated Omnibus Budget Reconciliation Act of

1986 (COBRA), HIPAA, and the American Reinvestment and Recovery Act of 2009;

- 3.1.5.** Medicare secondary payer laws, including, but not limited to the Social Security Number reporting requirements in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), 42 U.S.C. §1395y (b)(7);
- 3.1.6.** ACA;
- 3.1.7.** Any Oregon state laws corresponding to or implementing the above federal laws;
- 3.1.8.** 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;
- 3.1.9.** If Carrier is an insurance company, the Insurance Code as defined in ORS 731.004, or if Carrier is a health care service contractor within the meaning of ORS 750.005, the portions of the Insurance Code that ORS 750.055 applies to health care service contractors; and
- 3.1.10.** All regulations and administrative rules established pursuant to the foregoing laws.

These laws, regulations, executive orders, administrative bulletins, and ordinances are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated.

- 3.2.** Carrier shall comply with the federal laws as set forth or incorporated, or both, in this Contract and all other federal laws applicable to Carrier's performance under this Contract as they may be adopted, amended, or repealed from time to time.
- 3.3.** All provisions of the Contract are governed by DCBS's Rules (OAR Chapter 945) generally, in addition to any specific DCBS Rules cited herein. If the Contract's provisions conflict with DCBS's Rules, DCBS's Rules take precedence over the provisions of the Contract.
- 3.4.** To the extent a subcontractor is used to perform Carrier's duties under this contract, Carrier shall include provisions in its subcontracts requiring compliance with the laws described in the sections 3.1 to 3.3. Carrier shall enforce such provisions in connection with any violation of law by subcontractor that comes to the attention of Carrier.

4. Independent Contractor

- 4.1.** Carrier is not an officer, employee, or agent of DCBS as those terms are used in ORS 30.265 or otherwise.

- 4.2. If Carrier is currently performing work for DCBS, the State of Oregon, or the federal government, Carrier by signature to this Contract represents and warrants that Carrier's work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS Chapter 244.
- 4.3. Carrier is responsible for all federal and state taxes applicable to compensation paid to Carrier under this Contract and, unless Carrier is subject to backup withholding, DCBS will not withhold from such compensation any amounts to cover Carrier's federal or state tax obligations. Carrier is not eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation paid to Carrier under this Contract.
- 4.4. Carrier agrees and acknowledges that it is an independent contractor of DCBS for purposes of this Contract. Carrier shall perform all work as an independent contractor. DCBS reserves the right, to the extent permitted by this Contract, to (a) determine and modify the delivery schedule for all work to be performed and/or provided by Carrier pursuant to this Contract, (b) to establish minimum standards relevant to the work product to be supplied by Carrier pursuant to this Contract, and (c) to evaluate the quality of the work product provided by Carrier pursuant to this Contract, and (d) to decline work product that falls below the minimum standards provided by DCBS to Carrier pursuant to this Contract. However, DCBS may not and will not control the means or manner of Carrier's performance. Carrier is responsible for determining the appropriate means and manner of performing the work.

5. Representations and Warranties

- 5.1. Each person executing this Contract on behalf of Carrier hereby represents and warrants to DCBS that such person is duly authorized to execute this Contract and to bind Carrier to each of the terms and provisions hereof.
- 5.2. Carrier's Representations and Warranties. Carrier represents and warrants to DCBS that:
 - 5.2.1. Carrier has the power and authority to enter into and perform this Contract;
 - 5.2.2. This Contract, when executed and delivered, is a valid and binding obligation of Carrier enforceable in accordance with its terms;
 - 5.2.3. The execution and performance of this Contract has been duly authorized by all necessary corporate action;
 - 5.2.4. Carrier has the requisite experience, expertise and resources to fully and properly perform all of its duties and obligations, and exercise all of the powers, as set forth in this Contract;
 - 5.2.5. Carrier has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Carrier will apply that skill and knowledge with care and diligence to perform the work in a professional manner and in accordance with the highest standards prevalent in Carrier's

industry, trade or profession;

- 5.2.6. Carrier shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the work, including but not limited to having any applicable license(s) and Certificate of Authority in good standing from DCBS the Division of Financial Regulation;
- 5.2.7. Carrier has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.
- 5.2.8. Carrier prepared its Application (“Application”) in response to the Request for Applications related to this Contract described in OAR 945-020-0020(1), independently from all other applicants, and without collusion, fraud, or other dishonesty;
- 5.2.9. Carrier has completed, obtained and performed all other registrations, filings, approvals, authorizations, consents or examinations required by any government or governmental authority for its acts contemplated by this Contract;
- 5.2.10. Carrier’s Application was true, complete, accurate, and not misleading when made, and any information Carrier has furnished for this Contract, its exhibits and amendments was true, complete, accurate, and not misleading when made;
- 5.2.11. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided; and
- 5.2.12. Carrier shall promptly notify DCBS in writing if any of the foregoing representations or warranties will cease to be true at any time during the term of this Contract.

6. Recourse Limited

DCBS is solely responsible for its obligations under this Contract. Carrier shall not be compensated for services performed or work completed under this Contract by any other agency or department of the State of Oregon.

7. Use of Work Product

Original Works. All Work Product created by Carrier 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 DCBS. DCBS and Carrier agree that all Work Product is “work made for hire” of which DCBS 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,” Carrier hereby irrevocably assigns to DCBS 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 DCBS’s reasonable request, Carrier shall execute such further documents and instruments necessary to fully vest such rights in DCBS. Carrier

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.

- 7.1.** In the event that Work Product is Carrier Intellectual Property, a derivative work based on Carrier Intellectual Property or a compilation that includes Carrier Intellectual Property, Carrier hereby grants to DCBS an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Carrier Intellectual Property and the pre-existing elements of Carrier Intellectual Property employed in the Work Product, and to authorize others to do the same on DCBS' behalf.
- 7.2.** 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, Carrier shall secure on DCBS' behalf, where reasonably possible to do so, but in no event less than necessary for Carrier to comply with its obligations under this Contract, an irrevocable, non-exclusive, royalty-free license, for the duration of the Contract and any additional periods of time required for Carrier to fulfill all obligations that survive termination of this Contract, 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 DCBS's behalf.

8. Indemnity

- 8.1.** General Indemnity. Carrier shall defend, save, hold harmless, and indemnify the State of Oregon, DCBS, and their respective agencies, subdivisions, boards, officers, directors, employees, agents, successors in interest, and assigns from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including, but not limited to, the cost of legal defense, settlement, attorneys' fees, and all related costs resulting from, arising out of, or relating to the activities of Carrier and/or its officers, employees, subcontractors, or agents under this Contract.
- 8.2.** Indemnity for infringement claims. Without limiting the generality of 8.1, Carrier expressly shall defend, indemnify, and hold DCBS, the State of Oregon, and their respective agencies, subdivisions, boards, officers, directors, agents, employees, successors in interest, and assigns harmless from any and all claims, suits, actions, losses, liabilities, costs, and expenses, including, but not limited to, attorneys' fees, costs, 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 DCBS by Carrier that may be the subject of protection under any State or federal intellectual property law or doctrine, or DCBS's 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 DCBS will provide Carrier with prompt written notice of any claim of infringement.

- 8.3.** Defense Qualification. Neither Carrier nor any attorney engaged by Carrier shall defend any claim in the name of DCBS or the State of Oregon or any agency of the State of Oregon, nor purport to act as the legal representative of the State of Oregon or DCBS, or any of its agencies, without the prior written consent of DCBS and the Oregon Attorney General. The State of Oregon may, at any time at its election, assume its own defense and settlement in the event that it determines that Carrier is prohibited from defending the State of Oregon, that Carrier is not adequately defending the State of Oregon's interests, that an important governmental principle is at issue, or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Carrier if the State of Oregon elects to assume its own defense. Furthermore, notwithstanding Carrier's foregoing indemnity and defense obligations to DCBS, and without waiving DCBS's right to recover attorneys' fees and costs as provided in section 8.1 and to the fullest extent permitted by law, DCBS may, at any time at its election, assume its own defense and settlement in the event that it determines that Carrier is prohibited from defending DCBS, that Carrier is not adequately defending DCBS's interests, that an important governmental principle is at issue, or that it is in the best interests of DCBS to do so. DCBS reserves all rights to pursue any claims it may have against Carrier if DCBS elects to assume its own defense.
- 8.4.** DCBS is not responsible for the provision of health care by health care providers under Carrier's SADPs.

9. Default; Remedies; Termination

- 9.1.** Default by Carrier. Carrier shall be in default under this Contract if Carrier:
- 9.1.1.** 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
 - 9.1.2.** No longer holds a license or certificate that is required for Carrier to perform its obligations under the Contract and Carrier has not obtained such license or certificate within 14 calendar days after DCBS's notice or such longer period as DCBS may specify in such notice; or
 - 9.1.3.** Commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, including, but not limited to, failure to pursue the work, such that Carrier's performance under this Contract, in accordance with its terms is endangered, and where such breach, default or failure is not cured within 30 calendar days after DCBS's notice, or such longer period as DCBS may specify in such notice.
 - 9.1.4.** Carrier has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State.
- 9.2.** Any violation of Contractor's warranty in Section V of this Contract that Carrier has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also constitutes a material breach of this Contract.

- 9.3.** DCBS's Remedies for Carrier's Default. In the event Carrier is in default under Section 9.1, DCBS 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:
- 9.2.1.** Termination of this Contract under section 9.6; or
 - 9.2.2.** Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
 - 9.2.3.** Decertifying Carrier's SADPs, following the procedure in Section 4.4 of Exhibit A; or
 - 9.2.4.** Requiring Carrier to perform at Carrier's expense additional work necessary to perform the Statement of Work in Exhibit A.
 - 9.2.5.** Undertaking collection by administrative offset, garnishment, or withholding of all monies due for to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after the Contractor has been given notice if required by law.

These remedies are cumulative to the extent the remedies are not inconsistent, and DCBS may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Carrier was not in default under Section 9.1, then Carrier shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 9.5.

- 9.4.** Default by DCBS. DCBS shall be in default under this Contract if DCBS 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 Carrier's notice or such longer period as Carrier may specify in such notice.
- 9.5.** Carrier's Remedies for DCBS's Default. In the event DCBS is in default under Section 9.4, Carrier's sole remedy shall be a claim against CMS or the IRS for any subsidy approved for periods prior to termination, less previous amounts paid and any claim(s) that DCBS has against Carrier. In no event shall DCBS be liable to Carrier for any expenses related to termination of this Contract or for anticipated profits.

9.5. Termination.

DCBS's Right to Terminate for Cause. In addition to any other rights and remedies DCBS may have under this Contract, DCBS may terminate this Contract for cause upon the occurrence of any of the events identified in Section 9.1 or 9.2. Such termination shall be effective immediately upon written notice of the breach by DCBS to Carrier or at such later date as DCBS may establish in such notice, unless a period of time is permitted for Carrier to cure the default in Section 9.1 or 9.2. If Carrier is granted a period of time to cure the default under Section 9.1 or 9.2, then the termination shall become effective at the expiration of the time allowed for cure, if Carrier fails to reasonably cure the default prior to such time.

9.6. Procedure upon Termination

- 9.6.1.** When this Contract terminates, and if requested by DCBS, Carrier shall administer all claims through the applicable grace period and run out period as required by applicable state and federal law. Contract termination will not extinguish or prejudice DCBS's right to enforce this Contract with respect to any default by Carrier that has not been cured.
- 9.6.2.** Effective on termination of this Contract, Carrier shall:
- 9.6.2.1.** Upon DCBS's request, be responsible for performing its duties under this Contract through the end of the Plan Year or Policy Year;
 - 9.6.2.2.** Be responsible for administration of any claims submitted during the time after the termination and any pending claims ("run out"), including claims incurred up to the termination date;
 - 9.6.2.3.** Subject to the parties entering into agreements in standard form to protect privacy under HIPAA, promptly deliver to DCBS all of DCBS's property that is in the possession or under the control of Carrier in whatever stage of development and form of recordation such DCBS property is expressed or embodied at that time;
 - 9.6.2.4.** Cease all activities under this Contract, except for activities to perform obligations which survive termination, unless DCBS expressly directs otherwise in such notice of termination; and
 - 9.6.2.5.** Upon DCBS's request, surrender to anyone DCBS designates, all documents, research, or objects or other intangible things, including, but not limited to, data needed to complete the Statement of Work in Exhibit A.
- 9.6.3.** Termination of the Contract does not discharge either party from any obligations or liabilities already accrued prior to termination, including any breach of a Contract warranty or any default or defect in Carrier performance that has been cured. The rights and remedies of each party under this section are not exclusive and are in addition to any other rights and remedies provided by law under this Contract.

10. Records Maintenance, Access

- 10.1.** Carrier shall maintain all Records, are pertinent to this Contract, in such a manner as to clearly document Carrier's performance.
- 10.2.** Carrier shall maintain all Records relating financial matters that are pertinent to this Contract in accordance with statutory accounting principles.
- 10.3.** Carrier acknowledges and agrees that DCBS 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. Any audit will be subject to Carrier's reasonable security and confidentiality

requirements. Carrier shall retain and keep accessible all Records for the longer of:

- 10.3.1.** Ten years following final payment and either (i) the termination of this Contract pursuant to Section 10 of Exhibit B or (ii) expiration of each term of this Contract;
- 10.3.2.** The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
- 10.3.3.** Until the conclusion of any audit, controversy or litigation arising out of or related to this Contract.

11. Force Majeure

Neither DCBS nor Carrier shall be responsible for delay or default caused by fire, riot, acts of God, war, terrorism or other similar events beyond the party's reasonable control. Carrier and DCBS shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

12. Subcontracts, Assignment of Contract, Successors in Interest

12.1. Carrier shall not assign or transfer any rights in this Contract (including but not limited to a merger or other assignment by operation of law), or delegate any duties, without first obtaining DCBS's prior written consent. To obtain DCBS's written consent pursuant to this section, Contractor shall submit a notice to DCBS in writing identifying the proposed assignee, transferee, and/or delegee; the proposed rights and/or obligations to be assigned, transferred, and/or delegated to such individual or entity; the dates such assignment, transfer, and/or delegation shall commence and conclude; and a space whereby DCBS may elect to indicate its consent to such action by signing the notice.

12.2. Any subcontract does not relieve Carrier of any of its duties under this Contract. This Contract is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided in the Contract, their permitted legal successors and assigns.

12.3. No Third Party Beneficiaries

DCBS and Carrier are the only parties to this Contract and the only persons who may enforce this Contract. Nothing in this Contract gives or is intended to give any benefit or right to third persons unless these persons are individually identified by name and expressly described as intended beneficiaries of this Contract. Except as otherwise stated in this Contract, the State of Oregon and its agencies are not intended beneficiaries of this Contract.

13. Amendments

No amendment under this Contract shall bind either party unless it is in writing and signed by both parties and, when required, by the Department of Justice. Any change or amendment to the Contract must refer specifically to this Contract to be valid.

14. Waiver

No party has the unilateral authority to change this Contract or waive any of its provisions. No waiver, consent, modification or change of terms of this Contract will bind all parties unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will 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 will not constitute a waiver by that party of that or any other provision.

15. Severability

If any term of this Contract is determined, to any extent, to be invalid or unenforceable, the parties intend that the remainder of this Contract not be affected, and each remaining term of this Contract to be valid and enforceable to the fullest extent permitted by law. Any invalid or unenforceable term is to be replaced by a mutually acceptable term, which being valid and enforceable, comes closest to the intention of the parties underlying the invalid or unenforceable term. If deletion or replacement of the invalid or unenforceable term materially changes this Contract or causes completion of either party's obligations to be unreasonable, either party may terminate this Contract without further obligation or liability upon written notice to the other party.

16. Notice

Except as otherwise expressly provided in this Contract, any communications or notices between Carrier and DCBS regarding this Contract will be given in writing, by personal delivery, by overnight carrier, or by mailing the same, postage prepaid with return receipt, to Carrier or DCBS 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 16. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five (5) business days after the date of mailing. Any communication or notice given by personal delivery or overnight carrier shall be effective when actually delivered to the addressee's place of business.

17. Entire Agreement

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.

18. Counterparts

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

19. Confidentiality of Information

19.1. All information obtained by Carrier in performing work under this Contract shall be held confidential unless otherwise permitted by law and any related agreements between DCBS and Carrier.

- 19.2.** Subject to any federal or state confidentiality or privacy laws, DCBS and Carrier will share information as necessary to effectively serve DCBS and its participants.
- 19.3.** Any federal or state tax return or return information, as defined by 26 U.S.C. Section 6103(b), as stated and as revised to render such definition applicable to the State of Oregon (collectively “Tax Return Information”), made available to Carrier pursuant to this Contract, from any source, shall be used only for the purpose of carrying out the provisions of this Contract. Tax Return Information contained in any such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract and as permitted by federal or state law, as applicable. Inspection by or disclosure to anyone other than an officer or employee of Carrier is prohibited. All Tax Return Information will be accounted for upon receipt and properly stored before, during, and after processing to ensure the appropriate and required measures of confidentiality. In addition, all related output and products will be given the same level of protection as required for the source material. Should Carrier seek to subcontract any of the work to be performed under this Contract to a third party, in full or in part, Carrier shall notify DCBS if the intended subcontract will require disclosure of any Tax Return Information as part of the approval process identified in Section 12.1 of Exhibit B.