

Contract Review Sheet

HE-5578-23

 Intergovernmental Agreement #: HE-5578-23 Amendment #: _____

 Contact: Meuy Saechao Department: Health and Human Services

 Phone #: (503) 584-4897 Date Sent: Wednesday, July 12, 2023

 Title: Developmental Disability FY 23-25 BIENNIUM IGA#180110

 Contractor's Name: Oregon Department of Human Services

 Term - Date From: July 1, 2023 Expires: June 30, 2025

 Original Contract Amount: \$31,827,545.00 Previous Amendments Amount: \$0.00

 Current Amendment: \$0.00 New Contract Total: \$31,827,545.00 Amd% 0%
 Incoming Funds
 Federal Funds
 Reinstatement
 Retroactive
 Amendment greater than 25%

 Source Selection Method: 50-0010 General Exemptions (IGAs and QRFs)

Description of Services or Grant Award

Oregon Department of Human Services (ODHS) has issued FY23-25 Intergovernmental Grant Agreement (IGA) #180110 to the County acting as the Administrator for the Community Developmental Disabilities Program (CDDP) as set forth in OAR 411-317-0000. The County shall oversee and provide services for individuals with developmental disabilities as described in the IGA's Exhibit B; Part 2 Service Element Standards and Procedures. The funding amount requested for FY 23-25 biennium of \$31,827,545.00.

 Desired BOC Session Date: 8/16/2023 BOC Planning Date: 8/3/2023

 Files submitted in CMS: 7/26/2023 Printed packet & copies due in Finance: 8/1/2023

 BOC Session Presenter(s) Ryan Matthews and Karin Perkins
FOR FINANCE USE

 Date Finance Received: 7/28/2023 Date Legal Received: _____

 Comments: Y
REQUIRED APPROVALS

<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> <small>DocuSigned by:</small> <small>C5B2F3DF257F444...</small> </div> <div style="border-top: 1px solid black; padding-top: 5px;"> Finance - Contracts Date </div>	<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> <small>DocuSigned by:</small> <small>58191FB1DB94499...</small> </div> <div style="border-top: 1px solid black; padding-top: 5px;"> Contract Specialist Date </div>
<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> <small>DocuSigned by:</small> <small>D0CFC5B04B9F483...</small> </div> <div style="border-top: 1px solid black; padding-top: 5px;"> Legal Counsel Date </div>	<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> <small>DocuSigned by:</small> <small>1E984034585E433...</small> </div> <div style="border-top: 1px solid black; padding-top: 5px;"> Chief Administrative Officer Date </div>



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: Aug 16, 2023

Department: Health & Human Services Agenda Planning Date: Aug 3, 2023 Time required: 10

Audio/Visual aids

Contact: Meuy Saechao Phone: 503-584-4897

Department Head Signature: Ryan Matthews

TITLE Oregon Department of Human Services (ODHS)- Intergovernmental Grant Agreement (IGA) #180110 FY23-25 Biennium for Community Developmental Disabilities Program (CDDP) HE-5578-23.

Issue, Description & Background Oregon Department of Human Services (ODHS) has issued FY23-25 Intergovernmental Grant Agreement (IGA) #180110 to the County acting as the Administrator for the Community Developmental Disabilities Program (CDDP) as set forth in OAR 411-317-0000. The County shall oversee and provide services for individuals with developmental disabilities as described in the IGA's Exhibit B; Part 2 Service Element Standards and Procedures. The total amount not exceed the contract amount \$\$31,827,545.00.

Financial Impacts: The total amount not exceed the contract amount \$\$31,827,545.00.

Impacts to Department & External Agencies Health & Human Services anticipates no financial impact to other departments.

Options for Consideration: 1. Approve 2. Deny approval 3. Take no action at this time.

Recommendation: Health and Human Services Department recommends approval of FY23-25 Intergovernmental Grant Agreement (IGA) #180110 HE-5578-23.

List of attachments: Health and Human Services Department recommends approval of FY23-25 Intergovernmental Grant Agreement (IGA) #180110 HE-5578-23.

Presenter: Ryan Matthews and Karin Perkins

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Meuy Saechao; msaechao@co.marion.or.us

REQUEST FOR AUTHORIZATION OF CONTRACT HE-5578-23

Date: July 12, 2023
To: Chief Administrative Officer
Cc: Contract File
From: Meuy Saechao

I. Subject: Retroactive

The Marion County Health and Human Services (MCHHS) is requesting approval of a retroactive contract as described in Section 10-0580 of the Marion County Public Contracting Rules. The contract is with Oregon Department of Human Services (ODHS) for DD FY 23-25 biennium Intergovernmental Grant Agreement (IGA)# 180110 with a value of \$31,827,545.00 and will be effective retroactive to 7/1/2023 upon approval.

A. BACKGROUND

This is an incoming funds through Intergovernmental Grant Agreement from ODHS to MCHHS to provides financing of Community Developmental Disabilities Services. This Agreement shall become effective on July 1, 2023.

B. As required in Section 10-0580(2)(a), Department staff will provide an explanation of why the contract was not submitted before performance began:

MCHHS received the Intergovernmental Agreement (IGA) #180110-0 from ODHS on June 28, 2023. Health & Human Services Executive Team and Contracts began conducting reviews of the agreement and statement of works to ensure adequate funding has been provided to perform the service element tasks. It was determined by Health & Human Services Executive Team to accept the IGA and process for agreement for signature.

C. As required in Section 10-0580(2)(b), Department staff will provide a description of the steps being taken to prevent similar occurrences in the future:

It is the goal of the MCHHS to involve all necessary departments and contractors as part of the contract review and drafting process. The MCHHS will continue to plan accordingly and start the contract process sooner to ensure contract changes can be made in a timely manner.

Submitted by:

DocuSigned by:
Meuy Saechao
58191FB1DB94499...
Meuy Saechao
Health and Human Services

Reviewed by:

DocuSigned by:
Camber Schlag
C5B2F3DF257F444...
Contracts & Procurement

Acknowledged by:

DocuSigned by:
Ryan Matthews
7D28A787856F458...
Department Head

Acknowledged by:

DocuSigned by:
Jan Fritz
1E984034585E453...
Jan Fritz, CAO

1. Effective Date and Duration.

This Agreement shall become effective on **July 1, 2023**, regardless of the date of the parties' signatures. Unless extended or terminated earlier in accordance with its terms, this Contract shall expire on **June 30, 2025**. Contract termination shall not extinguish or prejudice ODHS' right to enforce this Contract with respect to any default by Contractor that has not been cured.

2. Agreement Documents, Order of Precedence.

- a.** This Agreement includes the following listed exhibits and attachments which are incorporated into this Agreement:

Exhibit A:	Definitions
Exhibit B Part 1:	Operations and Administration Terms and Conditions;
Exhibit B Part 2:	Service Element Standards and Procedures;
Exhibit B Part 3:	Financial Terms and Conditions;
Exhibit C:	Special Terms and Conditions;
Exhibit D:	General Terms and Conditions;
Exhibit E:	Standard Terms and Conditions;
Exhibit F:	Federal Terms and Conditions;
Exhibit G Part 1:	Required Subcontractor Provisions;
Exhibit G Part 2:	Subcontractor Insurance Requirements;
Exhibit H Part 1:	Privacy and Security Agreement;
Exhibit H Part 2:	Third Party Information System Access Request;
Attachment #1:	Days and Hours of Operation;
Attachment #2:	Subcontractor Disclosures Report.

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

- b.** In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of the documents comprising this Agreement is as follows, the documents being listed from highest precedence to lowest precedence.

- (1) This Agreement without exhibits;
- (2) Exhibit F: Federal Terms and Conditions;
- (3) Exhibit H Part 1: Privacy and Security Agreement;
- (4) Exhibit H Part 2: Third Party Information System Access Request;
- (5) Exhibit E: Standard Terms and Conditions;
- (6) Exhibit A: Definitions;
- (7) Exhibit B Part 1: Operations and Administration Terms and Conditions;
- (8) Exhibit B Part 2: Service Element Standards and Procedures;
- (9) Exhibit B Part 3: Financial Terms and Conditions;
- (10) Exhibit C: Special Terms and Conditions;
- (11) Exhibit D: General Terms and Conditions;
- (12) Exhibit G Part 1: Required Subcontractor Provisions;

- (13) Exhibit G Part 2: Subcontractor Insurance Requirements;
- (14) Attachment #1: Days and Hours of Operation;
- (15) Attachment #2: Subcontractor Disclosures Report.


- c.** For purposes of this Agreement, “Work” means specific work to be performed or services to be delivered by County as set forth in Exhibit B Part 2.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

3. Signatures.

Marion County

By:



Authorized Signature

Administrator

Title

Ryan Matthews

Printed Name

7/12/23

Date

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

By:

Authorized Signature

Title

Printed Name

Date

Approved for Legal Sufficiency:

Approved via email by Steven Marlowe
Department of Justice

6/28/2023

Date

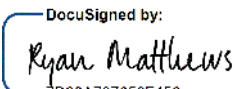
**SIGNATURE PAGE FOR
DD FY 23-25 BIENNIUM IGA#180110 - HE-5578-23
between
MARION COUNTY and OREGON DEPARTMENT OF HUMAN SERVICES**

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair _____ Date _____

Commissioner _____ Date _____

Commissioner _____ Date _____

Authorized Signature:  7D28A787856F458... 7/28/2023
Department Director or designee _____ Date _____

Authorized Signature:  1E984034585E433... 7/31/2023
Chief Administrative Officer _____ Date _____

Reviewed by Signature:  D0CFC5B04B9F483... 7/31/2023
Marion County Legal Counsel _____ Date _____

Reviewed by Signature:  C5B2F3DF257F444... 7/28/2023
Marion County Contracts & Procurement _____ Date _____

EXHIBIT A

Definitions

As used in this Agreement, the following words and phrases shall have the indicated meanings. Certain additional words and phrases are defined in the Service Element Standards and Procedures, in the special conditions of the Service Element Prior Authorization (SEPA), and in the Exhibit H Part 1 “Privacy and Security Agreement”. When a word or phrase is defined in a particular Service Element Standards and Procedures, or special condition in the Service Element Prior Authorization, the word or phrase shall not necessarily have the ascribed meaning in any part of the Agreement other than the particular Service Element Standards and Procedures, or special condition in which it is defined.

1. **“Access”** means the ability or the means necessary to read, communicate, or otherwise use ODHS or State Data, Network and Information Systems, and Information Assets.
2. **“Allowable Costs”** means the costs determined in accordance with the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200, except to the extent such costs are limited or excluded by other provisions of this Agreement, whether in the applicable Service Element Standards and Procedures, or special conditions identified in the Service Element Prior Authorization.
3. **“Career Development Plan” or “CDP”** has the meaning set forth in OAR 411-317-0000
4. **“Carryover”** means funds received by CDDP for eligibility, Special Projects Licensing and Abuse Investigations staff that remain available at the close of a State fiscal year or a biennium.
5. **“Case Management Entity” or “CME”** has the meaning set forth in OAR 411-317-0000.
6. **“Case Management Services”** has the meaning as set forth in OAR 411-317-0000.
7. **“CDDP Administrator”** has the meaning set forth in Exhibit C, Section 3 of this Agreement.
8. **“Claim”** has the meaning set forth in OAR 411-370-0010.
9. **“Client”** has the same meaning as Individual or Recipient, for purposes of this Agreement.
10. **“Client Prior Authorization” or “CPA”** means an authorization for a specific Individual to receive a particular Service, by an identified Provider, at a rate approved by ODHS. The CPA is submitted by County for the Provider once an Individual and the Provider have agreed to a Service. The CPA specifies:
 - a. the Service,
 - b. the Individual or Recipient,
 - c. the effective date and end date for the Services authorized in the CPA, and
 - d. the rate for the Service.

11. **“Client Record(s)”** means any Client, applicant, or participant information regardless of the media or source, collected by County in the course of completing the Work, provided through the Network and Information Systems to County, or otherwise exchanged between the parties.
12. **“CMS”** means Centers for Medicare and Medicaid Services.
13. **“Common Law Employer”** or **“CLE”** means the employer referred to in OAR 411-375-0010.
14. **“Community Developmental Disabilities Program”** or **“CDDP”** has the meaning as set forth in OAR 411-317-0000.
15. **“Community First Choice K Plan”** or **“K Plan”** has the meaning as set forth in OAR 411-317-0000.
16. **“Developmental Disability”** or **“DD”** has the meaning as set forth in OAR 411-320-0020.
17. **“Developmental Disabilities Services”** or **“DD Services”** has the meaning as set forth in OAR 411-317-0000.
18. **“Disbursement Claim”** means a document executed and delivered to ODHS by a Provider or County, either electronically in eXPRS or in hard copy, with respect to a DD Service authorized in a CPA and PPA, or POC, certifying that a unit of that DD Service was delivered by a Provider identified in the CPA and PPA, or POC, to the Individual identified in the CPA or POC, during the period specified in the CPA or POC; and requesting disbursement of funds for that unit of DD Service.
19. **“Employer”** has the meaning as set forth in OAR 411-317-0000.
20. **“Employer Resource Connections”** or **“ERC”** means the voluntary training program provided by the Oregon Home Care Commission and offered to all Individuals receiving in-home Services. ERC meets the K Plan requirement for voluntary training on how to select, manage, and dismiss attendants, and provides activities to empower and inform Individuals receiving in-home Services regarding their rights, roles, and responsibilities as employers of Personal Support Workers.
21. **“Express Payment and Reporting System”** or **“eXPRS”** means an information system for managing the disbursement and tracking of ODHS payments for the Developmental Disabilities Programs.
22. **“Federal Funds”** means all funds paid to CDDP under this Agreement that ODHS receives from an agency, instrumentality, or program of the federal government of the United States.
23. **“Full-time Equivalent”** or **“FTE”** means a unit of measure equivalent to one person working full-time. An FTE is calculated based on the CME’s work hours of a regular work week. Employees who work fewer hours than a regular work week have their hours divided by the regular full-time work week hours. An FTE of 1.0 is equivalent to full-time; an FTE of 0.5 is half of a full-time equivalent.
24. **“Functional Needs Assessment”** or **“FNA”** has the meaning as set forth in OAR 411-317-0000.

25. **“Individual”** has the meaning as set forth in OAR 411-317-0000.
26. **“Individual Support Plan”** or **“ISP”** has the meaning as set forth in OAR 411-317-0000.
27. **“Individual Support Plan Team”** or **“ISP Team”** means a group of people that include the Individual, the Services Coordinator or personal agent, when applicable the Individual’s designated representative, or others chosen by the Individual to participate in Service planning, as described in OAR 411-415-0070.
28. **“Information Asset(s)”** refers to all information provided through ODHS, regardless of the source, which requires measures for security and privacy.
29. **“Intellectual Disability”** or **“ID”** has the meaning as set forth in OAR 411-320-0020.
30. **“Intellectual or Developmental Disability”** or **“I/DD”** has the meanings as described in OAR 411-320-0020.
31. **“Level of Care”** or **“LOC”** has the meaning as described in OAR 411-317-0000.
32. **“Local Match”** means the opportunity for Local Government Entities, including Transit Districts, to request additional Federal Funds to recoup costs for Intellectual and Developmental Disabilities program expenditures, *exceeding allotted state funds*, in the following services: Local Match Transportation and Case Management Operations. The Local Government Entity is responsible for the local fund portion and providing the necessary documentation to ODHS for approval. If approved, the local funds will be submitted for federal match.
33. **“Medicaid”** means Federal Funds received by ODHS under Title XIX of the Social Security Act and Children’s Health Insurance Program (CHIP) Funds administered jointly with Title XIX funds as part of state medical assistance programs by ODHS.
34. **“Medicaid Fraud”** means the providing of false information to claim reimbursement for Medicaid funded services. Medicaid Fraud includes, but is not limited to, the following activities: billing for services not actually performed; billing for more expensive services than actually rendered; billing for several services that should be combined into one billing; and billing twice for the same service.
35. **“Misexpenditure”** means money, other than Overexpenditure, disbursed to County by ODHS under this Agreement and expended by County or a Subcontractor that:
 - a. Is identified by the federal government as expended contrary to applicable statutes, rules, the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200, or any other authority that governs the permissible expenditure of such money, for which the federal government has requested reimbursement by the State of Oregon, whether in the form of a federal determination of improper use of Federal Funds, a federal notice of disallowance, or otherwise; or
 - b. Is expended in a manner not permitted by this Agreement, including without limitation, any money expended by County, contrary to applicable statutes, rules, OMB Circulars, or any other authority that governs the permissible expenditure of such money; or

- c. Is expended on the delivery of a DD Service in violation of the Service Element Standards and Procedures of this Agreement with respect to that DD Service.
36. **“Network and Information System(s)”** means the ODHS and State of Oregon’s computer infrastructure which provides personal communications, Data such as Client Records; Access to other Information Assets, regional, wide area and local networks, and the internetworking of various types of networks.
37. **“ODDS”** has the meaning set forth in OAR 411-317-0000.
38. **“Office of Training, Investigation and Safety”** or **“OTIS”** means the ODHS office that investigates reports of suspected abuse or neglect.
39. **“Oregon Needs Assessment”** or **“ONA”** has the meaning set forth in OAR 411-317-0000.
40. **“Overexpenditure”** means money disbursed by ODHS under this Agreement and expended by County that is in excess of the amount County is entitled to expend as determined in accordance with the funding calculation methodologies set forth in the applicable Service Element Standards and Procedures.
41. **“Personal Agent”** shall have the meaning set forth in OAR 411-317-0000.
42. **“Personal Support Worker”** or **“PSW”** has the meaning as set forth in OAR 411-317-0000.
43. **“Plan of Care”** or **“POC”** means a service authorization feature in eXPRS that is a collection of individual Provider service authorizations for an Individual with I/DD. These Service Authorizations in accepted status are required to enable the Provider of the authorized Service to successfully submit Claims for payment.
44. **“Program Area”** means the geographic area within the State of Oregon where County is contracted to provide DD Services.
45. **“Provider”** has the meaning as set forth in OAR 411-317-0000.
46. **“Provider Enrollment Application and Agreement”** or **“PEAA”** has the meaning set forth in OAR 411-370-0030.
47. **“Provider Prior Authorization”** or **“PPA”** means an authorization, either through eXPRS or by submission to ODHS of a document acceptable to ODHS, for funding awarded in the SEPA for delivery of a particular DD Service by a particular Provider, and for Provider submission of Disbursement Claims for the DD Service, that specifies:
- a. the DD Service,
 - b. the Provider,
 - c. a period, during which the authorization may be used to support delivery of the DD Service by the Provider,
 - d. whether the PPA is an “Opt Out” PPA for those Providers that are paid through a CPA and have fluctuating amounts in a specific month; or the PPA is for a specific amount authorized to the Provider for a specified time frame. If the PPA is for an amount for a specific Provider, the total amounts authorized in the PPAs cannot exceed the total SEPA amount for that time frame for that DD Service.

48. **“Rationed Fee for Services”** or **“RFFS”** means the Case Management Entity billings paid up to the maximum monthly amount of the PPA. All Case Management Entity billings entered that meet the criteria for a successful Claim, yet exceed the maximum monthly amount of the PPA, will suspend to be utilized for future payments up to the amount outlined in the Biennial Legislatively Approved Budget.
49. **“Recipient”** has the meaning as set forth in OAR 411-370-0010.
50. **“SEPA Adjustment”** means a document, acceptable to ODHS, presented electronically in eXPRS by County, that amends the SEPA, with respect to one or more DD Services, to reflect the new maximum amount of funding that ODHS will provide under this Agreement through eXPRS for the specified Service Element(s), as well as any new or modified special performance or other requirements.
51. **“SEPA Pass Phrase or Pass Code”** or **“SEPA Pass Phrase”** means a code used by eXPRS to verify the identity of the individual accepting the SEPA Adjustment on behalf of County.
52. **“Service”** means any one of the DD Services for Individuals listed in Exhibit B Part 2 of this Agreement provided directly by CDDP, and authorized by CDDP or Subcontractor, pursuant to this Agreement.
53. **“Service Authorization”** means an authorization by CDDP of the DD Services that CDDP is responsible to authorize according to Exhibit B Part 2, as identified in an Individual’s ISP, and entered for billing purposes into eXPRS via POC or a CPA.
54. **“Services Coordinator”** has the meaning as set forth in OAR 411-317-0000.
55. **“Service Element”** has the meaning as set forth in OAR 411-317-0000.
56. **“Service Element Prior Authorization”** or **“SEPA”** means the maximum amount of Service Element funding that ODHS will provide to County under this Agreement through eXPRS, and any Service Element associated special performance or other requirement. The SEPA is broken down by Service Element and may be amended from time to time by a SEPA Adjustment.
57. **“Service Element Standards and Procedures”** has the meaning set forth in OAR 411-370-0010.
58. **“Service Equity”** means promoting health, safety, and independence for all Individuals by adapting services and policy to eliminate discrimination and disparities in the delivery of human services.
59. **“Settlement”** means the process through which ODDS determines Underexpenditures and Overexpenditures and resolves Misexpenditures at the end of each Agreement period, upon Agreement termination or on an interim basis, if necessary, during the term of this Agreement.
60. **“Subcontract”** means a contract between the County and a third party to perform one or more of the direct Service(s) required under this Agreement. Subcontract does not include contracts for County ancillary services.

61. **“Subcontractor”** means a third-party contractor that contracts with the County to perform one or more Service(s) under this Agreement and may include all CDDP functions that the County is required to perform under this Agreement.
62. **“Transmittals”** means communications that request action from, or provide policy, program, training, and other information to County. Transmittals take the form of Action Requests (AR), Information Memoranda (IM), or Policy Transmittals (PT).
63. **“Underexpenditure”** means money disbursed by ODHS under this Agreement and not expended by County that is less than the amount County is entitled to expend as determined in accordance with the funding calculation methodologies set forth in the applicable Service Element Standards and Procedures.
64. **“User”** means any individual authorized by ODHS to access Network and Information Systems and who has an assigned unique log-on identifier.
65. **“Written Materials”** means documents and forms created by CDDP or ODDS, in connection with Services being provided to the Individual.
66. **“Workload Model”** or **“WLM”** means the computation of FTE based on the Random Moment Sampling Survey (RMSS) and fixed percentages based on caseloads.

EXHIBIT B PART 1

Operations and Administration Terms and Conditions

1. CDDP Administrative Responsibilities.

In performing the Work under this Agreement:

- a.** CDDP shall adhere to all Oregon Administrative Rules (OAR), Oregon Revised Statutes (ORS) and the Code of Federal Regulations (CFR) pursuant to this Agreement. CDDP shall comply with all language and requirements outlined in the Community First K Plan and waiver, including updates and amendments, or as instructed by ODDS through Transmittals. In general, Transmittals are written to provide clarification or guidance of an existing rule, statute, or CFR.

Outside of natural disasters, pandemics or circumstances that would put Individuals in service at risk, any policy and Transmittal that is written by ODDS that requires new work for a Case Management Entity (CME) will necessitate ODDS to give the CME an opportunity to provide input within specified timelines. ODDS will analyze the input for impact to workloads, making adjustments where appropriate, prior to issuing the Action Request (AR) or Policy Transmittal (PT). This excludes policies resulting from a rule change that is required by a federal or state directive, as rules and rule amendments require a fiscal analysis and are provided to the Rule Advisory Committee.

- b.** CDDP shall participate in person, by phone, or video conference, in monthly CDDP program manager meetings as designated by ODDS. Meetings will be scheduled by ODHS with representatives designated by ODHS to review, clarify, and further plan the Work performed under this Agreement. These ODHS and CDDP meetings shall be scheduled at a time mutually acceptable to both parties. CDDP will ensure a representative will participate in 80% of CDDP program manager meetings for the term of this Agreement.
- c.** CDDP shall participate in person, by phone, or video conference in other required, scheduled meetings. ODDS shall make reasonable efforts to schedule meetings at a time and place conducive to the greatest number of participants.
- d.** CDDP management is responsible for ensuring all information provided by ODHS, during the monthly Case Management Leadership Team (manager or director) meetings, is communicated effectively and timely with all applicable CDDP staff.
- e.** CDDPs must comply with ODDS designated IT systems upon implementation and training. These systems will be designated as the state systems of record for the applicable information.
- f. Career Development Plan.** CDDP shall develop a Career Development Plan (CDP), consistent with ODDS policy and administrative rules, as well as Executive Order 15-01, as part of the ISP for all Individuals of working age, including transition age Individuals, prior to their expected exit from school or within one year of an unexpected exit from school.

- (1) CDDP shall submit copies of the CDP documents to ODHS upon request or cooperate with ODDS field review to verify compliance with timely development of CDPs.
 - (2) In the event the CDDP fails to develop a CDP for any Individual, the CDDP shall take corrective action and develop the CDP within 90 calendar days of the date the CDDP is notified by ODHS, or the CDDP self identifies the absence of a required CDP. The CDP development must meet the requirements as outlined in ODDS policy and administrative rule. These newly developed CDPs must be submitted to ODDS for a quality assurance review.
 - (3) If CDDP fails to respond or follow the directives as lined out in a. and b. above, a financial penalty not to exceed \$150 per identified CDP may be assessed.
- g. Emergency Plan.** CDDP must maintain an emergency plan, policies, and procedures in accordance with OAR 411-320-0040(10) at all times that address responses to any natural disasters, pandemics, or other times when the CDDP may have to react to reducing office hours and or building closures; and that ensure continuity of care to Individuals. CDDP must submit their emergency plan upon request for review by the ODDS Case Management Support Services Unit.
- h. Service Equity Plan.** CDDP will maintain service equity assessment and service equity action plan and will review them periodically, but not less frequently than every two years. CDDP will submit their assessment and plan updates to ODDS Service Equity and Inclusion Manager and Person-Centered Practices and Service Equity Coordinator. Service equity assessments and plans must address at minimum the following priority areas:
- (1) Systemic racism,
 - (2) Language access,
 - (3) Workforce diversity,
 - (4) Data analysis and collection,
 - (5) Service Access,
 - (6) Community engagement, and
 - (7) Identification and development of staff skills, awareness and or practices using an equity lens when providing Services.
- i.** CDDPs Service Equity self-assessment and action plan may be developed in any format. ODDS will not require a specific format but may offer an optional template for CDDP to utilize if needed.
- j.** CDDP will choose at least one action item from within each priority area of their Service Equity action plan and set metrics to measure progress dependent on the priority area and outcomes identified from the CDDP Service Equity assessment. Progress and additional action items based on progress will be reported annually no later than June 30th to ODDS Service Equity and Inclusion Manager and

Person-Centered Practices and Service Equity Coordinator with an understanding that many goals will have long-term progress timeline.

- k.** If requested, ODDS will provide technical assistance to CDDP for Service Equity assessment and plan that may include:
 - (1) Self-assessment tools,
 - (2) Limited trainings for CME staff, and
 - (3) Providing data.
- l.** ODDS will support systemic transformation in service equity by:
 - (1) Identifying shared areas for learning, technical assistance, and improvement.
 - (2) Developing training opportunities for the field based upon system wide trends and improvement areas and offering those trainings to CDDP staff.
 - (3) Extracting and sharing best practice ideas and methods from the CDDP submitted plans.
- m.** Workload Model; Random Moment Sampling Survey.
 - (1) CDDP will assist ODDS in completing the Random Moment Sampling Survey (RMSS) for the computation of FTE and the fixed percentages for caseloads. ODDS will submit the FTE survey with the first RMSS in December following Agreement execution. Failure of the CDDP to complete the survey may result in a reduction of funding.
 - (2) ODDS will report the maximum number of eligible Individuals the CDDP will serve at the biennium start, and as changes are made, based on the biennial Workload Model. The most recent Workload Model is attached to the SEPA for the period for the Services. Funding for CDDP FTEs is allocated within the Workload Model.

2. CDDP Assistance with Provider and Employer Enrollment, Credentials, and Payments.

- a.** CDDP shall assist any Individual who wishes to hire a Personal Support Worker (PSW) with the following:
 - (1) Assist the Individual in becoming a Common Law Employer (CLE) or identifying a designated CLE and provide resources to prospective CLEs on their role. For each CLE CDDP will:
 - (a) Initiate enrollment of the CLE into the Fiscal Management Agent Services (FMAS) vendor's web portal (currently referred to as "BetterOnline").
 - (b) Refer Individuals to the Employer Resource Connection contractor serving in the Program Area. If the CDDP identifies a need for ERC program services and resources, the CDDP shall refer the CLE to the ERC contractor.

- (2) Contacts for information from Oregon Home Care Commission (OHCC).

CDDPs must comply with requests from the OHCC and its Customer Relations and Workers' Compensation Units for information regarding workers' compensation claims, PSW safety complaints, ADA accommodation requests, unemployment claims related to an individual who is the employer of PSWs, PSW late payment complaints, and PSW complaints and grievances.

- (3) Assist the Individual in the enrollment process for PSWs by:

(a) Providing PSWs with a Provider Enrollment Application and Agreement (PEAA) and initiating a Criminal History Check (CHC).

(b) Initiating the PSW enrollment in the FMAS vendor's web portal. For each new PSW, CDDP will provide the required information to successfully enroll the PSW.

b. CDDP shall assist Individuals by verifying that certifications, licenses, CHCs, driver's licenses, and auto insurance are valid prior to Services being authorized for PSW Providers.

c. CDDP must review and approve or reject the PSW time sheet, progress note, and mileage log. CDDP must review and approve or reject PSW submitted Services Delivered billing entries accordingly. CDDPs will work with PSWs or direct PSWs to work with their CLE for suspended payment claims that are unrelated to an eligibility issue.

3. CDDP is required to submit an Out of Cycle (OOC) request for payment for PSWs, if the PSW turned in a properly completed timesheet within the dates as outlined on the approved PSW payment calendar, and the timesheet was not approved due to an administrative error on the part of the CDDP. The OOC request for payment must be submitted within one business day of the CDDP verifying that an error occurred and that it was due to an administrative error. CDDP will be invoiced for all fees incurred for OOC requests due to administrative error, including but not limited to, no more than a \$125 fee per day for initiating an OOC. ODDS will calculate the \$125 fee per day based on number of requests received for the day and invoice CDDP quarterly.

CDDP will also be invoiced for any approved PSW Late Fees generated due to CDDP error at a rate of \$20 per day as determined through the payment complaint process. The number of days for PSW Late Fee will be calculated as follows: actual date processing occurred minus scheduled processing date equals number of late days. PSW Late Fees will only match, and not exceed, the overall gross payment that is delayed. This cap on PSW Late Fees will not apply when a PSW experiences an additional payment occurrence within one calendar year.

In the event that a CDDP has reasonable cause to believe that a CLE or PSW is committing Medicaid Fraud, CDDP will notify ODDS Provider Administration Manager and Medicaid Fraud Unit immediately.

4. Days and Hours of Operation; Notifications to ODDS.

- a. CDDP must provide the days and hours it will be open to the public by submitting a completed Attachment #1 to ODDS when the Agreement is signed by the CDDP. Failure by CDDP to provide this information will prevent Agreement execution by ODHS and distribution of the signed Agreement. CDDP must report any changes to the days and hours of operation to ODDS.contracts@odhsoha.oregon.gov within 24 hours of the decision.
- b. If CDDP must close or reduce its hours of operation as described in Attachment #1 for any reason, including but not limited to a loss of utilities, a pandemic, or a natural disaster, CDDP must notify ODDS' Agreement Administrator by email or telephone within 24 hours of the reduction or closure. If CDDP cannot meet the deadlines to approve PSW timesheets, CDDP will notify ODDS' Provider Administration Manager immediately by email or telephone.
- c. ODDS reserves the right to reduce funding if CDDP's days or hours of operation are reduced from those identified in Attachment #1 unless the reduction in operations is the result of an overall statewide fiscal reduction due to a legislative action.

5. ODDS Administrative Responsibilities.

- a. ODDS will publish Action Requests and Policy Transmittals that have an impact on the day-to-day processes and operation of a CDDP to the Innovation and Engagement website prior to publication. Website comments will be reviewed and responses to those comments posted at the time of publication of the Transmittal. ODDS reserves the right to not respond to all individual website comments.
- b. ODDS will publish Transmittals prior to the effective date of the Transmittal when possible. There may be times due to states of emergency, pandemics, or natural disasters that Transmittals may not be published timely and may be retroactive.
- c. ODDS will provide training to the CDDP staff prior to implementing new systems. Training may be in multiple formats including, but not limited to, in person, webinars, the ODHS approved learning management system, and other media sources. In person trainings will be conducted, at a minimum, in four areas of the State.
- d. ODDS will respond to fiscal inquiries from the CDDP within five business days of receipt of a written inquiry. Fiscal inquiries must be submitted to cau.invoice@odhsoha.oregon.gov.
- e. ODDS will facilitate conversations with ORAI to provide a 2-week window for CDDP to review final RMS survey results and calculations prior to those numbers being finalized and submitted to the ODHS Budget Office.

- f.** ODDS will only post results from final quality assurance reports on the ODHS website. For strategic messaging, ODDS will analyze widespread findings that lower the results for a large number of CMEs and will bring forward those findings to the Case Management Leadership Team prior to posting on the website.
- g.** If a CDDP refuses to follow the rules identified in CFRs, OARs or ORS that require the CDDP to take action necessary to assure the health and safety of Individuals enrolled in DD Services, ODDS will notify the CDDP in writing that ODDS intends to perform the functions necessary for the health and safety of the Individuals. ODHS may reduce the funding received by the CDDP to cover the costs of ODDS fulfilling the roles necessary for the needed actions.
- h.** ODDS will work with Case Management Entities to develop or update, as appropriate, position descriptions for positions funded by ODDS to provide to Department of Administrative Services (DAS). ODDS must have final position descriptions by December 15th of the review year to submit to DAS for review and to identify comparable classifications in the state’s classification plan no later than January 1, 2024.

6. Quality Assurance.

- a.** ODHS’s quality assurance activities include:

 - (1) Review of Case Management Services;
 - (2) Review of assessments, ISPs, and LOCs;
 - (3) Review of CDDP’s Provider monitoring, complaints, and other contracted obligations; and
 - (4) Review of approved Case Management claims.
- b.** CDDP shall:

 - (1) Comply with all ODHS quality assurance reviews, plans, and processes designed to monitor and ensure CDDP’s timely and accurate CMS compliance.
 - (2) Follow all undisputed remediation instructions, including timelines, resulting from the quality assurance review findings.
 - (3) Make available to ODHS’ quality assurance staff, upon request, Access, including a login and password, to any electronic systems or physical documentation that contains intellectual or developmental disabilities information about Individuals enrolled in Case Management Services, if allowed under federal and state law.

c. ODHS shall:

- (1) Notify CDDP in advance of a ODHS quality assurance review.
- (2) Provide timely feedback to CDDP of quality assurance review findings and an opportunity for CDDP to dispute those findings prior to the final report.
- (3) Provide technical assistance and training to CDDP in the areas identified as needing improvement by the quality assurance review. Technical assistance and training provided by ODHS will not negate necessary remediation activities by CDDP.

EXHIBIT B PART 2

Service Element Standards and Procedures

1. Provision of Services.

- a. The DD Services listed in this Section 1 and described in this Exhibit B Part 2 must be provided as described in the appropriate federal regulations, Oregon Revised Statutes, Oregon Administrative Rules, most current ODDS expenditure guidelines, and Service Element Standards and Procedures for the DD Services. Requirements for Service Elements may be found in the OARs listed below. Any additional requirements may be found in this Exhibit B Part 2. Only the DD Services listed are subject to this Agreement.
- b. Upon acceptance of the Service Element Prior Authorization (SEPA) in eXPRS, CDDP agrees to directly provide or subcontract for the DD Services. The DD Services provided by CDDPs whose costs are covered in whole or in part with the SEPA are:

Service Name	References
(1) Eligibility and Licensing	Chapter 411, Division 320, Service Element Standards and Procedures
(2) Case Management Operations	Chapter 411, Divisions 415 and 320; Service Element Standards and Procedures
(3) Abuse Investigation Services	Chapter 411, Division 320; Service Element Standards and Procedures

2. Assistance Listings (fka CFDA) Number(s) for all Services in Exhibit B Part 2.

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, and ODHS procedure "Contractual Governance," ODHS' determination is that County is a Contractor.

The Assistance Listings (fka Catalog of Federal Domestic Assistance (CFDA)) #(s) of Federal Funds to be paid through the Agreement: 93-778.

3. Service Element Standards and Procedures Review Process.

ODHS shall update this Exhibit B Part 2 as follows:

- a. ODDS will engage with a standing group of stakeholders to review and, if needed, modify this Exhibit B Part 2. Stakeholders shall include CDDP staff and designated representatives, ODDS staff, and other parties identified by ODDS.
- b. Upon determining that an update is necessary, a draft of the document changes will be sent to the stakeholder group via e-mail for review and comment. The ODDS e-mail shall include a time, date, and conference line number or virtual meeting information for a discussion between ODHS and CDDPs regarding the draft Service Element Standards and Procedures being reviewed. ODHS will

accept comments via e-mail for 15 business days after the date of the ODDS e-mail notification of the changes.

- c. After the discussion and the deadline for receipt of any e-mail review and comments from the CDDPs, ODHS will consider any information from CDDPs when determining the final changes to this Exhibit B Part 2.
- d. Upon completion of the review process, ODHS shall follow the amendment process as outlined in Exhibit E Section 27 “Amendments; Waiver; Consent” of this Agreement to update Exhibit B Part 2.

4. Service Authorization.

CDDP must authorize Services as outlined below:

- a. All Services, regardless of service setting or unless otherwise noted, must be authorized in eXPRS or MMIS for Long-Term Community Care Nursing (LTCCN), in a manner consistent with rule, by the CDDP in which the Individual is enrolled and is receiving Case Management Services and found eligible for I/DD Services as outlined in OAR Chapter 411, Division 320. This authorization must be obtained and documented in accordance with OARs and ODHS policies and procedures.
- b. All Services must be authorized at the appropriate rate for the service setting. All Services included in the expenditure guidelines must be entered using the rates detailed in the expenditure guidelines. Rates are subject to change upon notice from ODHS.

5. Ancillary Services.

Rates are set using the most recent ODDS expenditure guidelines. Exceptions to the published rate(s) may be allowed with prior approval by ODHS. ODDS will issue a final funding memo to CDDP when the payment of invoice is approved. ODDS will process payment within 45 days in accordance with ORS 293.462.

6. Employment Services; Other Non-Residential Day Services.

- a. CDDP will assist ODHS in monitoring compliance with the following Provider special reporting requirements:
 - (1) Provider must complete such Provider assessments as requested by ODHS in a timely and accurate manner.
 - (2) Provider will report to ODHS any employment outcome related information, including but not limited to wages, earnings, and turnover data, to ODHS using forms and procedures designated by ODHS.
- b. The Individual will receive the hours of Services per week as agreed to by the Individual, his or her ISP team, and the Provider. Service hours provided to the Individual may not be lowered to accommodate any ODHS reductions in the Provider rate.

7. Supported Living.

Upon implementation of the rate table, the ODHS budget tool will no longer be needed for Individuals receiving Supported Living Services.

8. Transportation Services.

- a. Transportation Service rates are set using the expenditure guidelines or the transit providers published rate.
- b. Individuals enrolled in Transportation Local Match Services for going to or from employment services, including day support activities, are not eligible for other Transportation Services for transportation to or from employment services, including day support activities without an exception.
- c. CDDP must maintain Transportation Local Match rosters and report changes regarding Individuals eligible for Transportation Local Match to transit districts as outlined in transportation worker's guide. CDDP's failure to report these changes to the transit district will result in CDDP paying for rides provided to Individuals ineligible for Transportation Local Match.

9. Special Projects.

- a. Special Projects are a mechanism for special payments as a pass-through payment to the CDDP.
- b. All requests for Special Projects funding must be submitted to ODDS.FundingReview@odhsoha.oregon.gov prior to authorization by ODDS or submitted through an identified application process prior to authorization by ODDS. If County subcontracts the entire CDDP Program, the County, the County is prohibited from applying or receiving Special Projects funding. An ODDS approved contractor may apply for Special Project funding and, when approved in writing by ODDS, may be allowed to subcontract or partner with a community organization to conduct the Project.
- c. Performance requirements for Special Projects not otherwise defined in this Agreement are described below:
 - (1) A Special Project must be authorized in advance by ODDS, and the Special Project must be performed prior to ODDS releasing funding, unless otherwise approved by ODDS in writing.
 - (2) Funding for Special Projects will be paid to the CDDP through eXPRS.
 - (3) Terms and conditions of each Special Project will be defined in cooperation with the CDDP.
- d. All Special Project funds are subject to Settlement to confirm and reconcile any discrepancies that may have occurred between actual ODHS disbursements of funding and the amount actually delivered and invoiced at the end of the Agreement period or biennium in which they are authorized, whichever comes first.

10. Room and Board General Fund (R&B GF).

- a.** Services for R&B GF are limited to those Individuals with I/DD who are not Medicaid eligible due to the Individual being undocumented but are working towards United States citizenship. R&B GF Services assist these Individuals with room and board (R&B), personal incidental items, and as necessary, allowable medical expenditures.
- b. Authorizing R&B GF Services.**
- (1) Individuals must be 18 or older and concurrently receiving Residential Services or Adult Foster Home Services.
 - (2) Services must be approved in advance by ODHS. CDDP must submit the following documentation when requesting R&B GF Services:
 - (a) Individual's name;
 - (b) Individual's prime number;
 - (c) Effective date of requested R&B GF Services;
 - (d) Amount of monthly funds requested;
 - (e) Information regarding Individual's citizenship status;
 - (f) Steps Individual has taken to date in obtaining citizenship;
 - (g) Steps to be taken by the Individual to obtain citizenship during the time frame requested for R&B GF Services;
 - (h) A copy of the Individual's most current Individual Support Plan (ISP), if funding for medical expenditures is requested;
 - (i) A methodology for calculating the funds for medical expenditures, if applicable;
 - (j) Documentation that the Individual has been denied Citizen Alien Waived Emergent Medical (CAWEM) and Oregon Health Plan (OHP) insurance coverage.
 - (3) An Individual cannot receive R&B GF medical expenditure funding if the Individual is receiving OHP or CAWEM benefits unless the ISP team determines that the Individual's medical needs exceed what is covered CAWEM benefits and requests an exception.
 - (4) If the Individual has been approved to receive R&B GF medical expenditure funding and has been approved for CAWEM, CAWEM must be used for any medical expenditure covered by CAWEM. CAWEM coverage is limited to emergency medical services only.
 - (5) R&B GF funds may be used for an Individual in a medical emergency even though the emergency situation is not included in the ISP. For purposes of this Exhibit B Part 2, an emergency situation is defined as a sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of

immediate medical attention could reasonably be expected to result in placing the Individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

- (6) The following medical services are not authorized under R&B GF Services:
 - (a) Routine dental care and diagnostic testing such as annual or semi-annual cleanings, fillings, root canals and routine x-rays.
 - (b) Routine eye exams, diagnostic testing, contacts, glasses, and lenses.
- (7) R&B GF authorizations may not exceed 12 months. If requesting a renewal, CDDP must submit:
 - (a) Updated information about the status of the Individual's citizenship;
 - (b) Steps the Individual has taken towards citizenship since the last update;
 - (c) Steps to be taken by the Individual to obtain citizenship during the requested timeframe for renewed R&B GF Services; and
 - (d) Updated documentation on CAWEM and OHP eligibility.

c. Rate Setting for R&B GF Services.

- (1) The funds awarded for R&B GF Services for R&B and personal incidentals are equivalent to the anticipated federal Supplemental Security Income (SSI) as defined in Code of Federal Regulations (CFR) Part 416.101 – 416.121, 416.401 – 416.435 and 416.501 - 416.665, and the Oregon Supplemental Income Program (OSIP) Manual under “Room and Board and Personal Needs Standards”. Monthly rates are subject to change to reflect federal cost-of-living or other ODHS approved adjustments. These monthly rate changes do not require a request by CDDP and approval from ODHS. Any monthly rate adjustments resulting from these changes will be added by ODHS to awards ODHS authorized for Individuals receiving R&B GF Services.
- (2) R&B GF funds must be used for “current maintenance” costs incurred by an Individual receiving R&B GF Services, as defined in the above-referenced CFRs, the OSIP Manual, and as outlined in this Exhibit B Part 2. Current maintenance includes the room and board fees charged by the Provider to the Individual and costs incurred for clothing, medical care authorized by ODHS, and personal comfort care for the Individual, whether provided directly by, or facilitated by, the Provider of the R&B GF Services.
- (3) R&B GF funds used for an Individual's medical expenses must only be for necessary medical expenditures for the Individual up to the amount authorized by ODHS.

d. Disbursement of R&B GF Service Funds.

- (1) A SEPA will be created for the total amount of the R&B GF Service allowed for the Individual prior to Services being rendered.
- (2) R&B GF funds are disbursed through a PPA in eXPRS to the CDDP.
- (3) R&B and personal incidental funds are disbursed at the beginning of each Service month through a ODHS created 12-month PPA. CDDP must remit payment to the Provider after receiving disbursement.
- (4) Medical Expenditures are disbursed at the beginning of a service period through an ODHS created three-month PPA. CDDP must remit payment to the Provider after receiving disbursement. If ODHS has paid to CDDP, through the release of the PPA funding, more R&B GF medical expenditure funds than reported by the Provider and submitted by CDDP, ODHS will stop releasing funds for R&B GF medical expenditures until the balance due CDDP for R&B GF medical expenditures is no less than one month of the allocated PPA funding. If a Provider's monthly medical expenditure report shows the Provider needs additional medical expenditure funds to cover future medical costs for an Individual, and the additional funds and medical expenditures are within the Individual's ODHS authorized funding, then ODHS will release the additional funding up to, but not to exceed, the SEPA amount.

e. Special Provisions of R&B GF Services.

- (1) Medical expenditure funding for an Individual for R&B GF Services paid to a Provider via CDDP may only be carried over into future months within the same biennium. When medical expenditure funding carry-over occurs, the next monthly payment to CDDP for the Individual will be reduced by ODHS by the amount carried over from the previous months. CDDP may not carry over funding of R&B GF Services for medical expenditures into the next biennium. The medical expenditure funding must be returned to ODHS immediately upon request by ODHS, or within 45 calendar days of the end of the biennium in which the funds were paid, whichever date is sooner.
- (2) CDDP shall notify ODHS within 14 calendar days if the Individual's circumstances change and the Individual is no longer eligible for R&B GF Services.
- (3) ODHS may request at any time other information regarding the use of R&B GF Services or the justification of such Services. CDDP must respond to any request within 10 business days.
- (4) CDDP must submit to ODHS quarterly, paid Provider invoices for R&B and personal incidental expenditures. Provider invoices must reflect that the Individual received the R&B GF Services during the time period covered by the invoices. If paid Provider invoices are not received by ODHS, the R&B and personal incidental funds paid to Provider, and not

supported by paid Provider invoices, must be recovered by CDDP and CDDP must then return this R&B GF funding to ODHS.

(5) For Medical Expenditures:

- (a) Providers shall report to CDDP the allowable medical expenditures each month on a ODHS prescribed form. This monthly report will serve as the Provider invoice for medical expenditures for R&B GF Services. This monthly medical expenditure report must include the following, at minimum:
 - i. Individual's name;
 - ii. Individual's prime number;
 - iii. Month or timeframe for the reported R&B GF Services;
 - iv. Provider's name and eXPRS Provider number;
 - v. Description of each medical expenditure listed separately;
 - vi. Amount of each medical expenditure;
 - vii. Name of entity providing the R&B GF Service, such as the name of pharmacy, doctor, or therapist; and
 - viii. Actual date of R&B GF Service, not the date the Service was paid for by the Provider.
 - (b) Provider must submit a monthly medical expenditure report to the CDDP within 14 calendar days of the end of each month R&B GF Services were provided. The Provider medical expenditure report for the last month in the biennium must be submitted to CDDP within 14 calendar days of the end of each biennium.
 - (c) CDDP shall submit for payment the Provider's monthly medical expenditure report on a form prescribed by ODHS no later than 45 calendar days from the end of the month in which R&B GF Services were provided. ODHS will review this report for accuracy and adherence to this Exhibit B Part 2. CDDP will be notified of any non-allowable expense and will be required to recoup the funding from the Provider. CDDP will remit to ODHS the recouped funding within 45 calendar days of recoupment.
- f. ODHS reserves the right to end R&B GF Services with proper notice to the Individual, Provider and CDDP.
 - g. All R&B GF funds are subject to Settlement to confirm and reconcile any discrepancies that may have occurred between actual ODHS disbursements of funding and the amount actually delivered and invoiced at the end of the Agreement period or biennium in which they are authorized, whichever comes first.
 - h. All invoices must be submitted to cau.invoice@odhsoha.oregon.gov.

11. Eligibility and Licensing.

- a. Eligibility and Licensing encompasses the activities related to determination of eligibility of Individuals under OAR Chapter 411, Division 320 and assisting in the licensing of Adult Foster Homes under OAR Chapter 411, Division 360; and assistance in certifying Child Foster Homes under OAR Chapter 411, Division 346, unless otherwise exempt under Oregon law.
- b. **Standards and Procedures not identified in rule.**
 - (1) Special Reporting Requirements
 - (a) Upon ODHS' written request, CDDP will provide data and information relative to the implementation of eligibility and Licensing Services within the time specified by ODHS in its request to CDDP.
 - (b) CDDP must ensure applications, determinations and reason for decision is documented in eXPRS as outlined in OAR 411-320-0080. Upon request from ODHS, the CDDP must complete the eligibility tracking document and provide a response within 30 calendar days of request.
 - (2) Billing and Payment Procedures
 - (a) ODHS will provide CDDP with funding for Eligibility and Licensing Services by entering a Service Element Prior Authorization (SEPA) and Provider Prior Authorization (PPA) based on the approved CDDP Workload Model or its funding level for FTE staff.
 - (b) ODHS will disburse funding for Eligibility and Licensing Services for a specified period of time equal to the monthly amount set forth in the accepted SEPA and approved in the PPA, as such amounts may be updated from time to time. Any recovery of funding will be done as outlined in Exhibit B Part 3 of this Agreement.
 - (3) CDDP, as a Provider of Eligibility and Licensing Services that are funded by ODHS, must:
 - (a) Employ an identified individual as an Eligibility Specialist, as defined in OAR 411-320-0020 (14), and meet qualifications outlined in OAR 411-320-0030 (5)(d), to perform the duties outlined in OAR 411-320-0030 (9)(b) and OAR 411-415-0050; or have an agreement with another CDDP to perform eligibility determination for the CDDP receiving the Eligibility and Licensing funding. If there is an agreement with another CDDP to perform eligibility determinations, the agreement must include the provision of Eligibility and Licensing Services in that CDDP's Program Area.

- (b) Employ an identified individual as a Licensor who meets qualifications indicated in OAR 411-320-0030 (5)(g) and performs the duties outlined in OAR 411-320-0030 (9)(e); or have an agreement with another CDDP to perform foster care licensing and certification for the CDDP receiving the Eligibility and Licensing funding. If there is an agreement with another CDDP to perform foster care licensing and certification, the agreement must include the provision of Eligibility and Licensing Services in that CDDP's Program Area.
- (c) Employ sufficient staff to perform the eligibility determinations and licensing duties within required timelines for its own CDDP and the CDDP with whom it is subcontracting if performing these duties for another county.
- (d) Use ODHS approved systems, forms, and procedures for eligibility determination services.
- (e) Inform ODHS' Office of Developmental Disabilities Services (ODDS) of the name(s) of the CDDP's designated Eligibility Specialist(s) and notify ODDS if the CDDP assigns a new Eligibility Specialist.
- (f) Will determine an Individual's eligibility for Services within the time frames identified by ODHS in OAR 411-415-0030 and OAR 411-320-0080.
- (g) Ensure that an Eligibility Specialist (ES), or the ES processor with the appropriate training and eXPRS user role, completes the appropriate eligibility paperwork and intake screens in eXPRS.
- (h) Complete the eXPRS eligibility within ten business days of any eligibility determination or change.
- (i) Complete the supplemental LOC assessment through the Oregon Needs Assessment, in compliance with OAR 411-415-0060.

12. Case Management Operations.

- a.** Case Management Operations encompass the activities related to the general administration and management of a Community Developmental Disabilities Program (CDDP). These activities include, but are not limited to, ensuring that all CDDP staff receive necessary training, that all services offered by the CDDP are understood by staff, as well as the rules that govern those services, and that all staff comply with OAR Chapter 411, Division 320 as it describes the requirements of CDDP staff.
- b.** Case Management Services are delivered to Individuals who are eligible for Intellectual and or Developmental Disabilities Services (I/DD Services) funded by ODHS in an identified Program Area.

c. General Performance Requirements.

- (1) For each eligible Individual receiving Case Management Services, the CDDP shall create and submit a Client Prior Authorization (CPA) in eXPRS for Case Management Services within five business days of the CDDP's determination that the Individual is eligible for Case Management Services. Updates or changes to an Individual's eligibility or service period for Case Management Services must be reflected in the Individual's CPA within five business days of the CDDP's receipt of notification of change. The Case Management CPAs that are submitted successfully by the CDDP and are accepted through eXPRS will serve as the CDDP enrollment roster for Case Management Services.
- (2) Providers of Case Management Services funded by ODHS shall:
 - (a) Comply with the requirements of OAR Chapter 411 Division 320 "Community Developmental Disabilities Program" and Division 415 "Case Management Services for Individuals with Intellectual or Developmental Disabilities", as such rules may be revised from time to time.
 - (b) Complete annual plan entry into eXPRS for any Plan of Care Services under the guidelines identified in OAR 411-415-0070 "Service Planning". Failure to follow the guidelines identified may result in payment withholding for services rendered or other actions as deemed appropriate by ODHS.
 - (c) Develop, maintain, and effectively implement systems and procedures for the timely and accurate documentation of Case Management Services.
 - (d) Comply with all ODHS requirements designed to assure the timely and accurate enrollment, Service Authorization, and service payment for Individuals receiving Case Management Services.
 - (e) Ensure that all Claims billed are for activities that meet ODHS guidelines for Case Management.
 - (f) Ensure each Individual receiving Case Management Services is eligible for DD Services, with eligibility determined in accordance with OAR Chapter 411, Division 320, as such rules may be revised from time to time.
 - (g) Complete and submit Case Management Service eligibility or enrollment information via established methods, and update forms following instructions and using forms(s) or method(s) designated by ODHS. Failure to submit the Case Management Service eligibility or enrollment form may delay the approval of the service authorization for Case Management Services.

- (h) Ensure that all Oregon Administrative Rules and ODHS policies, procedures, and Transmittals are complied with and that CDDP staff provide Case Management Operations in compliance with Exhibit B Part 2 of this Agreement.

d. Special Reporting Requirements.

- (1) Upon the written request of ODHS, the CDDP shall supply data and information relative to the implementation of Case Management Services within 14 business days of request, unless otherwise mutually agreed upon.
- (2) CDDP shall respond to ODHS staff inquiries or written requests for additional information within five business days of a request pertaining to a complaint or administrative hearing to include, but not be limited to, eligibility or service complaints and hearings.
- (3) Upon reasonable notice, CDDP staff shall cooperate in any administrative hearing as a witness at any stage of the hearing or any other legal matters arising from their role including, but not limited to, eligibility or service complaints.

e. Funding for Case Management Services.

- (1) Case Management funding is based upon the amount of qualified billable RFFS Claims submitted by the Provider of Case Management Services, up to the monthly amount authorized by the CDDP's Case Management service authorization.
- (2) Case Management funding is paid to the CDDP after the Claims processing cycle on the 15th of the month based on Title XIX eligible Claims cleared since the first of the month. Title XIX eligible Claims made for the previous month(s) that have cleared but have not previously been paid, will also be processed for payment at this time up to the monthly authorized amount. General fund Claims submitted for the time period between the 1st of the month and the 15th of the month will be held until the next monthly Claims processing cycle described in 12.e.(3) of this Exhibit B Part 2.
- (3) Case Management funding is paid to CDDP after the Claims processing cycle on the last day of the month based on:
 - (a) If any funds remain or are available in the monthly authorized amount;
 - (b) Title XIX eligible Claims cleared since the 15th will be processed and paid first;
 - (c) Title XIX eligible Claims cleared but not yet paid for the previous month(s) will be processed and paid second up to the maximum monthly authorized amount;

- (d) If any funds remain or are available for the month after payment of the Title XIX eligible Claims, general fund Claims that have cleared that month will be processed and paid third; and
 - (e) General fund Claims cleared but not yet paid for the previous month(s) will be processed and paid fourth until the monthly authorized amount is exhausted.
- (4) ODHS is not obligated to provide funding for any Case Management Services that are not properly documented in Individual case files, or are not properly reported through eXPRS within 12 months of the Case Management Service, and by the date 60 calendar days after the termination of the Agreement; termination of ODHS' obligation to provide funding for Case Management Services; or termination of CDDP's obligation to include the Program Area in which the Case Management Services are provided.
 - (5) Provider of Case Management Services shall resolve all Provider Liability Accounts (PLA) as shown in eXPRS relating to Case Management Services, by ensuring the PLA ending balance is zero, within 60 calendar days after the earlier of expiration or termination of the Agreement with ODHS; termination of ODHS' obligation to provide funding for Case Management Services; or termination of CDDP's obligation to include the Program Area in which the Case Management Services are provided.
 - (6) Each Individual receiving Case Management Services must have an active, accepted CPA within eXPRS for the period the Case Management Services are provided to the Individual in order for Provider to submit a qualifying Claim.
 - (7) For each unit of Case Management Services reported in eXPRS as delivered to an Individual, a qualifying billable Case Management Service must have been delivered to the Individual and sufficiently documented in progress notes within the Individual's file. ODHS will not provide funding for more than one billable Case Management Service or unit per Individual per day. CDDP will void or back out any submitted claims that are determined not to meet Case Management Services.

13. Abuse Investigation Services.

- a.** Abuse Investigation Services for adults include responding to abuse allegations, accessing protective services in coordination with Case Management Entities, and assuring that the abuse allegations are appropriately investigated and reported. CDDP must operate a Community Developmental Disabilities Program, or have a service agreement with another CDDP, to perform abuse investigation activities. The abuse investigator specialist serves as the "designee" of ODHS under ORS 430.731, 430.735 to 430.765.

b. General Performance Requirements.

- (1) When providing Abuse Investigation Services for ODHS, CDDP will:
 - (a) Comply with OAR Chapter 411, Division 320 “Community Developmental Disabilities Program”, as such rules may be revised from time to time.
 - (b) Comply with ORS 430 and OAR Chapter 407, Division 045 “Office of Training, Investigations and Safety ”(OTIS), as such statutes and rules may be revised from time to time.
 - (c) Comply with ODHS policies and procedures and ODHS Transmittals requesting action or providing policy information.
- (2) CDDP must employ individuals as abuse investigators or have an agreement with an identified CDDP or Subcontractor, to perform abuse investigation activities which include the provision of Abuse Investigation Services in a Program Area and who will be referred to as the “Abuse Investigator”.
- (3) CDDP or Subcontractor shall employ, provide training, and require attendance to mandatory training for Abuse Investigators indicated in the Workload Model for Abuse Investigation Services within the funding allotted.
- (4) Abuse Investigators must use a State approved information system, forms, and procedures for acting on mandatory abuse reports, assessing protective services, and conducting investigations for documentation of findings regarding abuse allegations.
- (5) Abuse Investigators must complete the abuse investigation duties within the timelines outlined in rule. Any variance to the investigation rules in OAR Chapter 407, Division 45 “Office of Training, Investigations and Safety” must be reviewed and approved by OTIS.
- (6) Abuse Investigators must participate in quarterly meetings held by OTIS.
- (7) Upon reasonable notice, Abuse Investigators must participate in a contested case matter, including as a witness, at any stage of the hearing or any other legal matters arising from their role.
- (8) Abuse Investigators must participate in the county multidisciplinary team relative to ORS 430.739 “County multidisciplinary teams; protocols; reports” and provide any requested data and information needed to comply with ORS 403.739 and OAR Chapter 407, Division 45.
- (9) Per ORS 430.731(3) a person employed by a CDDP as a case manager may not serve as the lead investigator of an allegation of abuse of a person with a developmental disability.
- (10) A CDDP may identify a back-up Abuse Investigator who is also a case manager or Services Coordinator. Back-up Abuse Investigators must complete the Investigator Core Competencies training as delivered by

OTIS. A back-up Abuse Investigator may be used in a situation where the primary Abuse Investigator is absent or temporarily unavailable. If a case manager is the back-up Abuse Investigator, the case manager cannot serve as the investigator for an allegation involving an adult they case manage.

- (11) In circumstances where a CDDP may have a potential conflict of interest, OTIS should be consulted as prescribed in OAR Chapter 407, Division 45. A conflict of interest is limited to cases where a CDDP employee is the accused person, there is a familial relationship to the investigator, or the allegation is a highly sensitive issue requiring outside investigation.
- (a) The Abuse Investigator must consult with OTIS to confirm the conflict of interest and then coordinate the out of CDDP investigation with the assigned OTIS special investigator.
 - (b) OTIS, in consultation with the Abuse Investigator, will determine if there is an actual or potential conflict of interest that cannot be remedied through assignment to another abuse investigation provider.
 - (c) OTIS will provide a written response regarding the outcome of the formal request to the original investigator within 24 hours.

c. Special Reporting Requirements.

Upon ODHS' written request, a CDDP will provide data and information relative to the implementation of Abuse Investigation Services within the time specified by ODHS in its request to CDDP.

d. Billing and Payment Procedures.

- (1) ODHS will provide CDDP with funding for Abuse Investigation Services by entering a Service Element Prior Authorization (SEPA) and Provider Prior Authorization (PPA) based on the approved CDDP Workload Model or its funding level for FTE staff.
- (2) ODHS will disburse funding for Abuse Investigation Services, for a specified period of time, in an amount equal to the monthly amount set forth in the accepted SEPA and approved in the PPA, as such amounts may be updated from time to time, subject to the following:
 - (a) If CDDP fails to deliver Abuse Investigation Services for part of a month, the funding for Abuse Investigation Services for that month will be prorated and ODHS may reduce future disbursements of Abuse Investigation funds accordingly.
 - (b) If requested by ODHS, CDDP shall also accept an appropriate SEPA Adjustment to amend funding for Abuse Investigation Services as a result of a CDDP's failure to deliver the Abuse Investigation Services for a full month.

14. Centralized Abuse Management System Procedures.

- a. CDDP must record all serious incidents, complaints of abuse, death reviews, and abuse investigations in the ODHS approved Centralized Abuse Management (CAM) System.

b. **Abuse Data Measures.**

#	Metric	Metric Explanation
(1)	Timeliness of First Contact	Abuse investigations meeting applicable response times according to OAR.
(2)	Investigation Cycle Time	Number of days from opening an investigation to the date the investigation is closed.
(4)	Screening Timelines	Allegations screened in compliance with OAR timelines.
(5)	Caseload Ratio	Number of investigations opened per abuse investigator.
(6)	Re-abuse Rates	Number of victims with multiple substantiations of abuse.
(7)	Core Competency Training	Number of new investigators who complete Core Competency Training within 6 months of hire.
(8)	Annual Training Hours	Number of abuse investigators who complete 20 hours of annual training.
(9)	Serious Incidents and Investigations	Number of investigations with related serious incidents.

c. **Serious Incident Measures.**

#	Metric	Metric Explanation
(1)	Serious Incidents Entered	Number of serious incidents meeting applicable entry timelines.
(2)	Serious Incidents Closed	Number of serious incidents meeting closure timelines.
(3)	Serious Incident Recommended Actions	Number of serious incidents recommended actions with documented outcome.
(4)	Serious Incident Types	Number of serious incidents reported.

- d. ODHS in coordination with CDDP will gather baseline data and establish appropriate compliance targets for the identified measures. CDDP will follow ODDS instructions to request from CAM Operations and Maintenance (O&M) to create reports needed to meet reporting requirements. If CAM O&M is unable to create a report the CDDP will notify ODDS and will not be required to gather data and establish targets for measures.
- e. CDDPs are required to meet internally on a quarterly schedule to review their local data, develop actionable plans and respond to concerning or ongoing patterns of incidents among Individuals and or Providers, also referred to as trend reports in this Agreement.
- f. At a minimum, CDDP will submit quarterly data reports on an approved ODHS template.
- g. The quarterly data reports and the trend reports described below will be provided to IMT.Submissions@odhs.oregon.gov.
- h. ODDS will outline the reporting timelines for the CDDP.

i. Quarterly Trend Reports.

- (1) ODDS will provide CDDP a form for CDDP to complete a comparison of actual trend results versus trend targets for the current period and at least the two previous periods.
- (2) A proposed action plan for each measure not in compliance with the agreed upon compliance targets.
- (3) An action plan will include:
 - (a) An analysis/statement of the root causes/reasons for not meeting the compliance targets.
 - (b) A description of solutions identified and recommended by the CDDP in order to meet the agreed measures.
 - (c) A timeframe for implementing the solutions.

EXHIBIT B PART 3
Financial Terms and Conditions

1. Disbursement of Payments.

- a. Disbursement Generally.** Subject to the conditions precedent to disbursement set forth in subsection c. below, ODHS shall disburse the payments described in the SEPA to CDDP and or Subcontractors in accordance with the procedures set forth in this Section 1 and, as applicable, in Exhibit B Part 2 “Service Element Standards and Procedures”. Disbursement procedures may vary by DD Service.

If County subcontracts any or all Service(s) covered under this Agreement, County must forward all funds related to the Services subcontracted to Subcontractor within ten business days of receipt from ODDS. If the entire CDDP program is subcontracted County cannot retain any of the funding.

- b. Disbursements Remain Subject to Recovery.** All disbursements of funds to CDDP and or Subcontractors under this Agreement remain subject to recovery from CDDP, in accordance with Section 7 below, as a Misexpenditure.
- c. Conditions Precedent to Disbursement.** ODHS’ obligation to disburse payments to CDDP and or Subcontractors under this Agreement is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- (1) No CDDP default as described in Exhibit E “Standard Terms and Conditions” has occurred.
 - (2) CDDP’s representations and warranties set forth in Section 4 “Representations and Warranties” of Exhibit E “Standard Terms and Conditions” are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

2. Use of Funding.

- a.** CDDP shall use all funds disbursed to CDDP under this Agreement solely to cover actual Allowable Costs reasonably and necessarily incurred to deliver DD Services during the term of this Agreement. Depositing these contracted funds into a single pool, making one dollar indistinguishable from another, is prohibited and subject to audit. However, CDDP may deposit funds from different sources, including the funds from ODHS, into a single account if the different funding streams are accounted for and trackable, sometimes referred to as “braiding.”
- b.** CDDP indirect costs defined in 2 CFR 200.1 cannot exceed rate assumed in Workload Model. Costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both.

3. Effect of Amendments Reducing Funding.

- a. If CDDP and ODHS amend the SEPA to reduce the amount of funding awarded for a particular DD Service, CDDP is not required by this Agreement to utilize other CDDP funds to replace the funds no longer received under this Agreement as a result of the amendment and CDDP may, from and after the date of the SEPA, reduce the quantity of that DD Service included in its CDDP commensurate with the amount of the reduction in funds awarded for that DD Service.
- b. If a CDDP receives Local Match funding to recoup the reduced funding, DD Services may not be reduced. Nothing in the preceding sentence shall affect CDDP's obligations under this Agreement with respect to payments disbursed by ODHS under this Agreement or with respect to DD Services delivered.

4. Audit Requirements.

- a. A CDDP operated by a Subcontractor, is required to submit to ODHS an Audit within 120 calendar days of the end of the previous fiscal or biennial period. Audits must:
 - (1) Cover the entire previous fiscal or biennial period and include all federal and state funds provided to CDDP as part of this Agreement.
 - (2) Must be submitted directly to ODDS.contracts@odhsoha.oregon.gov by the auditing agency or a Certified Public Accountant (CPA).
- b. Failure to submit a proper Audit within 120 calendar days of the end of the previous fiscal or biennial period may result with ODHS withholding further funding to CDDP until Audit is submitted to ODHS. ODHS may allow for one 60-calendar day extension to this if the CDDP can document due diligence in attempting to meet the requirements of this subsection prior to the end of the 120-calendar day period.

5. Carryover.

Any amount of Carryover funds is to be used by CDDP in support of DD Services provided to Individuals and may not be co-mingled with other County programs or departments.

- a. If County is requesting local match, County must submit a report of Carryover funds retained from a previous biennium to the cau.invoice@odhsoha.oregon.gov email using the form provided by ODHS. The report must include the following:
 - (1) Amount of awarded funds or other compensation paid directly to the CDDP under this Agreement.
 - (2) A written description of how the Carryover funds will be used by CDDP to increase DD Services or cover costs of DD Services under the same Service Element for which the funds were awarded to CDDP in the previous biennium.

6. Process for Settlement.

CDDP shall cooperate with ODHS during the biennial, or any interim, Settlement process for those DD Services where funds are paid directly to CDDP or as defined in Exhibit B Part 2 of this Agreement.

- a. ODHS will analyze the ODHS paid versus CDDP expended funds, for each DD Service funded under this Agreement directly to CDDP, for the timeframe of the Settlement process. Upon completion of the ODHS analysis, ODHS will notify CDDP via an e-mail addressed to the CDDP Administrator of the results of its Settlement process (“Settlement Notification”). The Settlement Notification will include the following:
 - (1) Settlement Cover Letter, and
 - (2) Initial Settlement Report.
- b. CDDP shall have 90 calendar days from the date of the Settlement Notification to respond with corrections, additional information, or acceptance of the Settlement amount as presented by ODHS.
- c. CDDP shall submit any additional information or corrections on the spreadsheet provided in the Initial Settlement Report per the instructions in the Settlement packet, as well as any documentation needed to support a disputed amount (the “Response File”).
- d. ODHS shall review and respond to CDDP’s Response File within 120 calendar days of receipt of the Response File. ODHS shall clearly identify in a revised Settlement Notification, emailed to the CDDP Administrator, which items ODHS has accepted or denied.
- e. Any additional backup documentation provided by CDDP is subject to 42 CFR §447.45 Medicaid Claims which allows Medicaid match for new Claims if paid within 12 months from date of Service and seven quarters plus current quarter for corrections to existing Claims.
- f. If ODHS and CDDP continue to disagree as to the Settlement amount, the parties may agree to further appropriate dispute resolution processes, subject to Exhibit E Section 20 “Resolution of Disputes” of this Agreement.
- g. The final Settlement Notification sent by ODHS to CDDP shall indicate the amount and the expected date of payment to ODHS by way of a check from CDDP or recovery through future payments in the manner described in this Exhibit B Part 3. If funds are to be paid to CDDP, the final Settlement Notification shall indicate the amount and the expected date of payment by check from ODHS. Any disputes to the final Settlement Notification shall be resolved through the appeals processes as outlined in this Exhibit B Part 3.

7. **Recovery of Funding for Misexpenditure.**

- a. If ODHS identifies a Misexpenditure of moneys disbursed to CDDP under this Agreement, ODHS shall provide CDDP by e-mail with written notice thereof and ODHS and CDDP shall engage in the process described in subsection 7.b. below.
- b. From the date of the notice of Misexpenditure, CDDP shall have the lesser of (1) 60 calendar days, or (2) if a Misexpenditure relates to a federal government request for reimbursement, 30 calendar days fewer than the number of days (if any) that ODHS has to appeal a final written decision from the federal government, to either:
 - (1) Make a payment to ODHS of the full amount of the noticed Misexpenditure identified by ODHS; or
 - (2) Notify ODHS that CDDP wants to repay the amount of the noticed Misexpenditure from future payments pursuant to subsection 7.d. below; or
 - (3) Notify ODHS that it wants to engage in the applicable appeal process set forth in subsection 7.c. below.

c. **Appeal Process for Misexpenditure.**

If CDDP notifies ODHS that it wants to engage in an appeal process with respect to a noticed Misexpenditure, the parties shall comply with the following procedures, as applicable.

- (1) **Appeal from ODHS-Identified Misexpenditure.**

If ODHS' notice of Misexpenditure is based on a Misexpenditure solely of the type described in Section 35 b. or c. of Exhibit A "Definitions", CDDP and ODHS shall engage in the process described in this subsection to resolve a dispute regarding the noticed Misexpenditure.

 - (a) CDDP and ODHS shall engage in non-binding discussions to give CDDP an opportunity to present reasons why it claims that there is no Misexpenditure or that the amount of the Misexpenditure is different than the amount identified by ODHS; and to give ODHS the opportunity to reconsider its notice of recovery.
 - (b) CDDP and ODHS may negotiate an appropriate apportionment of responsibility for the recovery of a Misexpenditure. At CDDP's request, ODHS will meet and negotiate with the CDDP in good faith concerning appropriate apportionment of responsibility for recovery of a Misexpenditure. In determining an appropriate apportionment of responsibility, CDDP and ODHS may consider any relevant factors. An example of a relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure.

- (c) If ODHS and CDDP reach agreement on an amount owed to ODHS, CDDP shall, promptly repay that amount to ODHS by issuing payment to ODHS or direct ODHS to withhold future payments pursuant to subsection 7 d. below.
 - (d) If ODHS and CDDP continue to disagree as to whether there has been a Misexpenditure or as to the amount owed, the parties may agree to further appropriate dispute resolution processes, including, subject to Department of Justice and CDDP Counsel approval, binding arbitration.
- (2) Appeal from Federal-Identified Misexpenditure.
- (a) If ODHS' notice of Misexpenditure is based on a Misexpenditure of the type described in Section 35 a. of Exhibit A "Definitions" and the relevant federal agency provides a process either by statute or administrative rule to appeal the determination of improper use of Federal Funds, the notice of disallowance or other federal identification of improper use of funds, and if the disallowance is not based on a federal or state court judgment founded in allegations of Medicaid Fraud or abuse, then CDDP may, prior to 30 calendar days prior to the applicable federal appeals deadline, request that ODHS appeal the determination of improper use, notice of disallowance, or other federal identification of improper use of funds, in accordance with the process established or adopted by the federal agency.
 - (b) If CDDP so requests that ODHS appeal the determination of improper use of Federal Funds, federal notice of disallowance, or other federal identification of improper use of funds, the amount in controversy shall, at the option of CDDP, be retained by CDDP or returned to ODHS pending the final federal decision resulting from the initial appeal.
 - (c) If CDDP does request, prior to the deadline set forth in (2) (a) above, that ODHS appeal, ODHS shall appeal the determination of improper use, notice of disallowance or other federal identification of improper use of funds in accordance with the established process and shall pursue the appeal until a decision is issued by the Departmental Grant Appeals Board of the Department of Health and Human Services (the "Grant Appeals Board") pursuant to the process for appeal set forth in 45 C.F.R. Subtitle A, Part 16, or an equivalent decision is issued under the appeal process established or adopted by the federal agency. CDDP and ODHS shall cooperate with each other in pursuing the appeal.
 - (d) If the Grant Appeals Board or its equivalent denies the appeal, then either CDDP, ODHS, or both may, in their discretion, pursue further appeals. Regardless of any further appeals, within 90 calendar days of the date the federal decision resulting from the

initial appeal is final, CDDP shall repay to ODHS the amount of the noticed Misexpenditure (reduced, if at all, as a result of the appeal) by issuing payment to ODHS or by directing ODHS to withhold future payments pursuant to subsection 7 d. below. To the extent that CDDP retained any of the amounts in controversy while the appeal was pending, CDDP shall pay to ODHS the interest, if any, charged by the federal government on such amount.

- (e) If the relevant federal agency does not provide a process either by statute or administrative rule to appeal the determination of improper use of Federal Funds, the notice of disallowance or other federal identification of improper use of funds or CDDP does not request that ODHS pursue an appeal 30 calendar days prior to the applicable federal appeals deadline, and if ODHS does not appeal, then within 90 calendar days of the date the federal determination of improper use of Federal Funds, the federal notice of disallowance, or other federal identification of improper use of funds is final, CDDP shall repay to ODHS the amount of the noticed Misexpenditure by issuing a payment to ODHS or by directing ODHS to withhold future payments pursuant to subsection 7 d. below.
- (f) If CDDP does not request that ODHS pursue an appeal of the determination of improper use of Federal Funds, the notice of disallowance, or other federal identification of improper use of funds, prior to 30 calendar days prior to the applicable federal appeals deadline, but ODHS nevertheless appeals, CDDP shall repay to ODHS the amount of the noticed Misexpenditure (reduced, if at all, as a result of the appeal), within 90 calendar days of the date the federal decision resulting from the appeal is final, by issuing payment to ODHS or by directing ODHS to withhold future payments pursuant to subsection 7 d. below.
- (g) If the Misexpenditure was expressly authorized by a ODHS rule or a ODHS writing that applied when the expenditure was made, but was prohibited by federal statutes or regulations that applied when the expenditure was made, CDDP will not be responsible for repaying the amount of the Misexpenditure to ODHS, provided that:
 - i. Where post-expenditure official reinterpretation of federal statutes or regulations results in a Misexpenditure, CDDP and ODHS will meet and negotiate in good faith an appropriate apportionment of responsibility between them for repayment of the Misexpenditure.
 - ii. For purposes of this section, a ODHS writing must interpret this Agreement or a ODHS rule and be signed by the

Director of ODHS or by one of the following ODHS officers concerning DD Services:

Director of the Office of Developmental Disabilities Services;

Deputy Director of the Office of Developmental Disabilities Services;

Chief Operating Officer of the Office of Developmental Disabilities Services.

ODHS shall designate alternate officers in the event the offices designated in the previous sentence are abolished. Upon CDDP request, ODHS shall notify CDDP of the names of individual officers with the above titles. ODHS shall send ODHS writings described in this paragraph to CDDP by mail and e-mail and to CDDP's directors by e-mail.

- iii. The ODHS writing must be in response to a request from the CDDP for expenditure authorization, or a statement intended to provide official guidance to the CDDP or counties generally, for making expenditures under this Agreement. The ODHS writing must not be contrary to this Agreement or contrary to law or other applicable authority that is clearly established at the time of the writing.
- iv. If the ODHS writing is in response to a request from CDDP for expenditure authorization, the request must be in writing and signed by the director of a CDDP department with authority to make such a request or by CDDP Counsel. It must identify the supporting data, provisions of this Agreement and provisions of applicable law relevant to determining if the expenditure should be authorized.
- v. A ODHS writing expires on the date stated in the writing, or if no expiration date is stated, upon expiration of this Agreement. An expired ODHS writing continues to apply to CDDP expenditures that were made in compliance with the writing and during the term of the writing.
- vi. ODHS may revoke or revise a ODHS writing at any time if it determines in its sole discretion that the writing allowed expenditure in violation of this Agreement or law or any other applicable authority. However, ODHS is not responsible for a Misexpenditure that was based on a ODHS writing that was effective at the time of the Misexpenditure.

vii. The ODHS rule or the ODHS writing does not authorize an expenditure that this Agreement prohibits.

d. Recovery of Misexpenditure from Future Payments.

- (1) To the extent that ODHS is entitled to recover a Misexpenditure pursuant to subsection 7 b. above, ODHS may recover the Misexpenditure by offsetting the amount thereof against future amounts owed to County by ODHS, including, but not limited to, any amount owed to CDDP by ODHS under this Agreement, or any amount owed to County by ODHS under any other contract or agreement between County and ODHS, present or future.
- (2) ODHS shall provide the CDDP with written notice of its intent to recover the amount of the Misexpenditure as set forth in this section from amounts owed CDDP by ODHS, and ODHS shall identify the amounts owed by ODHS to CDDP which ODHS intends to offset to recover the Misexpenditure amount, including the contracts or agreements, if any, under which the amounts owed arose and those other contracts or agreements from which ODHS wishes to deduct payments.
- (3) CDDP shall then have 14 calendar days from the date of ODHS' notice in which to request the deduction be made from other amounts owed to County by ODHS and identified by CDDP. ODHS shall comply with CDDP's request for alternate offset.
- (4) In the event that ODHS and the CDDP are unable to agree on which specific amounts, owed to CDDP by ODHS, ODHS may offset in order to recover the amount of the Misexpenditure, then ODHS may select the particular contracts or agreements between ODHS and CDDP and amounts from which it will recover the amount of the Misexpenditure, after providing notice to CDDP, and within the following limitations:
 - (a) ODHS shall first look to amounts owed to CDDP (but unpaid) under this Agreement.
 - (b) If that amount is insufficient, then ODHS may look to any other amounts currently owing or owed in the future to County by ODHS.
 - (c) In no case, without the prior consent of County, shall ODHS deduct from any one payment due County under the contract or agreement from which ODHS is offsetting funds an amount in excess of twenty-five percent (25%) of that payment.
 - (d) ODHS may look to as many future payments as necessary in order to fully recover the amount of the Misexpenditure.

8. Additional Settlement and Misexpenditure Provisions.

- a. CDDP shall cooperate with ODHS in the Settlement process throughout the Agreement term and with the Agreement Settlement process upon termination or expiration of the Agreement.
- b. ODHS' right to recover through Settlement and the Misexpenditure process from CDDP under this Agreement is not subject to or conditioned on CDDP's recovery of any money from any other entity.
- c. If the exercise of ODHS' right to offset under this provision requires CDDP to complete a re-budgeting process, nothing in this provision shall be construed to prevent CDDP from fully complying with its budgeting procedures and obligations, or from implementing decisions resulting from those procedures and obligations.
- d. Nothing in this provision shall be construed as a requirement or agreement by CDDP to negotiate and execute any future contract with ODHS.
- e. Nothing in this Section 8 shall be construed as a waiver by either party of any process or remedy that might otherwise be available.

9. Resolution of Disputes over Additional Funds Owed CDDP After Termination or Expiration.

If, after termination or expiration of this Agreement, CDDP believes that ODHS disbursements of funds under this Agreement for a particular DD Service are less than the amount of funds that ODHS is obligated to provide to CDDP under this Agreement for that DD Service, as determined by the Agreement Settlement, and in accordance with the applicable funding calculation methodology, CDDP shall provide ODHS with written notice thereof. ODHS shall have 90 calendar days from the effective date of CDDP's notice to pay CDDP in full or notify CDDP that it wishes to engage in a dispute resolution process. If ODHS notifies CDDP that it wishes to engage in a dispute resolution process, CDDP and ODHS' Agreement Administrator shall engage in non-binding discussion to give ODHS an opportunity to present reasons why it believes that it does not owe CDDP any additional funds or that the amount owed is different than the amount identified by CDDP in its notices, and to give CDDP the opportunity to reconsider its notice. If ODHS and CDDP reach agreement on the additional amount owed to CDDP, ODHS shall promptly pay that amount to CDDP. If ODHS and CDDP continue to disagree as to the amount owed, the parties may agree to further appropriate dispute resolution processes, including, subject to Department of Justice and CDDP Counsel approval, binding arbitration. Nothing in this Section 9 shall preclude CDDP from raising underpayment concerns at any time prior to termination or expiration of this Agreement.

- b.** Enable, on behalf of CDDP, the disbursement of funds under this Agreement that is described in the SEPA, through submission and modification of service authorizations, either electronically through eXPRS or by submission of hard copy documents to ODHS; and to authorize Providers, to submit Disbursement Claims on behalf of CDDP, either electronically through eXPRS or by submission of hard copy documents to ODHS.
- c.** Authorize others, including but not limited to CDDPs subcontracting with a County, to take one or more of the foregoing actions on behalf of CDDP except for authorizing amendments to this Agreement and SEPAs.

EXHIBIT D

General Terms and Conditions

- 1. Operation of CDDP.** County shall operate or subcontract for the operation of a CDDP during the term of this Agreement. If County wishes to subcontract the operation of a CDDP, the Subcontract must comply with the terms of this Agreement, including but not limited to, Exhibit E, Section 21. If County subcontracts the entire CDDP duties, County will be obligated to pass all funds received for the CDDP to the Subcontractor.
- 2. Usage of Funds.** County must hire as many FTEs as possible per the funding allocated within the Workload Model. County shall employ and provide training for all employees and meet the requirements documented in this Agreement, Oregon Revised Statutes, and Oregon Administrative Rules. County shall operate their CDDP within the applicable federal and state rules, regulations, and the terms of this Agreement. All funds received by the County must be used exclusively for the purposes of conducting DD Services.
- 3. Reporting Requirements.**

County shall report the FTEs utilized for the Service Elements Eligibility and Licensing, Case Management including Local Match, and Abuse Investigations, if applicable, to ODHS semi-annually or when requested by ODHS. In addition to the FTEs, this report shall include how the FTEs are calculated. County shall use ODHS prescribed format for this reporting once available and dispersed to County. In addition, County shall provide the days and hours of operation of the CDDP in Attachment #1 as described in Section 5 of Exhibit B Part 1.
- 4. Subcontracts.**

 - a.** If County chooses to subcontract any or all CDDP Services under this Agreement County must submit a Notice of Intent to Subcontract to ODDS.contracts@odhsoha.oregon.gov for review prior to subcontracting. The notice must include, but is not limited to, the name of proposed Subcontractor, qualifications, and services to be subcontracted.
 - b.** County shall not permit any person or entity to be a Subcontractor unless the person or entity holds all certificates, authorizations and other approvals as identified in the applicable Service Element Standards and Procedures and OARs.
 - c.** If County subcontracts a CDDP Service, or portion thereof, from a Subcontractor, the Subcontract with County must be in writing and contain each of the provisions set forth in Exhibit G Part 1, “Required Subcontractor Provisions” in substantially the form set forth therein, in addition to any other provisions that must be included to comply with applicable law, that must be included in a Subcontract with County under the terms of this Agreement, or that are necessary to implement DD Service delivery in accordance with the applicable Service Element Standards and Procedures and any special conditions.

- d. County shall maintain an originally executed copy of each Subcontract at its office and shall furnish a copy of any Subcontract to DHS within 90 days of the execution of this Agreement, 90 days of any Amendment to this Agreement, or upon request. Subcontracts must be submitted to ODDS.contracts@odhsoha.oregon.gov.
 - e. In accordance with ORS § 430.670 (3), any private corporation that contracts with a county or the Department of Human Services to operate a developmental disabilities program shall provide an opportunity for competition among private care providers when awarding Subcontracts for provision of services described in ORS 430.630 (1) to (3) and 430.664.
5. **ODHS Reports.** To the extent resources are available to ODHS to prepare and deliver the information, ODHS shall, during the term of this Agreement, provide County with summary reports from data and other Individual data reported to ODHS under this Agreement.
6. **Technical Assistance.** During the term of this Agreement, ODHS shall provide technical assistance to County in the delivery of DD Services to the extent that funding is allocated to ODHS for this purpose. If the provision of technical assistance to County concerns a Provider or Subcontractor, ODHS may require, as a condition to providing the assistance, that County take all reasonably necessary action with the Provider or Subcontractor to facilitate the technical assistance.
7. **Amendments Proposed by ODHS.** Subject to Exhibit E Section 27 “Amendments; Waiver; Consent”, County shall review all pending Agreement amendments prepared and presented to County by ODHS by e-mail and act within 60 calendar days of County’s receipt of pending amendment. If County chooses to accept an amendment, County shall follow ODHS’ procedures for signing and returning the amendment to ODHS. If County chooses to reject an amendment, County must submit an e-mail detailing the reason for the rejection to County’s assigned ODHS Agreement Administrator.
8. **eXPRS Administration.**
- a. **Designation of Direct Contract Chief Security Officer.**
 - (1) The Case Management Entity Administrator may request in writing to designate to ODHS any individual(s) authorized to perform the duties of the security role, in compliance with Exhibit H Part 1 “Privacy and Security Agreement”, currently titled Direct Contract Chief Security Officer (DCCSO), or as such role may be renamed by ODHS.
 - (2) Upon approval of the request, ODHS will send the DCCSO a User ID for accessing eXPRS. If County wishes to designate a substitute DCCSO, the CME Administrator may do so by subsequent written notice to ODHS.
 - (3) The individual designated as the DCCSO is responsible to ensure that County is in compliance with the Privacy and Security Agreement requirements described in Exhibit H Part 1 of this Agreement.

- (4) If the CME Administrator does not designate another County employee as the DCCSO, the CME Administrator will be designated as the DCCSO and will act as the DCCSO on behalf of the County.

b. Responsibilities of Direct Contract Chief Security Officer.

- (1) The DCCSO shall assign, maintain, and revoke all eXPRS user account securities for County staff.
 - (a) The DCCSO may only assign, maintain, or revoke user account securities upon receipt of the ODHS eXPRS User Enrollment Form signed by the ODHS manager.
 - (b) ODHS eXPRS User Enrollment Form must be maintained by the County.
- (2) The DCCSO shall ensure County staff are in compliance with all eXPRS policies and procedures.

c. Revocation of User IDs and SEPA Pass Phrase by ODHS or County.

- (1) ODHS may revoke a User ID or SEPA Pass Phrase if ODHS determines that revocation is reasonably necessary for technical or security reasons.
- (2) A User ID or SEPA Pass Phrase may be revoked if ODHS or the County determines:
 - (a) The User ID or SEPA Pass Phrase was not properly issued or created or was obtained by fraud.
 - (b) The User ID or SEPA Pass Phrase has or may have been lost, disclosed, compromised, or subjected to unauthorized use.
 - (c) The County has revoked or modified the authorization of the CME Administrator.
 - (d) County is in default under this Agreement.
- (3) If ODHS revokes a User ID or SEPA Pass Phrase under this Section 8, ODHS will notify the County promptly thereafter.
- (4) ODHS may, without notice to the County, revoke all User IDs and SEPA Pass Phrases upon termination or expiration of this Agreement.

9. Alternative Formats and Translation of Written Materials, Interpreter Services.

- a.** In connection with the delivery of Service Element services, County shall make available to Client, without charge, upon the Client's reasonable request:
- (1) All Written Materials related to the Services provided to the Individual in alternate formats.
 - (2) All Written Materials related to the Services provided to the Individual in the Individual's preferred format and or language.
 - (3) Oral interpretation services related to the Services provided to the Individual in the Individual's preferred format and or language.

- (4) Sign language interpretation services and telephone communications access services related to the Services provided to the Individual.
- b. For purposes of the foregoing, “Written Materials” means materials created by County, in connection with all Services being provided to the Individual. The County may develop its own forms and materials and with such forms and materials, the County shall be responsible for making them available to an Individual, without charge to the Individual, in the prevalent non-English language(s), including braille, within the County’s Program Area.
- c. ODHS shall be responsible for making its forms and materials available, without charge to the Individual or County, in the prevalent non-English language(s), including braille, within the County’s Program Area. ODHS will provide translation of written materials and oral interpretation, including American Sign Language (ASL) for specific Services outlined in the expenditure guidelines.
- d. Nothing in this Agreement shall cause or require County or ODHS to act in violation of state or federal constitutions, statutes, regulations, or rules. The parties intend this limitation to apply in addition to any other limitation in this Agreement, including limitations in this Agreement.
- e. If County’s staff provides oral interpretation and or translation to Individuals, County will have policies and procedures that address identifying language proficiency of County’s staff.
- f. ODDS reserves the right to review County’s Written Materials.

10. Confidentiality of Information.

a. Client Information.

- (1) All information as to personal facts and circumstances obtained by the County on the Client (“Client Information”) shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the Client, his or her guardian, or the responsible parent when the Client is a minor child, or except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other forms which does not identify particular individuals.
- (2) The use or disclosure of Client Information shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- (3) If County, or any of its officers, directors, employees, agents, or subcontractors receives or has access to confidential Social Security Administration (SSA), or Federal Tax Information (FTI), or Criminal Justice Information Services (CJIS) records, in the performance of Work under this Agreement, County shall comply, and ensure that all of County’s officers, directors, employees, agents, and subcontractors comply, with the following provisions:

- (a) With respect to SSA records:
 - i. Provide a current list of employees and employees of any agent or subcontractor with access to SSA records;
 - ii. Adhere to the same security requirements as employees of ODHS;
 - iii. Abide by all relevant Federal laws, restrictions on access, use, disclosure, and the security requirements contained within ODHS' agreement with SSA;
 - iv. Provide its employees and agents the same security awareness training as ODHS employees; and
 - v. Include the provisions of this Section 9.a.(3)(a) in any subcontract.

- (b) With respect to Federal Tax Information (FTI), as defined in IRS Publication 1075:
 - i. County and its officers, directors, and employees with access to, or who use FTI provided by ODHS must meet the background check requirements defined in IRS Publication 1075;
 - ii. Any FTI made available to County shall be used only for the purpose of carrying out the provisions of this Agreement. County shall treat all information contained in FTI as confidential and that information shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Inspection by or disclosure to anyone other than an officer or employee of the County is prohibited;
 - iii. County shall account for all FTI upon receipt and shall properly store all FTI before, during, and after processing. In addition, all FTI related output and products will be given the same level of protection as required for the source material;
 - iv. No work involving FTI furnished under this Agreement will be subcontracted without prior written approval of the IRS;
 - v. Maintain a list of employees who are authorized access to FTI. Such list will be provided to ODHS and, upon request, to the IRS reviewing office; and
 - vi. Include the provisions of this Section 9.a.(3)(b) in any subcontract.

- (c) With respect to Criminal Justice Information Services (CJIS) information, County shall:
 - i. Meet the same training and certification criteria required by governmental agencies performing a similar function, and shall be subject to the same extent of audit review as are local user agencies;
 - ii. Acknowledge, via signing of the attached CJIS Outsourcing Agreement, and abide by all aspects of the CJIS Outsourcing Standard approved by the Director of the FBI, acting for the U.S. Attorney General, as referenced in Title 28 CFR 20.33 (a)(7). Modifications to the CJIS Outsourcing Standard shall be enacted only by the FBI; and
 - iii. Include the provisions of this Section 9.a.(3)(c) in any subcontract.
- (d) Failure to abide by any of the requirements in this subsection could result in criminal or civil penalties and result in termination of this Agreement.
- (e) County may be subjected to periodic and ongoing security reviews to ensure compliance with the requirements of Section 9.a.(3).
- (4) Except as prohibited by Section 9.a.(3) above, ODHS, County and any subcontractor will share information as necessary to effectively serve ODHS Clients.

b. Non-Client Information.

- (1) Each Party acknowledges that it and any of its officers, directors, employees, and agents may, in the course of performing its responsibilities under this Agreement, be exposed to or acquire information that is confidential to the other Party. To the extent permitted by law, any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of the Agreement that reasonably could at the time of its disclosure be understood to be confidential shall be deemed to be confidential information of the originating Party (“Confidential Non-Client Information”).
- (2) Confidential Non-Client Information shall be deemed not to include information that:
 - (a) Is or becomes (other than by disclosure by the Party acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;

- (b) Is furnished by the originating Party to others without restrictions similar to those imposed on the receiving Party under this Agreement;
 - (c) Is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure by the originating Party under this Agreement;
 - (d) Is obtained from a source other than the originating Party without the obligation of confidentiality;
 - (e) Is disclosed with the written consent of the originating Party; or
 - (f) Is independently developed by the receiving Party's officers, directors, employees, and agents who can be shown to have had no access to the Confidential Non-Client Information.
- (3) Nondisclosure. The receiving Party shall hold all Confidential Non-Client Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; and shall not sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Non-Client Information to third parties; shall not use Confidential Non-Client Information for any purposes whatsoever other than as contemplated by this Agreement or reasonably related thereto; and shall advise any of its officers, directors, employees and agents that receive or have access to the Confidential Non-Client Information of their obligations to keep Confidential Non-Client Information confidential. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Non-Client Information if the receiving Party can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, in which case the receiving Party shall notify the originating Party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.311 to 192.478. The receiving Party shall notify the originating Party of a public records request five days prior to the disclosure.
- c. Upon request and pursuant to the instructions of ODHS, County shall return or destroy all copies of Confidential Information, and County shall certify in writing the return or destruction of all Confidential Information.
 - d. "Client" means any individual, family or provider:
 - (1) For whom ODHS must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care,

protection, and support without regard to the proximity of the services being provided;

- (2) Who in fact receives and utilizes services provided by ODHS primarily for that individual's or family's benefit;
- (3) Who is under the custody, care, or both of ODHS; or
- (4) Who provides direct care or Services and is a proxy or representative of the non-provider Client.

11. **Nondiscrimination.**

- a. The County must provide services to ODHS Clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation, or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language, and other special needs of Clients.
- b. County certifies that County has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. County agrees, as a material term of this Agreement, to maintain such policy and practice in force during the entire Agreement term.
- c. As required by ORS 279B.235, County must comply with ORS 652.220 and shall not unlawfully discriminate against any of County's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. County's compliance with this subsection constitutes a material element of this Agreement and a failure to comply constitutes a breach that entitles ODHS to terminate this Agreement for cause.
- d. County may not prohibit any of County's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. County may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

12. **HIPAA Compliance.** As a Business Associate of a Covered Entity, ODHS must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and ODHS must also comply with OAR 943-014-0400 through OAR 943-014-0465. County is a Business Associate of ODHS and therefore must comply with OAR 943-014-0400 through OAR 943-014-0465 and the Business Associate requirements set forth in 45 CFR 164.502 and 164.504.

County shall be liable to ODHS for any and all costs incurred by ODHS, including, but not limited to, costs of issuing any notices required by HIPAA, HITECH or any other applicable law and damages to third parties as a result of County's Breach of Unsecured Protected Health Information.

- a. Consultation and Testing.** If County reasonably believes that the County's or ODHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, County shall promptly consult the ODHS Information Security Office. County or ODHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the ODHS testing schedule.
- b. Data Transactions Systems.** If County intends to exchange electronic data transactions with ODHS or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, County shall execute an Electronic Data Interchange (EDI) Trading Partner Agreement and shall comply with EDI Rules set forth in OAR 943-120-0110 through 943-120-0160.

EXHIBIT E

Standard Terms and Conditions

- 1. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this Section, neither party waives any form of defense to or immunity, whether 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. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.

This Section shall survive expiration or termination of this Agreement.

- 2. Compliance with Law.** Both parties shall comply with laws, regulations, executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of Client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, Services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and ODHS, that employ subject workers who provide Services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126(2). County shall require all of its subcontractors to comply with and shall ensure that each of its subcontractors complies with, these requirements. Nothing in this Agreement shall require County or ODHS to act in violation of state or federal law or the Constitution of the State of Oregon.

This Section shall survive expiration or termination of this Agreement.

- 3. Independent Parties.**

The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

4. Representations and Warranties.

a. County represents and warrants as follows:

- (1) Organization and Authority. County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by County of this Agreement.
- (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid, and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County 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 County's industry, trade or profession.
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work.
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- (7) Services. To the extent DD Services are performed by County, the delivery of each DD Service will comply with the terms and conditions of this Agreement and meet the standards for such DD Service as set forth herein, including but not limited to, any terms, conditions, standards and requirements set forth in the Service Element Standards and Procedures.

b. ODHS represents and warrants as follows:

- (1) Organization and Authority. ODHS has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.

- (2) Due Authorization. The making and performance by ODHS of this Agreement (a) has been duly authorized by all necessary action by ODHS; (b) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency; and (c) does not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which ODHS is a party or by which ODHS may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by ODHS of this Agreement, other than approval by the Department of Justice if required by law.
- (3) Binding Obligation. This Agreement has been duly executed and delivered by and constitutes a legal, valid, and binding obligation of ODHS, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. Warranties Cumulative. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.
- d. This Section shall survive expiration or termination of this Agreement.

5. Funds Available and Authorized.

- a. The State of Oregon's payment obligations under this Agreement are conditioned upon ODHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow ODHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than ODHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. ODHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County must maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all disbursements under this Agreement. County shall provide this designation and information on a form provided by ODHS. In the event that EFT information

changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, County will provide the changed information or designation to ODHS on an ODHS-approved form. ODHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from County.

c. This Section shall survive expiration or termination of this Agreement.

6. Recovery of Overpayments. Reserved.

7. Ownership of Intellectual Property.

a. Definitions. As used in this Section 7 and elsewhere in this Agreement, the following terms have the meanings set forth below:

(1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.

(2) "Third Party Intellectual Property" means any intellectual property owned by parties other than ODHS or County.

b. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, ODHS will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that County owns, County grants to ODHS a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 7.b.(1) on ODHS' behalf, and (3) sublicense to third parties the rights set forth in Section 7.b.(1).

c. If state or federal law requires that ODHS or County grant to the United States a license to any intellectual property, or if state or federal law requires that ODHS or the United States own the intellectual property, then County shall execute such further documents and instruments as ODHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or ODHS. To the extent that ODHS becomes the owner of any intellectual property created or delivered by County in connection with the Work, ODHS will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.

d. County shall include in its Subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as ODHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

e. This Section survives the expiration or termination of this Agreement.

8. County Default.

County shall be in default under this Agreement upon occurrence of any of the following events:

- a. County fails to perform, observe, or discharge any of its covenants, agreements or obligations set forth herein;
- b. Any representation, warranty or statement made by County herein or in any documents or reports relied upon by ODHS to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;
- c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect), or (8) takes any action for the purpose of effecting any of the foregoing; or
- d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive calendar days, or an order for relief against County is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect).

9. ODHS Default.

ODHS shall be in default under this Agreement upon the occurrence of any of the following events:

- a. ODHS fails to perform, observe, or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by DHS herein is untrue in any material respect when made.

10. Termination.**a. County Termination.** County may terminate this Agreement:

- (1) For its convenience, upon a minimum of 90 calendar days advance written notice to ODHS for caseloads below 1,000 Individuals and 180 calendar days with caseloads 1,000 or more Individuals;
- (2) Upon a minimum of 90 calendar days advance written notice to ODHS for caseloads below 1,000 Individuals and 180 calendar days with caseloads 1,000 or more Individuals, if County does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
- (3) Upon a minimum of 90 calendar days advance written notice to ODHS for caseloads below 1,000 Individuals and 180 calendar days with caseloads 1,000 or more Individuals, if ODHS is in default under this Agreement and such default remains uncured at the end of said period or such longer period, if any, as County may specify in the notice; or
- (4) Immediately upon written notice to ODHS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

b. ODHS Termination. ODHS may terminate this Agreement:

- (1) For its convenience, upon a minimum of 90 calendar days advance written notice to County for caseloads below 1,000 Individuals and 180 calendar days with caseloads 1,000 or more Individuals;
- (2) Upon a minimum of 90 calendar days advance written notice to County for caseloads below 1,000 Individuals and 180 calendar days with caseloads of 1,000 or more Individuals, if ODHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of ODHS under this Agreement, as determined by ODHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, ODHS may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces ODHS' legislative authorization for expenditure of funds to such a degree that ODHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by ODHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 calendar days from the date the action is taken;

- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that ODHS no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
 - (4) Upon a minimum of 90 calendar days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said period or such longer period, if any, as ODHS may specify in the notice;
 - (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification; or
 - (6) Immediately upon written notice to County, if ODHS determines that County has endangered or are endangering the health or safety of a Client or others in performing work covered by this Agreement.
- c. Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.

11. Effect of Termination.

- a.** Upon termination of the entire Agreement:
 - (1) ODHS shall have no further obligation to pay County under this Agreement.
 - (2) County shall have no further obligation to perform Work under this Agreement.
 - (3) County shall retain all data and records in accordance with OAR 411-320-0070.
- b.** Obligations and Liabilities. Notwithstanding subsection (a)(2) above, any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.
- c.** Transition Services. County shall provide original files either paper or electronic to support a responsible and secure transition of Services to another CME or ODDS.
- d.** Transition Plan. Following a termination notice, County and ODDS will collaborate to develop a transition plan to ensure continuity of care for Individuals.

- (1) The parties will cooperate in good faith with each other in connection with their obligations under this section and will perform their obligations under the Transition Plan. If the Transition Period extends beyond the Agreement term, the provisions of this Agreement will remain in effect for the duration of the Transition Period.
- (2) County shall complete the transition of data from County to any Providers that ODDS designates while ensuring there is an uninterrupted continuity of care of Service to Individuals.

e. This Section survives the expiration or termination of this Agreement.

- 12. Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS. THIS LIMITATION OF LIABILITY IS PROVIDED TO THE EXTENT ANY RESULTING CONTINGENT REPAYMENT LIABILITY IS PERMITTED BY ARTICLE XI, SECTIONS 7 AND 10 OF THE OREGON CONSTITUTION AND THE OREGON TOR CLAIMS ACT, ORS 30.260 AND 30.300.

This Section shall survive expiration or termination of this Agreement.

- 13. Insurance.** County shall maintain, and shall require Subcontractors to maintain, insurance as set forth in Exhibit G Part 2, attached hereto. This Section shall survive expiration or termination of this Agreement.

14. Records Maintenance, Access.

a. Client Records. If County delivers a DD Service directly, County shall create and maintain an Individual record (“Client Record”) for each Individual who receives that DD Service, unless the Service Element Standards and Procedures precludes delivery of the DD Service on an Individual Client basis and reporting of Service commencement and termination information is not required by the Service Element Standards and Procedures. The Client Record shall contain:

- (1) Individual’s identification;
- (2) Assessments with problems;
- (3) Treatment, training, and care plan, as applicable;
- (4) Medical information when appropriate; and
- (5) Progress notes including Service termination summary and current assessment or evaluation instrument as designated by ODHS in administrative rules.

b. Expenditure Records. County shall document the use and expenditure of all funds paid by ODHS under this Agreement. Unless applicable federal law requires County to utilize a different accounting system, County shall create and maintain all use and expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODHS to verify how the funds paid by ODHS under this Agreement were used or expended.

- c. County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement, in such a manner as to clearly document County's performance.
 - d. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records."
 - e. **Access to Records and Facilities.** ODHS, the Secretary of State's Office of the State of Oregon, and the federal government and their duly authorized representatives, shall have access to all Records, paper or electronic, of County that are directly related to this Agreement, the funding provided hereunder, or any Service for the purpose of making examinations, audits, excerpts, copies and transcriptions. In addition, County shall permit authorized representatives of ODHS to perform site reviews, in person or electronically, of all Services delivered by County. Entities with electronic records must provide at minimum guest access to said records for examination by ODHS, Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives.
 - f. **Retention of Records.** County shall retain and keep accessible all Records for the longest of:
 - (1) Six years following final payment and termination of this Agreement;
 - (2) The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166;
 - (3) Until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement; or
 - (4) In accordance with OAR 411-320-0070.
 - g. This Section shall survive expiration or termination of this Agreement.
- 15. Information Privacy/Security/Access.** If the Services performed under this Agreement require or allow County or, when allowed, its Provider(s) or Subcontractors, to have access to or otherwise use any ODHS' Information Asset(s) or Network and Information System(s) to which security and privacy requirements apply, and ODHS grants County or its Provider(s) or Subcontractor(s) access to such ODHS Information Asset(s) or Network and Information System(s), County shall comply and require its Provider(s) or Subcontractor(s) to which such access has been granted to comply with the terms and conditions applicable to such access or use, including OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this Section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.
- 16. Force Majeure.** Neither ODHS nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, war, or other cause which is beyond the reasonable control of ODHS or County, respectively. Each party shall,

however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. ODHS may terminate this Agreement upon written notice to County after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.

17. Assignment of Agreement, Successors in Interest.

- a.** County shall not assign or transfer its interest in this Agreement without prior written consent of ODHS. Any assignment or transfer in violation of this Agreement shall be null and void. Any such assignment or transfer, if approved, is subject to such conditions and provisions required by ODHS. No approval by ODHS of any assignment or transfer of interest shall be deemed to create any obligation of ODHS in addition to those set forth in this Agreement.
- b.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

18. Resolution of Disputes. The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

This Section shall survive expiration or termination of this Agreement.

19. Subcontracts. County shall not enter into any Subcontracts for any of the Work required by this Agreement without ODHS' prior written consent. In addition to any other provisions ODHS may require, County shall include in any permitted Subcontract under this Agreement provisions to require that ODHS will receive the benefit of Subcontractor performance as if the Subcontractor were County with respect to this Agreement. ODHS' consent to any Subcontract shall not relieve County of any of its duties or obligations under this Agreement.

20. No Third Party Beneficiaries. ODHS and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

This Section shall survive expiration or termination of this Agreement.

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

This Section shall survive expiration or termination of this Agreement.

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

ODHS: Office of Contracts & Procurement
500 Summer St, E-03
Salem, OR 97301
Telephone: 503-945-5818

This Section shall survive expiration or termination of this Agreement.

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

This Section shall survive expiration or termination of this Agreement.

24. Counterparts. This Agreement 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 Agreement and any amendments so executed shall constitute an original.

25. Amendments; Waiver; Consent. ODHS may amend this Agreement to the extent provided herein, the solicitation document, if any from which this Agreement arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Agreement shall bind either party unless it is in writing and signed by both parties and when required, approved by 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 Agreement shall not constitute a waiver by that party of that or any other provision.

This Section shall survive the expiration or termination of this Agreement.

26. Contribution.

- a.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third-Party Claim. Either party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third-Party Claim.
- b.** With respect to a Third Party-Claim for which the State is jointly liable with County (or would be if joined in the Third-Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- c.** With respect to a Third Party Claim for which County is jointly liable with the State (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
- d.** This Section shall survive the expiration or termination of this Agreement.

27. Indemnification by Subcontractors. County shall take all reasonable steps to cause its Subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County’s Subcontractor or any of the officers, agents, employees or subcontractors of the Subcontractor (“Claims”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the Subcontractor from and against any and all Claims.

This Section shall survive the expiration or termination of this Agreement.

28. Stop-Work Order.

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

- a. Cancel or modify the stop work order by a supplementary written notice; or
- b. Terminate the Work as permitted by either the Default or the Convenience provisions of Section 13 “Termination”.

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

This Section shall survive expiration or termination of this Agreement.

29. Purchase and Disposition of Equipment.

a. For purposes of this Section, “Equipment” means tangible, non-expendable personal property having a useful life of more than one year and a net acquisition cost of more than \$5,000 per item. However, for purposes of information technology equipment, the monetary threshold does not apply (except as provided below for software and storage devices). Information technology equipment shall be tracked for the mandatory line categories listed below:

- (1) Network
- (2) Personal Computer
- (3) Printer/Plotter
- (4) Server
- (5) Storage devices that will contain Client information.

- (6) Storage devices that will not contain Client information when the acquisition cost is \$100 or more.
 - (7) Software when the acquisition cost is \$100 or more.
- b.** For any Equipment purchased with funds from this Agreement, ownership shall be in the name of County and County is required to accurately maintain the following Equipment inventory records:
- (1) description of the Equipment;
 - (2) serial number;
 - (3) source of funding for the Equipment (including the Federal Award Notification Number (FAIN));
 - (4) who holds title;
 - (5) where Equipment was purchased;
 - (6) acquisition cost and date;
 - (7) percentage of federal participation in cost;
 - (8) location, use, and condition of the Equipment and
 - (9) any ultimate disposition data including the date of disposal and sale of price of the Equipment.
- c.** County shall provide the Equipment inventory list to ODDS upon request. County or any subcontractors shall be responsible to safeguard any Equipment and maintain the Equipment in good repair and condition while in the possessions. County shall depreciate all Equipment, with a value of more than \$5,000, using the straight-line method.
- d.** Upon termination of this Agreement, or any Service thereof, for any reason whatsoever, County shall, upon request by ODHS, immediately, or at such later date specified by ODHS, tender to ODHS any and all Equipment purchased with funds under this Agreement as ODHS may require to be returned to the State. At ODHS' direction, County may be required to deliver said Equipment to a subsequent contractor for that contractor's use in the delivery of Services formerly provided by County. Upon mutual agreement, in lieu of requiring County to tender the Equipment to ODHS or to a subsequent contractor, ODHS may require County to pay to ODHS the current value of the Equipment. Equipment value will be determined as of the date of Agreement or Service termination.
- e.** Funds from this Agreement used as a portion of the purchase price of Equipment, requirements relating to title, maintenance, Equipment inventory reporting and residual value shall be negotiated, and the agreement reflected in a special condition authorizing the purchase.

- f.** Notwithstanding anything herein to the contrary, County shall comply with 2 CFR Subtitle B with guidance at 2 CFR Part 200 as amended, which, generally, describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal grant funds.
- g.** Equipment provided directly by ODHS to the County and/or its Subcontractor(s) to support delivery of specific program services is to be used for those program services. If the County and/or its Subcontractor(s) discontinue providing the program services for which the equipment is to be used, the equipment must be returned to ODHS or transferred to a different provider at the request of ODHS.

EXHIBIT F

Federal Terms and Conditions

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

- 1. Miscellaneous Federal Provisions.** County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of the Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of ODHS Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No Federal Funds may be used to provide Work in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then County shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- 3. Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to ODHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. County shall include and require all subcontractors to include in all

contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this Section.

4. **Energy Efficiency.** County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Agreement, the County certifies, to the best of the County's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. The County shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - e. No part of any Federal Funds paid to County under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f. No part of any Federal Funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g. The prohibitions in subsections (e) and (f) of this Section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h. No part of any Federal Funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. Audits.**
- a. County shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
 - b. If County, or their subcontractor, expends \$750,000 or more in Federal Funds (from all sources) in a federal fiscal year, County shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to ODHS within 30 days of completion. If County expends less than \$750,000 in a federal fiscal year, County is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit E, Section 16 “Records Maintenance, Access”. Audits must be submitted to ODDS.contracts@odhsoha.oregon.gov.

- 8. Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or Nonprocurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension” (See 2 CFR Part 180). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- 9. Drug-Free Workplace.** County shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace:
- a.** County certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in County's workplace or while providing services to ODHS Clients. County's notice shall specify the actions that will be taken by County against its employees for violation of such prohibitions;
 - b.** Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, County's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations;
 - c.** Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph a. above;
 - d.** Notify each employee in the statement required by paragraph a. above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
 - e.** Notify ODHS within ten calendar days after receiving notice under subparagraph d. above from an employee or otherwise receiving actual notice of such conviction;
 - f.** Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;
 - g.** Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs a. through f. above;
 - h.** Require any subcontractor to comply with subparagraphs a. through g. above;

- i. Neither County, or any of County's employees, officers, agents, or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or County's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the County or County's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to ODHS Clients or others. Examples of abnormal behavior include, but are not limited to, hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech, difficulty walking or performing job activities; and
 - j. Violation of any provision of this subsection may result in termination of this Agreement.
- 10. Pro-Children Act.** County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. 6081 et. seq.).
- 11. Medicaid Services.** County shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. 1396 et. seq., including without limitation:
- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
 - b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 Subpart I.
 - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County's understanding that payment of the Claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
 - e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. 1396a(a)(68).

- 12. Agency-based Voter Registration.** If applicable, County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
- 13. Disclosures.**
- a.** 42 CFR Part 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of Providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the Provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the Provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the Provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the Provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other Provider, fiscal agent or managed care entity in which an owner of the Provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the Provider, fiscal agent or managed care entity.
 - b.** County shall furnish to the State Medicaid agency or to the Health and Human Services (HHS) Secretary, within 35 days of the date of the request, full and complete information about the ownership of any subcontractor with whom the County has had business transactions totaling more than \$25,000 during the previous 12 month period ending on the date of the request, and any significant business transactions between the County, and any wholly owned supplier or between the County and any subcontractor, during the five year period ending on the date of the request. See, 42 CFR 455.105.
 - c.** 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP Provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the Provider based on risk of fraud, waste and abuse under federal law.
 - d.** As such, County must disclose any person with a 5% or greater direct or indirect ownership interest in the County whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or Title XXI program in the last 10 years.

- e. County shall ensure its Subcontractors make the disclosures required by this Section 13 to ODHS. ODHS reserves the right to take such action required by law, or where ODHS has discretion, as it deems appropriate, based on the information received (or the failure to receive information) from the Provider, fiscal agent, or managed care entity.

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

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

15. Federal Whistleblower Protection. County shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.

EXHIBIT G PART 1

Required Subcontractor Provisions

For purposes of this Exhibit G Part 1, Subcontractor means the individual or entity that is contracting directly with County to provide CDDP Services under this Agreement.

1. County intending to subcontract the entire CDDP Operation shall engage in discussions with ODDS about its role in continuing to operate a CDDP and whether ODDS should contract directly with the vendor for operation of the CDDP. If the County intends to retain the Agreement and chooses to subcontract, the County understands that all funds allocated by the State are intended solely for the operation of a CDDP and its delivery of services.
2. County subcontracting the entire CDDP operation shall include in the Subcontract all language from Exhibit A, Exhibit B Part 1, Exhibit B Part 2, Exhibit B Part 3, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G Part 2, and Attachment #2. Amended subcontracts must be forwarded to ODDS.contracts@odhsoha.oregon.gov. All funding provided to County must be paid to Subcontractor within ten business days of receipt of payment. County may not retain any funds related to the operation of the CDDP covered under this Agreement.
3. County subcontracting a portion of the CDDP, must include in the subcontracts all language from Exhibit A, Exhibit B Part 1, Exhibit B Part 2 if applicable Service Element Standards and Procedures are listed in the Subcontract, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G Part 2, and Attachment #2. All funding provided to County for the specific CDDP Service that is subcontracted must be paid to Subcontractor within ten business days of receipt of payment. County cannot retain any funds related to the specific CDDP Service that is subcontracted.
4. County entity serving as the CDDP will be responsible for oversight of the Subcontractor.
5. Subcontractor must agree that it is an independent contractor and not an agent of the State of Oregon, ODHS, or County.

EXHIBIT G PART 2

Subcontractor Insurance Requirements

County shall require its first tier Subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance as specified under Section 1 and meeting all the requirements under Sections 2, 3, 4, 5, 6, 7, and 8 of this Exhibit G Part 2 before the Subcontractors perform under subcontracts between County and the Subcontractors, and ii) maintain the insurance in full force throughout the duration of the subcontracts. As used in this paragraph, a “first tier” Subcontractor is a contractor with whom County directly enters a Subcontract. It does not include a subcontractor with whom the Subcontractor enters a contract.

The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODHS. County shall not authorize Subcontractors to begin work under the subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the subcontracts permitting it to enforce Subcontractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the subcontracts, as permitted by the subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Subcontractor to work under a Subcontract when County is aware that the Subcontractor is not in compliance with the insurance requirements.

For purposes of this Exhibit G Part 2 and the following Sections, Contractor means the individual or entity that is subcontracting directly with County for Services under this Agreement.

1. Insurance Requirements.

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

2. Workers’ Compensation & Employers’ Liability.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017, and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its

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

3. Commercial General Liability Insurance.

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State of Oregon. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project, or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$2,000,000 per occurrence. Annual aggregate limit shall not be less than \$4,000,000.

4. Automobile Liability Insurance.

Required **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

5. Professional Liability Insurance.

Required **Not required**

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this contract by the Contractor and Contractor's subcontractors, agents, officers, or employees in an amount not less than \$2,000,000 per claim. Annual aggregate limit shall not be less than \$4,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability Insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

6. Network Security and Privacy Liability.

Required **Not required**

Contractor shall provide network security and privacy liability insurance for the duration of the contract and for the period of time in which Contractor (or its business associates or subcontractor(s)) maintains, possesses, stores or has access to ODHS or Client data,

whichever is longer, with a combined single limit of no less than \$1,000,000 per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of ODHS or Client data (which may include, but is not limited to, Personally Identifiable Information (PII), Payment Card Data, and Protected Health Information (PHI)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of ODHS data.

7. Directors, Officers, and Organization Liability.

Required **Not required**

Directors, Officers, and Organization Insurance covering the Contractor's Organization, Directors, Officers, and Trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight, including improper oversight and or use of grant funds and donor contributions which includes state or federal funds, with a combined single limit of no less than \$1,000,000 per claim.

8. Physical Abuse and Molestation Insurance Coverage.

Required **Not required**

Abuse and Molestation Insurance in a form and with coverage that are satisfactory to the State of Oregon covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, and reporting to proper authorities, and retention of any person for whom the Contractor is responsible including but not limited to Contractor and Contractor's employees and volunteers. Policy endorsement's definition of an insured shall include the Contractor, and the Contractor's employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits shall be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, shall be treated as a separate occurrence for each victim. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.

9. Excess/Umbrella Insurance.

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

10. Additional Insured.

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with

respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Contractor's ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

11. Waiver of Subrogation.

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against ODHS or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not ODHS has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

12. Tail Coverage.

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

13. Certificate(s) and Proof of Insurance.

Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this contract. The Certificate(s) shall list the State of Oregon, its officers, employees, and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess and or umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess and or umbrella insurance. As proof of insurance ODHS and County have the right to request copies of insurance policies and endorsements relating to the insurance requirements in this contract.

14. Notice of Change or Cancellation.

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

15. Insurance Requirement Review.

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

16. State Acceptance.

All insurance providers are subject to State acceptance. If requested by ODHS or County, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents, and related insurance documents to ODHS' or County's representatives responsible for verification of the insurance coverages required under this Exhibit G Part 2.

EXHIBIT H PART 1
Privacy and Security Agreement

1. **PURPOSE.** County requires the Access described in Exhibit H Part 2 “Third Party Information System Access Request” (Form MSC 0785), which is hereby incorporated into this Exhibit H Part 1 by reference, to perform the Work. The terms and conditions of this Privacy and Security Agreement govern:
 - 1.1. County’s Use of Data;
 - 1.2. County’s Access to ODHS’ Information Assets and Systems;
 - 1.3. The periodic exchange of Data between ODHS’ and County’s systems via electronic means; and
 - 1.4. The interconnection between ODHS’ and County’s respective networks and information systems.

2. **TERM.** This Privacy and Security Agreement is effective for a period coterminous with the Agreement, subject to review at least annually by ODHS, unless terminated earlier by either party in accordance with the “Suspension or Termination” section of this Privacy and Security Agreement.

3. **DEFINITIONS.** The following definitions apply to this Privacy and Security Agreement:
 - 3.1. “Access” means the ability or the means necessary to read, communicate, or otherwise use ODHS or State Data, Network and Information Systems, and Information Assets
 - 3.2. “Breach” means the acquisition, access, exposure, use, or disclosure of Data or an Information Asset in a manner not in compliance with applicable law, rule, or policy, or Data loss, misuse, or compromise.
 - 3.3. “Client Records” includes any Client, applicant, or participant information regardless of the media or source, collected by County in the course of completing the Work, provided through the Network and Information Systems to County, or otherwise exchanged between the parties.
 - 3.4. “Data” means information created, transmitted, or stored through the Network and Information Systems, including metadata, personal information, and Client Records.
 - 3.5. “Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of any Network and Information System or Information Asset. An Incident is an observable, measurable occurrence that is a deviation from expected operations or activities. An Incident may be a Breach, failure to protect a User’s identification (ID), or theft of computer equipment that uses or stores any Information Asset.

- 3.6. “Individual Access Request (IAR)” refers to the ODHS form used to authorize a User, identify the User’s job assignment, and the required access to Network and Information System(s). It generates a unique alpha/numeric code used to access the ODHS Network and Information Systems.
- 3.7. “Information Asset(s)” refers to all information provided through ODHS, regardless of the source, which requires measures for security and privacy. Includes Data.
- 3.8. “Network and Information System(s)” means ODHS’ and the State of Oregon’s computer infrastructure which provides personal communications; Data such as Client Records; Access to other Information Assets, regional, wide area and local networks; and the internetworking of various types of networks.
- 3.9. “User” means any individual authorized to access Network and Information Systems and who has an been assigned a unique log-on identifier.

4. CHANGES TO PRIVACY AND SECURITY AGREEMENT. Other than as allowed under this section, County shall be requested to submit input to a revised “Third Party Information System Access Request” (Form MSC 0785), to request changes to Exhibit H Part 2. ODHS will review County’s request and, if approved in writing by ODHS, the parties will amend the Agreement in accordance with Exhibit E, Section 27.

4.1. **Point of Contact Changes.** Each party will provide notification to the other of any change of its respective point(s) of contact noted in Exhibit H Part 2, including any technical lead, and name an interim or replacement person in any such notice. Exhibit H Part 1 will be deemed amended to include the updated information.

4.2. **Administrative Changes.** County may request updates to Exhibit H that are administrative in nature and do not modify the mode of Access or type of data by submitting a written request to ODHS. Upon written acceptance by ODHS, Exhibit H will be deemed amended to include the updated information.

5. NOTIFICATIONS.

5.1. **Points of Contact.** The parties have designated their respective technical leads in Exhibit H Part 2. The parties will facilitate direct contacts between technical leads. The parties will provide notification to the other of any changes in technical point of contact information.

5.2. **Breach Notification.** In the event County or its Subcontractors or agents discover or are notified of an Incident or a Breach, including a failure to comply with County’s confidentiality obligations under the Agreement, County shall immediately notify ODHS’ Program Sponsor identified in Section 4 of Exhibit H Part 2 (or delegate) of the Incident or Breach. If ODHS determines that an Incident or Breach requires notification of ODHS Clients, or other notification required by law, ODHS will have sole control over the notification content, timing, and method, subject to County’s obligations under applicable law.

- 5.3. **Requests for Data.** In the event County receives a third-party request for Data, including any electronic discovery, litigation hold, or discovery searches, County shall first give ODHS notice and provide such information as may be reasonably necessary to enable ODHS to protect its interests.
- 5.4. **Changes in Law.** Each party will provide notice to the other of any change in law, or any other legal development, which may significantly affect its ability to perform its obligations.
6. **GRANT OF LICENSE.** Subject to County’s compliance with the Agreement, County is hereby granted a non-exclusive, non-transferable, and revocable authorization to Access and use Information Assets only in accordance with this Privacy and Security Agreement and applicable laws, rules, and policies. County and its employees, contractors, and agents shall not manipulate any URL or modify, publish, transmit, reverse engineer, participate in any unauthorized transfer or sale of, create derivative works of, or in any way exploit the content or software comprising this Access, or Information Assets made available through this Access.
7. **DATA PRIVACY.** In addition to County’s obligations under Exhibit D “General Terms and Conditions”, Section 9 regarding Confidentiality of Information:
- 7.1. **Generally.** County shall hold all Client Records, and other information as to personal facts and circumstances obtained by County on ODHS Clients, as confidential, using the highest standard of care applicable to the Client Records, and shall not divulge any Client Records without the written consent of the Client, the Client’s attorney, the responsible parent of a minor child, or the minor child’s guardian except as required by other terms of this Privacy and Security Agreement or applicable law.
- 7.2. **Limited Purposes.** County shall limit the use or disclosure of Data concerning Clients to persons directly connected with the administration of this Privacy and Security Agreement or the Agreement. Confidentiality policies apply to all requests from outside sources.
- 7.3. **Privacy Protections.** Data may include information, such as Client Records, subject to specified confidentiality protections under state or federal law. County shall comply with laws, regulations, and policies applicable to the information described in Exhibit H Part 2, including as specified in the Agreement.
- 7.4. **Training.** County’s employees, subcontractors, and agents who will Access Data have received training on the privacy and security obligations relating to the Data, including Client Records. County shall provide periodic privacy and security training to its employees, subcontractors, and agents.
8. **SECURITY REQUIREMENTS.**
- 8.1. **Compliance with Laws, Regulations, and Policies.** County and its employees, contractors, and agents shall comply with all applicable state and federal laws and regulations, and State of Oregon policies governing use and disclosure of Data (including Client Records) and Access to Information Assets, including as those laws, regulations, and policies may be updated from time to time. Applicable laws, regulations, and policies include but are not limited to:

- 8.1.1. ODHS and OHA Information Security and Privacy Policies:
<https://www.oregon.gov/oha/FOD/OIS-ISPO/Pages/Policies.aspx>
- 8.1.2. ODHS and OHA Privacy and Confidentiality administrative rules, OAR Chapter 407, Division 14, and OAR Chapter 943, Division 14.
- 8.1.3. The Health Insurance Portability and Accountability Act (HIPAA), including as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”), and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160 and 164. County shall comply with HIPAA Compliance included in the Agreement in Exhibit D “General Terms and Conditions”, Section 11 in connection with County’s Access.
- 8.1.4. The Oregon Consumer Identity Theft Protection Act, ORS 646A.600 through 646A.628, to the extent applicable.
- 8.1.5. Oregon’s Statewide Information Security Standards:
<https://www.oregon.gov/das/OSCIO/Documents/2019StatewideInformationAndCyberSecurityStandardsV1.0.pdf>
- 8.2. **Responsible for Compliance.** County is responsible for the compliance of its employees, agents, and subcontractors with this Privacy and Security Agreement and with any third-party licenses to which Access is subject.
- 8.3. **Privacy and Security Measures.** County represents and warrants it has established and will maintain privacy and security measures that meet or exceed the standards set in laws, rules, and regulations applicable to the safeguarding, security and privacy of Data, including Client Records, all Information Assets, regardless of the media, and all Network and Information Systems. County shall monitor, periodically assess, and update its security controls and risk to ensure continued effectiveness of those controls.
- 8.4. **Security Risk Management Plan.** County shall ensure the level of security and privacy protection required in accordance with this Privacy and Security Agreement is documented in a security risk management plan. County shall make its security risk management plan available to ODHS for review upon request.
- 8.5. **Audit Rights and Access.** County shall maintain records in such a manner as to clearly document its compliance with and performance under this Privacy and Security Agreement, and provide ODHS, the Oregon Secretary of State, the federal government, and their duly authorized representatives access to County’s officers, agents, contractors, subcontractors, employees, facilities and records for ODHS to:
 - 8.5.1. Determine County’s compliance with this Privacy and Security Agreement,
 - 8.5.2. Validate County’s written security risk management plan, or

- 8.5.3. Gather or verify any additional information ODHS may require to meet any state or federal laws, rules, or orders regarding Information Assets.
- 8.5.4. Access to facilities, systems, and records under this section will be granted following reasonable notice to County. Records include paper or electronic form, system security logs, and related system components and tools (including hardware and software), required to perform examinations and audits, and to make excerpts and transcripts, including for data forensics.

9. ACCESS TO ODHS SYSTEMS.

- 9.1. **ODHS Review of User Requests.** If required for Access, ODHS will review requests, including forms such as the IAR, and will:
 - 9.1.1. Notify County of the approval or denial of its request for each User for whom Access has been requested;
 - 9.1.2. Provide any unique log-on identifier required for authorized Access;
 - 9.1.3. Provide updates to approved inquiry processes and instructions to County.
- 9.2. **County’s Responsibilities for User Accounts.** County shall facilitate completion of any forms (such as the IAR) for each person for whom Access is requested.
 - 9.2.1. County is responsible for all activities that occur through its Access, including for any acts related to a lost or stolen User ID or password.
 - 9.2.2. County is responsible for ensuring information provided by its Users is accurate, complete, and up to date.
 - 9.2.3. County shall immediately notify ODHS when a User, group of Users, or County, no longer requires Access whether due to changes in duties or due to changes in County’s programs related to the Agreement.
- 9.3. **Security and Disposal.** County shall maintain security of equipment, and ensure the proper handling, storage and disposal of all Information Assets accessed, obtained, or reproduced by County and its Users to prevent inadvertent destruction or loss. County shall ensure proper disposal of equipment and Information Assets when authorized use ends, consistent with County’s record retention obligations and obligations regarding Information Assets under the Agreement.
- 9.4. **Prevention of Unauthorized Access.** County shall prevent any Access to State of Oregon Network and Information Systems by its Users that is not authorized in accordance with the Agreement and applicable law and shall implement and maintain safeguards to prevent unauthorized access.
- 9.5. **Access from Outside the US and its Territories.** County Access to the state network from outside the US and its territories is prohibited unless approved by the ODHS|OHA Chief Information Risk Officer (CIRO). If approved, the County shall provide ODHS|OHA with the IP addresses, or IP address range, to be used to Access the network. Any changes to the provided IP addresses, or IP range, shall be immediately communicated to ODHS|OHA or Access could be affected.

- 9.5.1. County shall not allow use of any Information Asset in any country or territory in any manner prohibited by governing applicable law, rule, or policy.
- 9.6. **Authorized Access and Use Only.** No User may Access or use Data for any purpose other than those specifically authorized through the Agreement.
 - 9.6.1. Users shall not use Access to obtain or attempt to obtain any Data or Information Assets not authorized or intentionally made available.
 - 9.6.2. The use and disclosure of any Information Asset is strictly limited to the minimum information necessary to the exchange of Data between the parties described in Exhibit H Part 2.
 - 9.6.3. Except as otherwise specified or approved by ODHS, neither County nor its Users may modify, alter, delete, or destroy any Information Asset.
- 9.7. **Revocation or Termination of Access.** Breach, or wrongful use or disclosure of Information Assets by County or its Users, may cause the immediate revocation of the Access granted through this Privacy and Security Agreement, in the sole discretion of ODHS, or ODHS may specify a reasonable opportunity for County to cure the unauthorized use or disclosure and end the violation, and terminate the Access if County does not do so within the time specified by ODHS. Legal actions also may be taken for violations of applicable regulations and laws.
- 9.8. **No Unauthorized Distribution.** County shall not sell, make available, or provide Information Assets in any form to any other persons or organizations, and shall not use the Information Assets for any purposes other than as allowed under the Agreement and applicable law.
- 9.9. **No Impairment.** County shall not use this Access in any manner which could damage, disable, overburden, or impair Network and Information Systems or interfere with any other entity's use or benefit of Network and Information Systems.
- 9.10. **Prohibition on Data Mining.** County shall not capture, maintain, scan, index, share or use Data stored or transmitted by virtue of this interconnection, or otherwise use any data-mining technology, for any non-authorized activity. For purposes of this requirement, "non-authorized activity" means the data mining or processing of data, stored or transmitted through the Network and Information Systems, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security analysis that is not explicitly authorized in this Privacy and Security Agreement.
- 9.11. **Incidents and Breaches.** County shall comply, and shall cause its subcontractors to comply, with any requirements for identifying and addressing an Incident or Breach. This requirement applies regardless of whether the Incident or Breach was accidental or otherwise.

10. **SUSPENSION OR TERMINATION.**

- 10.1. This Privacy and Security Agreement may be terminated at any time by written agreement of the parties.

- 10.2. This Privacy and Security Agreement may be terminated by either party upon thirty (30) calendar days' written notice to the other party.
 - 10.3. Access and this Privacy and Security Agreement may be terminated immediately upon written notice from County if Access is no longer needed by County.
 - 10.4. ODHS may immediately revoke the Access granted County for County's failure to comply with the requirements of this Privacy and Security Agreement. In such event, ODHS will provide subsequent written notice to County's point of contact. ODHS may, to the extent it determines it is reasonable and able to do so, provide advance notice to County to cure any deficiency or breach of this Privacy and Security Agreement.
 - 10.5. Either party may terminate this Privacy and Security Agreement, and ODHS may modify Access, upon written notice if there are changes to or revised interpretations of federal or state laws, rules, or regulations, or if either party has changes in policies that require such action.
- 11. RETURN OF INFORMATION ASSETS.** Upon expiration or termination of the Agreement or this Privacy and Security Agreement for any reason whatsoever, County shall immediately deliver to ODHS all of ODHS' Information Assets, including Data and Client Records, that are in the possession or under the control of County in whatever stage and form of recordation such property is expressed or embodied at that time.
- 11.1. Except as necessary to meet obligations under Exhibit E "Standard Terms and Conditions", Section 16 "Records Maintenance, Access", County shall not retain any copies of Information Assets. County shall notify ODHS of any conditions that make returning all ODHS Information Assets not feasible. Upon ODHS' written acknowledgement that returning all Information Assets is not feasible, County shall purge or destroy retained Data in all its forms in accordance with the most current version of NIST SP 800-88 (or other agreed-upon standard) and on request provide ODHS with written certification of sanitization.
 - 11.2. County shall maintain protections required by law or the Agreement for any retained State of Oregon Information Asset for so long as County (including through any subcontractor) retains it.
- 12. INDEMNIFICATION AND INSURANCE.** Indemnification and insurance coverages provided by County under the Agreement apply to this Privacy and Security Agreement.
- 13. COSTS.** Each party will bear its own costs related to the acquisition of all equipment, software, data lines or connections necessary for Access, unless otherwise agreed to by written agreement between the parties. Each party is responsible for securing compatible hardware, equipment, and software, and network connections. Each party is responsible for complying with the licenses for third party products, including software and services that allow Access.
- 14. SURVIVAL.** Access and rights to use Information Assets ceases upon termination of this Privacy and Security Agreement. Rights and obligations which expressly or by their nature survive termination do so survive, and include this section, provisions regarding warranties and liabilities, indemnification, and confidentiality and non-disclosure.

15. **INTERPRETATION.** Any ambiguity in this Privacy and Security Agreement will be resolved to permit ODHS to comply with applicable privacy and security laws and State of Oregon and ODHS policies interpreting those laws.
16. **SUBCONTRACTORS.** County shall ensure all Subcontractors providing services related to this Privacy and Security Agreement are held to the same requirements as County.

EXHIBIT H, PART 2

Third Party Information System Access Request



SHARED SERVICES
Information Security and Privacy Office



Third Party Information System Access Request

Reset form

An DHS or OHA program completes this form to request access for a **third-party entity*** (*organization or individual*) to data within an DHS or OHA information system or network.

**Please note that each entity only needs one form.*

Hover over **blue** text for more information.

Request type (<i>required</i>): New request (ISPO will add agreement number)	Agreement number:
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Section 1. Third party information

This section defines the third party needing access to DHS/OHA network and information system(s). A third party is any individual or entity that is not part of the DHS/OHA workforce. Workforce means employees, volunteers, trainees and other individuals whose DHS or OHA work is under that agency's direct control. This applies to paid and unpaid workforce members.

Third-party agreement administrator contact information

This individual signs the contracts for the third party. (This is NOT a DHS/OHA employee.)

Organization/entity name: Marion County	
Contact name (<i>first, last</i>):	Ryan Matthews , Corissa Neufeldt
Position/title:	Ryan: Administrator, Corissa: Division Director
Work street address:	3180 Center St. NE, Suite 3360,
City, State, ZIP:	Salem, OR 97301
Phone:	Ryan: (503) 361-2670, Corissa: (503) 763-5787
Email:	RMatthews@co.marion.or.us; cneufeldt@co.marion.or.us
Website address (<i>optional</i>):	

Additional contact for third party

*This individual will be the contact for setting up or terminating users for the third party. (This is **not** a DHS/OHA employee.)*

Same contact information as above.

Agreement #: Org name: Marion County

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Section 2. Governing contract details

A DHS/OHA employee fills out this section. If a [governing contract](#) applies, please complete all applicable fields, below.

Does a governing contract establish a need for access? Yes No

Background checks

Please ensure all applicable required background checks are completed. DHS and OHA systems containing or accessing regulated data may require additional background check requirements beyond the pre-employment background checks. Regulated data sets requiring additional background checks include but are not limited to:

- Criminal Justice Information (CJI) in the Criminal Justice Information Services (CJIS) policy, 5.12.1 Personnel Security Policy and Procedures
- Federal tax information (FTI) as documented in Internal Revenue Service (IRS) Publication 1075, 5.1.1 Background Investigation Minimum Requirements.

Direct questions related to the background check process to BCU.Info@state.or.us or 503-378-5470 or 1-888-272-5545.

Section 3. Access description

Reason for access

Describe in detail the [business need](#) for access:

3rd party needs to access CAM, eXPRS and ASPEN to provide complete case management entity contract requirements. Individual access will be based on each user and their responsibilities.

Requested access start date: 07/01/2023

Method of access

Check all methods the third party will use to access DHS/OHA information systems.

- DHS/OHA on-site Will only use DHS/OHA supplied PC, laptop or workstation: Yes No
- Remote access via [VPN](#) Will only use DHS/OHA supplied PC, laptop or workstation: Yes No
- Remote access via [Citrix](#)
- Access to folder on [Secure File Transfer Protocol \(SFTP\) server](#)
- Other (*explain below*): Will only use DHS/OHA supplied PC, laptop or workstation: Yes No

Access and information flow will occur from:

DHS/OHA to third party (i.e., third party has access to DHS/OHA's information assets and systems) ▾

Scope of access

List all system names the third party needs to access. (*This form authorizes access for the third-party organization as a whole. A partner number [P#] and a network login are needed to access the following information systems. The system-specific [individual user access request forms](#) must be used to request access for individual third-party employees using the system.*)

- Email:** DHS/OHA email account authorized. This authorizes the third party to get DHS/OHA email accounts after receiving a completed individual user access request form for each individual.

Network: Network login authorized. This authorizes the third party to get DHS/OHA network login IDs after receiving a completed individual user access request form for each individual.

System 1	
Name of system: CAM	
Type of access requested: Read/write (please describe): ▾	
Description of access: Per the contract, CDDP must record all serious incidents, complaints of abuse, death reviews, and abuse investigations in the ODHS approved Centralized Abuse Management (CAM) System.	
Expiration date of access:	
Information type	
Will information being shared or accessed be identifiable (i.e., names, DOB, address, etc.)? <input checked="" type="radio"/> Yes <input type="radio"/> No	
If yes, what protected information will be shared or accessed? (Check all that apply.)	
<input checked="" type="checkbox"/> Protected health information (PHI)	<input checked="" type="checkbox"/> Personally identifiable information (PII)
<input checked="" type="checkbox"/> Financial information	<input type="checkbox"/> Federal tax information (FTI)
<input type="checkbox"/> Criminal justice information (CJI)	<input type="checkbox"/> Payment card information (PCI)
<input type="checkbox"/> Social Security Administration (SSA data)	
<input type="checkbox"/> Other (list below):	
Information owner review (internal use only)	
Name of reviewer: Lea Ann Stutheit	Review date: 04/21/2023
Access determination:	
Role or group assigned (if applicable):	
Access is: Choose one	▾
Reason for determination:	
Add another system	Remove this system (above)

System 2	
Name of system: eXPRS	
Type of access requested: Read/write (please describe): ▾	
Description of access: Per the contract, CDDP shall upload all applicable documentation supporting the service authorization and rates within eXPRS.	
Expiration date of access:	
Information type	
Will information being shared or accessed be identifiable (i.e., names, DOB, address, etc.)? <input type="radio"/> Yes <input checked="" type="radio"/> No	
Information owner review (internal use only)	
Name of reviewer: Lea Ann Stutheit	Review date: 04/21/2023
Access determination:	
Role or group assigned (if applicable):	

Access is: Choose one ▼
Reason for determination:
Add another system Remove this system (above)

System 3	
Name of system: ASPEN	
Type of access requested: Read/write (please describe): ▼	
Description of access: To provide complete case management entity contract requirements.	
Expiration date of access:	
Information type	
Will information being shared or accessed be identifiable (i.e., names, DOB, address, etc.)?	
<input checked="" type="radio"/> Yes <input type="radio"/> No	
If yes, what protected information will be shared or accessed? (Check all that apply.)	
<input checked="" type="checkbox"/> Protected health information (PHI)	<input checked="" type="checkbox"/> Personally identifiable information (PII)
<input checked="" type="checkbox"/> Financial information	<input checked="" type="checkbox"/> Federal tax information (FTI)
<input checked="" type="checkbox"/> Criminal justice information (CJI)	<input type="checkbox"/> Payment card information (PCI)
<input checked="" type="checkbox"/> Social Security Administration (SSA data)	
<input type="checkbox"/> Other (list below):	
Information owner review (internal use only)	
Name of reviewer: ISPO will staff to ASPEN BA	Review date: 04/21/2023
Access determination:	
Role or group assigned (if applicable):	
Access is: Choose one ▼	
Reason for determination:	
Add another system Remove this system (above)	

Check all methods the third party will use to access DHS/OHA information systems.

Section 4. Program sponsor

The **program sponsor** is the DHS or OHA manager who sponsors the requested access. That person must monitor and ensure the third party complies with the terms and conditions of the access agreement. (Note that the program sponsor is usually the contract administrator of the governing contract authorizing the access.)

Verification of need to know:	
<input checked="" type="checkbox"/> As program sponsor, I certify that sections 1 through 3 of this form note the minimum necessary access.	
Date: <u>04/19/2023</u>	
Name (first, last):	Lea Ann Stutheit
Position/title:	COO
Office:	ODHS

Agreement #: Org name: Marion County

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Program:	ODDS
District name:	N/A
Work street address:	550 Capitol St NE
City, State, ZIP:	Salem, OR 97301
Phone (include ext.):	503-945-6675
Email:	leaann.stutheit@odhs.oregon.gov

Section 5. Program requestor

The **program requestor** is the DHS or OHA staff person who works with the third party on a day-to-day basis. That person requests the access agreement for the third party. The requestor can be the same person as the program sponsor or contract administrator. However, a program can list separate requestors/contract administrators. This will ensure all relevant parties receive contract communication and expiration notices.

Check this box and skip this section if the program requestor is also the program sponsor.

Submission

Click the submit button below to submit electronically, or email this completed form to the Information Exchange (InfoEx) Program within the Information Security and Privacy Office at DHSOHA.InfoEx@dhsoha.state.or.us. You can also email this address if you need more help.

Policy reference: <https://apps.state.or.us/Forms/Served/de090-003.pdf>

Submit by email

DHS/OHA Information Security and Privacy Office use only

Date received:	Date completed:
Date approved by all information owners:	Date executed:
Notes:	
Completed by:	

ATTACHMENT #2
Subcontractor Disclosures Report

CDDP Name: _____

As described in Section 13 “Disclosures” of Exhibit F “Federal Terms and Conditions”, CDDP reports the following:

Number of board members: _____

Number of directors: _____

Number of indirect owners with five percent or more ownership: _____

Number of direct owners with five percent or more ownership: _____

Name:		Title:		Percentage of Ownership:	
Residence Street Address:			City:	State:	Zip:
SSI or EIN:			DOB:		
Do you have any other ODHS Provider numbers: (e.g. Personal Support Worker, Provider Agency Foster Home Provider): Yes No					
If yes, please list all Provider names and numbers:					
Check if this person has ever been convicted of a criminal offense or has been suspended or debarred from participation related to that person’s involvement in any program under Medicare, Medicaid or the Title XIX service program since the inception of those programs in the United States or its territories:					

Name:		Title:		Percentage of Ownership:	
Residence Street Address:			City:	State:	Zip:
SSI or EIN:			DOB:		
Do you have any other ODHS Provider numbers: (e.g. Personal Support Worker, Provider Agency Foster Home Provider): Yes No					
If yes, please list all Provider names and numbers:					
Check if this person has ever been convicted of a criminal offense or has been suspended or debarred from participation related to that person’s involvement in any program under Medicare, Medicaid or the Title XIX service program since the inception of those programs in the United States or its territories:					

Name:	Title:		Percentage of Ownership:	
Residence Street Address:		City:	State:	Zip:
SSI or EIN:		DOB:		
Do you have any other ODHS Provider numbers: (e.g. Personal Support Worker, Provider Agency Foster Home Provider): Yes No				
If yes, please list all Provider names and numbers:				
Check if this person has ever been convicted of a criminal offense or has been suspended or debarred from participation related to that person's involvement in any program under Medicare, Medicaid or the Title XIX service program since the inception of those programs in the United States or its territories:				

Name:	Title:		Percentage of Ownership:	
Residence Street Address:		City:	State:	Zip:
SSI or EIN:		DOB:		
Do you have any other ODHS Provider numbers: (e.g. Personal Support Worker, Provider Agency Foster Home Provider): Yes No				
If yes, please list all Provider names and numbers:				
Check if this person has ever been convicted of a criminal offense or has been suspended or debarred from participation related to that person's involvement in any program under Medicare, Medicaid or the Title XIX service program since the inception of those programs in the United States or its territories:				

Name:	Title:		Percentage of Ownership:	
Residence Street Address:		City:	State:	Zip:
SSI or EIN:		DOB:		
Do you have any other ODHS Provider numbers: (e.g. Personal Support Worker, Provider Agency Foster Home Provider): Yes No				
If yes, please list all Provider names and numbers:				
Check if this person has ever been convicted of a criminal offense or has been suspended or debarred from participation related to that person's involvement in any program under Medicare, Medicaid or the Title XIX service program since the inception of those programs in the United States or its territories:				

Name:	Title:		Percentage of Ownership:	
Residence Street Address:		City:	State:	Zip:
SSI or EIN:		DOB:		
Do you have any other ODHS Provider numbers: (e.g. Personal Support Worker, Provider Agency Foster Home Provider): Yes No				
If yes, please list all Provider names and numbers:				
Check if this person has ever been convicted of a criminal offense or has been suspended or debarred from participation related to that person's involvement in any program under Medicare, Medicaid or the Title XIX service program since the inception of those programs in the United States or its territories:				

Name:	Title:		Percentage of Ownership:	
Residence Street Address:		City:	State:	Zip:
SSI or EIN:		DOB:		
Do you have any other ODHS Provider numbers: (e.g. Personal Support Worker, Provider Agency Foster Home Provider): Yes No				
If yes, please list all Provider names and numbers:				
Check if this person has ever been convicted of a criminal offense or has been suspended or debarred from participation related to that person's involvement in any program under Medicare, Medicaid or the Title XIX service program since the inception of those programs in the United States or its territories:				

Name:	Title:		Percentage of Ownership:	
Residence Street Address:		City:	State:	Zip:
SSI or EIN:		DOB:		
Do you have any other ODHS Provider numbers: (e.g. Personal Support Worker, Provider Agency Foster Home Provider): Yes No				
If yes, please list all Provider names and numbers:				
Check if this person has ever been convicted of a criminal offense or has been suspended or debarred from participation related to that person's involvement in any program under Medicare, Medicaid or the Title XIX service program since the inception of those programs in the United States or its territories:				

If there are more individuals that need to be reported, please add additional pages.