

Exhibit D – Standard Terms and Conditions

1. Governing Law, Consent to Jurisdiction

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

2. Compliance with Applicable Law

- a. Contractor shall comply and cause all Subcontractors to comply with all State and local laws, regulations, executive orders and ordinances applicable to this Contract or to the performance of Work as they may be adopted, amended or repealed from time to time, including but not limited to the following: (i) ORS Chapter 659A.142; (ii) OHA rules pertaining to the provision of prepaid capitated health care and services, OAR Chapter 410, Division 141; (iii) all other OHA Rules in OAR Chapter 410; and (iv) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations. These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. OHA’s performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.230, 279B.235 and 279B.270, which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).
- b. In compliance with the Americans with Disabilities Act, any written material that is generated and provided by Contractor under this Contract to OHA clients, including Medicaid-Eligible Individuals, shall, at the request of such OHA clients, be reproduced in alternate formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. OHA shall not reimburse Contractor for costs incurred in complying with this provision. Contractor shall cause all Subcontractors under this Contract to comply with the requirements of this provision.
- c. Contractor shall comply with the federal laws as set forth or incorporated, or both, in this Contract and all other federal laws, applicable to Contractor's performance under this Contract as they may be adopted, amended or repealed from time to time.

3. Independent Contractor

- a. Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

- b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract. If compensation under this Contract is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.
- c. Contractor is responsible for all federal and State taxes applicable to compensation paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, OHA will not withhold from such compensation any amounts to cover Contractor's federal or State tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Contractor under this Contract, except as a self-employed individual.
- d. Contractor shall perform all Work as an independent contractor. OHA reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product, however, OHA may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

4. Representations and Warranties

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

5. (Reserved)

6. Funds Available and Authorized

- a. Contractor shall not be compensated for Work performed under this Contract by any other agency or department of the State of Oregon or the federal government. OHA certifies that it has sufficient funds currently authorized for expenditure to finance costs of this Contract within OHA's current biennial appropriation or limitation. Contractor understands and agrees that

OHA's payment for Work performed is contingent on OHA receiving appropriations, limitations, allotments, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable discretion, to continue to make payments under this Contract.

- b. All billings and payments processed through the Medicaid Management Information System (MMIS) shall be processed in accordance with the provisions of Oregon Administrative Rules (OAR) 407-120-0100 through 407-120-0200, OAR 407-120-0300 through OAR 407-120-0380 and any other OHA Oregon Administrative Rules that are program specific to the billings and payments and, if applicable, to billing and payment of Medicaid services.

7. Recovery of Overpayments

IF PAYMENTS UNDER THIS CONTRACT, OR UNDER ANY OTHER CONTRACT BETWEEN CONTRACTOR AND OHA, RESULT IN PAYMENTS TO CONTRACTOR TO WHICH CONTRACTOR IS NOT ENTITLED, OHA, AFTER GIVING WRITTEN NOTIFICATION TO CONTRACTOR, MAY WITHHOLD FROM PAYMENTS DUE TO CONTRACTOR SUCH AMOUNTS, OVER SUCH PERIODS OF TIME, AS ARE NECESSARY TO RECOVER THE AMOUNT OF THE OVERPAYMENT UNLESS CONTRACTOR PROVIDES A WRITTEN OBJECTION WITHIN 14 CALENDAR DAYS FROM THE DATE OF THE NOTICE. ABSENT TIMELY WRITTEN OBJECTION, CONTRACTOR HEREBY REASSIGNS TO OHA ANY RIGHT CONTRACTOR MAY HAVE TO RECEIVE SUCH PAYMENTS. IF CONTRACTOR PROVIDES A TIMELY WRITTEN OBJECTION TO OHA'S WITHHOLDING OF SUCH PAYMENTS, THE PARTIES AGREE TO CONFER IN GOOD FAITH REGARDING THE NATURE AND AMOUNT OF THE OVERPAYMENT IN DISPUTE AND THE MANNER IN WHICH THE OVERPAYMENT IS TO BE REPAYED. OHA RESERVES ITS RIGHT TO PURSUE ANY OR ALL OF THE REMEDIES AVAILABLE TO IT UNDER THIS CONTRACT AND AT LAW OR IN EQUITY INCLUDING OHA'S RIGHT TO SETOFF.

8. (Reserved)

9. Indemnification

- a. **GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY THE STATE OF OREGON AND OHA AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES AT TRIAL, ON APPEAL AND IN CONNECTION WITH ANY PETITION FOR REVIEW) RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.**
- b. **CONTROL OF DEFENSE AND SETTLEMENT. CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO THIS SECTION a., ABOVE; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR, SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE ATTORNEY GENERAL AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON; NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE, AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.**

- c. **TO THE EXTENT PERMITTED BY ARTICLE XI, SECTION 7 OF THE OREGON CONSTITUTION AND BY OREGON TORT CLAIMS ACT, THE STATE OF OREGON SHALL INDEMNIFY, WITHIN THE LIMITS OF THE TORT CLAIMS ACT, CONTRACTOR AGAINST LIABILITY FOR DAMAGE TO LIFE OR PROPERTY ARISING FROM THE STATE'S ACTIVITY UNDER THIS CONTRACT, PROVIDED THE STATE SHALL NOT BE REQUIRED TO INDEMNIFY CONTRACTOR FOR ANY SUCH LIABILITY ARISING OUT OF THE WRONGFUL ACTS OF EMPLOYEES, SUBCONTRACTORS OR AGENTS OF CONTRACTOR.**
- d. **THE OBLIGATIONS OF THIS SECTION 9 ARE SUBJECT TO THE LIMITATIONS IN SECTION 11 OF THIS EXHIBIT.**

10. Default; Remedies; and Termination

a. Default by Contractor. Contractor shall be in default under this Contract if:

- (1) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (2) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or
- (3) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice; or
- (4) Contractor knowingly has a director, officer, partner or person with beneficial ownership of more than 5% of Contractor's equity or has an employment, consulting or other Subcontractor agreement for the provision of items and services that are significant and material to Contractor's obligations under this Contract, concerning whom:
 - (a) Any license or certificate required by law or regulation to be held by Contractor or Subcontractor to provide services required by this Contract is for any reason denied, revoked or not renewed; or
 - (b) Is suspended, debarred or otherwise excluded from participating in procurement activities under Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued pursuant to Executive Order No. 12549 or under guidelines implementing such order; or
 - (c) Is suspended or terminated from the Oregon Medical Assistance Program or excluded from participation in the Medicare program; or
 - (d) Is convicted of a felony or misdemeanor related to a crime or violation of Title XVIII, XIX, or XX of the Social Security Act or related laws (or entered a plea of nolo contendere).

- (5) If OHA determines that health or welfare of Members is in jeopardy if this Contract continues; or
- (6) If OHA Determines:
 - (a) That amendment of this Contract is required due to change(s) in federal or State law or regulations, or due to changes in Covered Services or CCO Payments under ORS 414.735;
 - (b) That failure to amend this Contract to execute those changes in the time and manner proposed in the amendment may place OHA at risk of non-compliance with federal or State statute or regulations or changes required by the Legislative Assembly or the Legislative Emergency Board;
 - (c) That Contractor does not accept the amendment; or
 - (d) That Contractor failed to execute the amendment to this Contract within the time allowed.

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

- (1) Termination of this Contract under Section 10.e.(2) below;
- (2) Withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (3) Sanctions under Exhibit D, Section 32 through 35 of this Contract;
- (4) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- (5) Exercise of its right of recovery of overpayments under Section 7 of this Exhibit or setoff or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and OHA may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Section 10.a. above, then Contractor shall be entitled to a Claim for any unpaid CCO Payments as identified in Exhibit C, less previous amounts paid and any claim(s) that OHA has against Contractor.

c. Default by OHA. OHA shall be in default under this Contract if:

- (1) OHA fails to pay Contractor any amount pursuant to the terms of this Contract, net of any reduction for overpayment or other offset, and OHA fails to cure such failure within 15 calendar days after delivery of Contractor's notice of such failure to pay or such longer period as Contractor may specify in such notice; or

- (2) OHA commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

Any notice of default by Contractor must identify, with specificity, the term or terms of this Contract allegedly breached.

- d. **Contractor's Remedies for OHA's Default.** In the event OHA terminates this Contract under Section 10.e.(1) below, or in the event OHA is in default under Section 10.c. above and whether or not Contractor elects to exercise its right to terminate this Contract under Section 10.e.(3) below, Contractor's sole remedy shall be a Claim for any unpaid CCO Payments as identified in Exhibit C less previous amounts paid and any claim(s) that OHA has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 10.d. Contractor shall immediately pay any excess to OHA upon written demand. If Contractor does not immediately pay the excess, OHA may recover the overpayment in accordance with Section 7. "Recovery of Overpayments" above, and may pursue any other remedy that may be available to it.

- e. **Termination**

- (1) OHA's Right to Terminate at its Discretion. At its sole discretion, OHA may terminate this Contract:
 - (a) Without cause upon 90 days' prior written notice by OHA to Contractor; or
 - (b) Immediately upon notice if OHA fails to receive funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable discretion, to continue to make payments under this Contract; or
 - (c) Immediately upon written notice if federal or State laws, regulations, guidelines or CMS waiver terms are modified or interpreted in such a way that OHA's purchase or continued use of the Work or Work Products under this Contract is prohibited or OHA is prohibited from paying for such Work or Work Products from the planned funding source; or
 - (d) Immediately, and notwithstanding any claim Contractor may have under Section 15, "Force Majeure", upon written notice to Contractor if there is a threat to the health, safety or welfare of any OHA client, including any Medicaid eligible individual, under its care.
- (2) OHA's Right to Terminate for Cause. In addition to any other rights and remedies OHA may have under this Contract, and subject to Section 10.e.(3), OHA shall issue notice to Contractor that OHA is terminating this Contract upon the occurrence of any of the following events:
 - (a) Contractor is in default under Section 10.a.(1) because Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

- (a) Continuation of services to Members for the period in which a CCO Payment has been made, including inpatient admissions up until discharge;
 - (b) Orderly and reasonable transfer of Member care in progress, whether or not those Members are hospitalized;
 - (c) Timely submission of information, reports and records, including encounter data, required to be provided to OHA during the term of this Contract;
 - (d) Timely payment of valid claims for services to Members for dates of service included in the Contract year; and
 - (e) If Contractor continues to provide services to a Member after the date of termination, OHA is only authorized to pay for services subject to OHA rules on a fee-for-service basis if the former Member is OHA eligible and not covered under any other OHA Contractor. If Contractor chooses to provide services to a former Member who is no longer OHP eligible, OHA shall have no responsibility to pay for such services.
- (8) Upon termination, OHA shall conduct an accounting of CCO Payments paid or payable and Members enrolled during the month in which termination is effective and shall be accomplished as follows:
- (a) Mid-Month Termination: For a termination of this Contract that occurs during mid-month, the CCO Payments for that month shall be apportioned on a daily basis. Contractor shall be entitled to CCO Payments for the period of time prior to the date of termination and OHA shall be entitled to a refund for the balance of the month.
 - (b) Responsibility for CCO Payment/Claims: Contractor is responsible for any and all Claims from Subcontractors or other Providers, including Emergency Service Providers, for Capitated Services provided prior to the termination date.
 - (c) Notification of Outstanding OHA Claims: Contractor shall promptly notify OHA of any outstanding Claims for which OHA may owe, or be liable for, a fee-for-service payment(s), which are known to Contractor at the time of termination or when such new Claims incurred prior to termination are received. Contractor shall supply OHA with all information necessary for reimbursement of such Claims.
 - (d) Responsibility to Complete Contractual Obligations: Contractor is responsible for completing submission and corrections to encounter data for services received by Members during the period of this Contract. Contractor is responsible for submitting financial and other reports required during the period of this Contract.
 - (e) Withholding: Pending Completion of Contractual Obligations: OHA shall withhold 20% of the Contractor's last CCO Payment until Contractor has complied with all contractual obligations. OHA's determination of completion of Contractor's contractual obligations shall be no sooner than 6 months from the date of termination. Failure to complete said contractual obligations within a reasonable time period shall result in a forfeiture of the 20% withhold.

11. Limitation of Liabilities

- a. **NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.**
- b. Contractor shall ensure that OHA is not held liable for any of the following:
 - (1) Payment for Contractor's or any Subcontractor's debts or liabilities in the event of insolvency; or
 - (2) Capitated Services authorized or required to be provided under this Contract.

12. Insurance

Contractor shall maintain insurance as set forth in Exhibit F.

13. Access to Records and Facilities

Contractor shall maintain all financial records related to this Contract in accordance with generally accepted accounting principles or National Association of Insurance Commissioners accounting standards. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipment and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract in such a manner to clearly document Contractor's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Contractor whether in paper, electronic or other form, that are pertinent to this Contract, are collectively referred to as "Records." Contractor acknowledges and agrees that OHA, the Secretary of State's Office, CMS, the Comptroller General of the United States, the Oregon Department of Justice Medicaid Fraud Control Unit and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all Records for the longer of:

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

Contractor shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit. This right also includes timely and reasonable access to Contractor's personnel and Subcontractors for the purpose of interview and discussion related to such documents. The rights of access in this subsection are not limited to the required retention period, but shall last as long as the records are retained.

14. Information Privacy/Security/Access

If the Work performed under this Contract requires Contractor or, when allowed, its Subcontractor(s), to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Contractor access to such OHA Information Assets or Network and Information Systems, Contractor shall comply and require any Subcontractor(s) to which

such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, “Information Asset” and “Network and Information System” have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

15. Force Majeure

- a.** Neither OHA nor Contractor shall be held responsible for delay or default caused by riots, acts of God, power outage, fire, civil unrest, labor unrest, natural causes, government fiat, terrorist acts, other acts of political sabotage or war, which is beyond the reasonable control of OHA or Contractor, respectively. Each party 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.
- b.** If the rendering of services or benefits under this Contract is delayed or made impractical due to any of the circumstances listed in Section 15.a., above, care may be deferred until after resolution of those circumstances except in the following situations:
 - (1)** Care is needed for Emergency Services;
 - (2)** Care is needed for Urgent Care Services; or
 - (3)** Care is needed where there is a potential for a serious adverse medical consequence if treatment or diagnosis is delayed more than 30 calendar days.
- c.** If any of the circumstances listed in Section 15.a., above, disrupts normal execution of Contractor duties under this Contract, Contractor shall notify Members in writing of the situation and direct Members to bring serious health care needs to Contractor’s attention.

The foregoing shall not excuse Contractor from performance under this Contract if, and to the extent, the cause of the force majeure event was reasonable foreseeable and a prudent professional in Contractor’s profession would have taken commercially reasonable measures prior to the occurrence of the force majeure event to eliminate or minimize the effects of such force majeure event.

16. Foreign Contractor

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

17. Assignment of Contract, Successors in Interest

- a.** Contractor shall not assign or transfer its interest in this Contract, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other manner, without prior written consent of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary, including but not limited to Exhibit B, Part 8, Section 14. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in the Contract.
- b.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

18. Subcontracts

Contractor shall notify OHA, in writing, of any subcontract(s) for any of the Work required by this Contract other than information submitted in Exhibit G. In addition to any other provisions OHA may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that OHA will receive the benefit of Subcontractor performance as if the Subcontractor were the Contractor with respect to Sections 1, 2, 3, 4, 13, 14, 17, 18 and 21 of this Exhibit D. OHA's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. In addition to the requirements in this section, Contractor shall comply with Exhibit B, Part 8, Section 14.

19. No Third Party Beneficiaries

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

20. Amendments; Waiver; Consent

- a.** OHA may amend this Contract to the extent provided herein, or in any solicitation document from which this Contract arose, and to the extent permitted by applicable statutes and administrative rules. No amendment waiver, or other consent under this Contract shall bind either party unless it is in writing and signed by the party to be bound, and when required, the Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provisions.
- b.** OHA may provide Contractor with an amendment if OHA is required to amend this Contract due to changes in federal or State statute or regulations, or due to changes in Covered Services and CCO Payments under ORS 414.735, and if failure to amend this Contract to execute those changes in the time and manner proposed in the amendment may place OHA at risk of non-compliance with federal or State statute or regulations or the requirements of the Legislature or Legislative Emergency Board. OHA may also provide Contractor with an amendment following the Legislative Assembly's approval of coordinated care organization qualification criteria and the global budgeting process pursuant to HB 3650, in order to give effect to Section 14(2) and other provisions of HB 3650 affecting prepaid managed care health services organizations. In addition, OHA may, at OHA's sole discretion, amend the Contract to address budgetary constraints, including those arising from changes in funding, appropriations, limitations, allotments, or other expenditure authority limitations provided in Section 6 of this Exhibit D. OHA may provide Contractor with an amendment if OHA's actuary recalculates Standard population CCO Payment rates under Exhibit C, Section 2. OHA will send to Contractor the necessary Contract amendment(s) no later than 15 days before the proposed effective date of the amendment; and 30 days for review of a rate sheet before the proposed effective date of the amendment of the CCO Payment rates.
- c.** Any changes in the CCO Payment rates under ORS 414.735 shall take effect on the date approved by the Legislative Assembly or the Legislative Emergency Board. Any changes required by federal or State law or regulation shall take effect not later than the effective date of the federal or State law or regulation.

21. Severability

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

22. Survival

Sections 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 19, 21 and 22 of this Exhibit D shall survive Contract expiration or termination, as well as those provisions of this Contract that by their context are meant to survive. Contract expiration or termination shall not extinguish or prejudice OHA’s right to enforce this Contract with respect to any default by Contractor that has not been cured.

23. Notices

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

OHA: Office of Contracts & Procurement
 Department of Human Services
 250 Winter Street NE
 Salem, Oregon 97301
 Telephone: 503-945-5818
 Facsimile: 503-378-4324

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

Member: To the latest address provided for the Member on an address list, Enrollment or change of address form actually received by Contractor.

24. Construction

This Contract is the product of extensive negotiations between OHA and Contractor. The provisions of this Contract are to be interpreted and their legal effects determined as a whole. A court interpreting this Contract shall give a reasonable, lawful and effective meaning to this Contract to the extent possible. The rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Contract.

25. Headings

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

26. Merger Clause

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

27. 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.

28. Equal Access

Contractor shall provide equal access to Covered Services for both male and female members under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270.

29. Media Disclosure

Contractor shall not provide information to the media regarding a recipient of services under this Contract without first consulting with and receiving approval from the OHA case manager that referred the child or Family. Contractor shall make immediate contact with the OHA office when media contact occurs. The OHA office will assist the Contractor with an appropriate follow-up response for the media.

30. Mandatory Reporting

Contractor shall immediately report any evidence of child abuse, neglect or threat of harm to DHS Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 to 419B.045). If law enforcement is notified, the Contractor shall notify the referring caseworker within 24 hours. Contractor shall immediately contact the local DHS Child Protective Services office if questions arise whether an incident meets the definition of child abuse or neglect.

31. OHA Compliance Review

OHA is authorized to monitor compliance with the requirements in the Statement of Work. Methods of monitoring compliance may include review of documentation submitted by Contractor, Contract performance review, Grievances, on-site review of documentation or any other source of relevant information, including CCO and Subcontractor information and cooperation required under Exhibit B,

Part 8 (Operations). Contractor agrees to cooperate to make records and facilities available for compliance review, consistent with Exhibit D, Section 13 of this Contract.

Compliance with performance and quality outcome measures is discussed in greater detail in Exhibit B, Part 8. Where specific processes for monitoring and compliance are specified in Exhibit B, Part 8, or other portions of the Statement of Work, those specific processes will be followed. Monitoring and compliance requirements in the Statement of Work shall be construed to be consistent with the terms and conditions in this Sections 32 through 35.

If compliance cannot be determined, or if OHA determines that Contractor is non-compliant with the requirements of the Contract, OHA may find Contractor has breached Contract requirements and may impose Sanctions under Exhibit D, Sections 32 through 35, of this Contract, and pursue other remedies available under this Contract.

32. Conditions that May Result in Sanctions

OHA may impose sanctions, as specified in Subsection 33 of this Exhibit, if it determines that Contractor has acted or failed to act as described in this Subsection 32 or any other provision of this Contract. OHA's determination may be based on findings from an onsite survey, Member or other complaints, financial status or any other source.

Conditions that may result in a Sanction under this section may include when Contractor acts or fails to act as follows:

- a.** Fails substantially to provide Medically Appropriate services that the Contractor is required to provide, under law or under its Contract with OHA, to a Member covered under this Contract;
- b.** Imposes on Members premiums or charges that are in excess of the premiums or charges permitted under the Oregon Medical Assistance Program;
- c.** Fails to comply with the operational and financial reporting requirements specified in this Contract;
- d.** Acts to discriminate among Members on the basis of their health status or need for health care services. This includes, but is not limited to, termination of Enrollment or refusal to reenroll a Member, except as permitted under the Oregon Medical Assistance Program, or any practice that would reasonably be expected to discourage Enrollment by individuals whose medical condition or history indicates probable need for substantial future medical services;
- e.** Misrepresents or falsifies any information that it furnishes to CMS or to the State, or its designees, including but not limited to the assurances submitted with its application or Enrollment, any certification, any report required to be submitted under this Contract, encounter data or other information relating to care or services provided to a Member;
- f.** Misrepresents or falsifies information that it furnishes to a Member, Potential Member, or health care Provider;
- g.** Fails to comply with the requirements for Physician Incentive Plans, as set forth in 42 CFR 422.208 and 422.210, and this Contract;
- h.** Fails to maintain a Participating Provider Panel sufficient to ensure adequate capacity to provide Covered Services under this Contract;

- i. Fails to maintain an internal quality improvement program, or fraud and abuse prevention program, or to provide timely reports and data required under Exhibit B, Part 1 through Part 10, of this Contract;
- j. Failure to maintain an internal QA/PI program;
- k. Fails to comply with Grievance and Appeal requirements, including required notices, continuation or reinstatement of benefits, expedited procedures, compliance with requirements for processing and disposition of Grievances and Appeals, and record keeping and reporting requirements;
- l. Fails to pay for Emergency Services and post-emergency stabilization services or Urgent Care Services required under this Contract;
- m. Fails to follow accounting principles or accounting standards or cost principles required by federal or State laws, rule or regulation, or this Contract;
- n. Fails to make timely Claims payment to Providers or fails to provide timely approval of authorization requests;
- o. Fails to disclose required ownership information or fails to supply requested information to OHA on Subcontractors and suppliers of goods and services;
- p. Fails to submit accurate, complete, and truthful encounter data in the time and manner required by Exhibit B, Part 8, Section 7;
- q. Distributes directly or indirectly through any agent or independent contractor, marketing materials that have not been approved by the State or that contain false or materially misleading information;
- r. Fails to comply with a term or condition of this Contract, whether by default or breach of this Contract. Imposition of a sanction for default or breach of this Contract does not limit OHA's other available remedies;
- s. Violates of any of the other applicable requirements of sections 1903(m) or 1932 of the Social Security Act and any implementing regulations.
- t. Fails to submit accurate, complete and truthful pharmacy data in the time and manner required by Exhibit B, Part 8, Section 7; or
- u. Violates any of the other applicable requirements of 42 USC §1396b(m) or 1396u-2 and any implementing regulations.

33. Range of Sanctions Available

Sanctions that may be imposed include but are not limited to the following sanctions. The use of one sanction by OHA does not preclude the imposition of any other sanction or combination of sanctions or any other remedy authorized under this Contract for the same deficiencies. OHA may:

- a. Assess a Recovery Amount in the amounts authorized in 42 USC 1396u-2(e)(2);

- b.** Assess a Recovery Amount equal to one percent (1%) of Contractor's last monthly CCO Payment immediately prior to imposition of the sanction, to be deducted from Contractor's next monthly CCO Payment after imposition of sanction, except when a Recovery Amount has been assessed under Paragraph (1) of this subsection;
- c.** Grant Members the right to Disenroll without cause (OHA may notify the affected Members of their right to Disenroll);
- d.** Suspend all new Enrollment, including default Enrollment, or reduce the Enrollment level and/or the number of Contractor's current Members after the effective date of the sanction;
- e.** Suspend payment for Members enrolled after the effective date of the sanction until OHA is satisfied that the reasons for imposition of the sanction no longer exists and is not likely to recur;
- f.** Where financial solvency is involved, actions may include Increased reinsurance requirements; increased reserve requirements; market conduct constraints; and financial examinations
- g.** Require Contractor to develop and implement a plan that is acceptable to OHA for correcting the problem.
 - (1)** At a minimum, the Corrective Action Plan must include:
 - (a)** A written standard of conduct to be implemented by the Contractor that corrects the specific areas of non-compliance, how that standard of conduct will be established and maintained within Contractor's as well as Subcontractor's (as applicable) organization; and
 - (b)** Designation of the person with authority within Contractor's organization charged with the responsibility of accomplishing and monitoring compliance.
 - (2)** If Contractor has not submitted a Corrective Action Plan that is acceptable to OHA within the specified time period or does not implement or complete the Corrective Action within the specified time period, OHA will proceed with other sanctions or with termination of this Contract.
- h.** If OHA determines that there is continued egregious behavior that is described in Exhibit B of this Contract; or that there is substantial risk to Members' health; or that action is necessary to ensure the health of Members while improvements are made to remedy violations or until there is an orderly termination or reorganization by Contractor:
 - (1)** OHA must require Contractor to implement temporary management mechanisms, such as employment of consultants or other individuals or entities approved by OHA for the purpose, at Contractor's expense;
 - (2)** OHA must grant Members the right to Disenroll without cause and notify Members of the right to Disenroll without cause;
 - (3)** OHA must not delay the imposition of temporary management mechanisms to provide for Administrative Review before imposing this sanction; and
 - (4)** OHA must not terminate temporary management mechanisms until it determines that Contractor can ensure that the sanctioned behavior will not recur.

- i. Deny payments under this Contract for new Members when, and for so long as, payment for those Members is denied by CMS in accordance with 42 CFR 438.730; or
- j. Any other sanctions reasonably designed to remedy and/or compel future compliance with this Contract.

34. Sanction Process

OHA will notify the Contractor in writing of its intent to impose a sanction. The notification shall explain the factual basis for the sanction, reference to the section(s) of this Contract or federal or State law or regulation that has been violated, explain the actions expected of Contractor, and state the Contractor's right to file a request for Administrative Review with the Director of OHA in writing within 30 days of the date of the sanction notice.

Notwithstanding the preceding provision of this Subsection c., in cases in which OHA determines that conditions could compromise a Member's health or safety or when OHA acts pursuant to Subsection b, Paragraph (7) of this section, OHA may provisionally impose the sanction before such Administrative Review opportunity is provided.

- a. Contractor shall make Recovery Amount payments in full to OHA within 30 days of the date of the sanction notice, unless Contractor has made a timely request for Administrative Review pursuant to this Subsection c. above in which case Contractor may withhold payment of a disputed amount pending the issuance of the Administrative Review decision. Absent a timely request for Administrative Review, if Contractor fails to make payment within 30 days of the sanction notice, OHA will recoup the recovery payment from Contractor's future Capitation Payment(s) or as otherwise provided under this Contract, until the Recovery Amount payment is satisfied.
- b. The Administrative Review process described in Subsections b, Paragraph (7) of this section and this Subsection c, will be conducted in the same manner described in OAR 410-120-1580(4)-(6). Contractor understands and agrees that Administrative Review is the sole avenue for review of sanction decisions under this Exhibit D, Sections 32 through 35 of this Contract.

35. Notice to CMS of Contractor Sanction

OHA will give CMS' Regional Office written notice whenever Contractor has a sanction imposed or lifted by OHA for one of the violations listed in this Section 2, Subsection a, Paragraphs (1) through (6) or Paragraph (15). OHA may, at OHA's discretion, give CMS' Regional Office written notice whenever Contractor has a sanction imposed or lifted by OHA for any breach or violation of this Contract requirement excluding those specifically noted above.