

**State of Oregon**  
**Contract for Services**  
**@@@@@**

**Commented [RS\*01]:** A note about OYA templates:

For our internal templates we have "draft notes" that we place throughout the template (via comments like this one), guiding the PCS while drafting the contract. I have removed those draft notes because they are OYA specific and also could contain DOJ guidance that cannot be shared widely. But it is good to note that our Draft notes do contain alternative language options that a PCS can choose from given their specific assignment (e.g. youth in the community or youth in the facility). This allows us to use one template for most contracts, starting with a base and building it up to match the project need.

I've included one example directly below-for our specific effective date language.

**In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio tape, oral presentation, and computer disk. To request an alternate format, call the State of Oregon, Oregon Youth Authority, Procurement Unit, at 503-373-7371.**

**Contract #xxxxx**

This Contract for Services ("Contract") is by and between the State of Oregon, acting through its **Oregon Youth Authority** ("Agency") and @@@@ [doing business as \_\_\_\_] ("Contractor") and is effective as of the Effective Date.

Contractor's Contract Administrator for this Contract is: Agency's Contract Administrator for this Contract is:

Name and Title	Contract Administrator Name, Title
Address	Agency-Division
City, State ZIP	Address
Phone: xxx-xxx-xxxx	City, State ZIP
Fax: xxx-xxx-xxxx	Phone: xxx-xxx-xxxx
anyname@yahoo.com	Fax: xxx-xxx-xxxx
	anyname@oya.oregon.gov

Either party may change its Contract Administrator by providing the other notice in compliance with Section 17.6 of this Contract.

**1. Contract Term**

This Contract is effective on the date it has been signed by all parties and all required State of Oregon approvals have been obtained. Unless extended or terminated earlier in accordance with its terms, this Contract terminates on @@@@. The termination of this Contract will not extinguish or prejudice Agency's right to enforce this Contract with respect to any default by Contractor that has not been cured.

**Commented [RS\*02]:** Draft Note: If the contract has a specific start date or retroactive date, use the following in place of the first sentence (be sure to remove the original first sentence):

"Upon receipt of all required approvals and execution by all parties, this Contract shall be effective \_\_\_\_ (the "Effective Date")."

See procedure for more details>

[\\cenvfsprd1\OYA\\_Salem\Contracts\Contracts Unit Only\Templates and Forms\Retroactive or Specific Effective Date](#)

**2. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence:

- 2.1. This Contract less all exhibits;
- 2.2. Exhibit A - Statement of Work;
- 2.3. Exhibit B - Required Insurance;
- 2.4. Exhibit C - Special Terms and Conditions;
- 2.5. Exhibit D - Independent Contractor Certification;
- 2.6. Exhibit E - @; and
- 2.7. Exhibit F - @.

The foregoing documents and Exhibits are attached hereto and made a part of the Contract by this reference.

### 3. Services

- 3.1. Performance of Services.** Contractor shall perform the Services (the "Services") and deliver to Agency the deliverables ("Deliverables") set forth in Exhibit A, the Statement of Work (the "Statement of Work"). The Statement of Work includes the delivery schedule for the Deliverables and Services. Contractor shall perform the Services in accordance with the terms and conditions of this Contract.
- 3.2. Submission and Acceptance of Deliverables.** When the Statement of Work requires Contractor to deliver Deliverables to Agency, then Contractor shall deliver Deliverables that comply with the requirements and acceptance criteria set forth in the Statement of Work. Contractor shall provide written notice to Agency upon delivery of a completed Deliverables to Agency. By no later than (i) 15 business days after receipt of such notice, or (ii) the date or period for review set forth in the Statement of Work, Agency will determine whether the Deliverables has the characteristics and otherwise meets the acceptance criteria set forth in the Statement of Work. If Agency determines that the Deliverables has the characteristics and meets acceptance criteria set forth in the Statement of Work in all material respects, Agency will notify Contractor in writing of Agency's acceptance of the Deliverables.
- 3.3. Rejection of Deliverables; Corrections.** If Agency determines that a Deliverable does not have the characteristics or otherwise meet the acceptance criteria set forth in the Statement of Work in all material respects, Agency will notify Contractor in writing of Agency's rejection of the Deliverables, and describe in reasonable detail in such notice the Agency's basis for rejection of the Deliverables. Upon receipt of notice of non-acceptance, Contractor shall, within a 15 business day period, modify or improve the Deliverables at Contractor's sole expense so that the Deliverables has the characteristics described in the Statement of Work and meets, in all material respects, the acceptance criteria, and notify the Agency in writing that it has completed such modifications or improvements and re-tender the Deliverables to Agency. Agency will thereafter review the modified or improved Deliverables within 15 business days of receipt of the Contractor's delivery of the Deliverables. Failure of the Deliverables to have the characteristics or meet in all material respects the acceptance criteria set forth in the Statement of Work after the second submission will constitute a default by Contractor. In the event of such default, Agency may either, (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverables as set forth in this Section, or (ii) notify Contractor of such default and pursue its remedies for default provided for by law or the terms of this Contract.

### 4. Compensation

- 4.1. Not to Exceed Compensation.** The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$\*\*\*,\*\*\*.\*\*. Agency will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract, and will not pay for Services performed before the Effective Date or after the expiration or termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Services subject to the amendment.
- 4.2. Payments.** Payments, including interim payments, to Contractor are subject to ORS 293.462, will be made only for completed and accepted Deliverables and Services, and will be made in accordance with the payment schedule and requirements set forth in Exhibit A.

- 4.3. Invoices.** Contractor shall submit invoices to Agency as set forth in the Statement of Work or, if not set forth therein, to Agency's Contract Administrator. Contractor may submit invoices in accordance with the payment schedule set forth in the Statement of Work or, if no payment schedule is set forth therein, then no more frequently than once per month for accepted Deliverables and Services. The invoices must describe all Services performed with particularity, including the dates Contractor performed the Services for which it is requesting payment, and by whom the Services were performed and shall itemize and explain all expenses that this Contract requires Agency to pay and for which Contractor claims reimbursement.
- 4.4. Expenses.** Agency will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in the Statement of Work or elsewhere in this Contract. Any such authorized travel expenses must comply with the Oregon Travel Policy available on the Internet at: <http://www.oregon.gov/das/cfo/sars/policies/oam/40.10.00.pdf>.
- 4.5. Funds Available and Authorized.** Contractor shall not be compensated for Services performed under this Contract by any agency or department of the State of Oregon other than Agency. Agency believes it has sufficient funds currently available and authorized for expenditure to make payments under this Contract within Agency's biennial appropriation or limitation. Contractor understands and agrees that Agency's payments under this Contract are contingent on Agency receiving appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

## **5. Contractor's Personnel**

- 5.1. Key Persons.** Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's Key Person (each a "Key Person" and, together, "Key Persons") identified in this Section. Neither Contractor nor a Key Person may delegate performance of the powers and responsibilities that a Key Person is required to provide under this Contract to another Contractor employee, subcontractor, or agent without first obtaining the written consent of Agency. Further, Contractor may not re-assign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the Agency with the required expertise, experience, judgment, and personal attention, without first obtaining Agency's written consent to such re-assignment or transfer, which Agency will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace a Key Person in the event the Key Person is no longer available due to circumstances beyond Contractor's reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that Agency approve a re-assignment or transfer of a Key Person, or if Contractor must replace a Key Person, Agency may interview, review the qualifications of, and approve or reject the proposed replacement for the Key Person. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency in writing (email acceptable) will thereafter be deemed a Key Person for purposes of this Contract, and this Section will be deemed amended to include such Key Person. Listed below is the Key Person(s) under this Contract:

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- 5.2. Payment for Replacement Key Personnel.** If Agency is paying Contractor on an hourly or other periodic basis, then Contractor shall not charge Agency, and Agency will not pay, for a

replacement Key Person while such replacement acquires the project knowledge and skills necessary to perform the Services. Such period of non-charge will be agreed upon by the Parties.

- 5.3. State Premises.** Contractor and Contractor staff shall comply with all policies, rules, procedures, and regulations established by Agency and the State for access to and activities in and around premises controlled by Agency or any other agency of the State.

## **6. Independent Contractor; Responsibility For Taxes and Withholding**

- 6.1. Independent Contractor.** Contractor shall perform all Services as an independent contractor. Agency reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, Agency may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.
- 6.2. No Conflicts.** Contractor, by signature to this Contract, represents and warrants that Contractor's performance of the Services under this Contract creates no potential or actual conflict of interest as defined by ORS 244; and no statutes, rules, or regulations of any State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor from performing the Services under this Contract.
- 6.3. Affiliation.** Contractor understands and agrees that it is not an "officer," "employee," or "agent" of the State of Oregon, as those terms are used in ORS 30.265 or otherwise.
- 6.4. Taxes and Benefits.** Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless required by applicable law, Agency will not withhold from such compensation or payments any amount to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

## **7. Subcontracts, Successors, and Assignments**

- 7.1. Subcontracts.** Contractor shall not enter into any subcontracts for any of the Services required by this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Contractor. Agency's consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract.
- 7.2. Successors and Assigns.** The provisions of this Contract are binding upon and inure to the benefit of the Parties to this Contract, their respective successors, and permitted assigns, if any.
- 7.3. No Assignment.** Contractor shall not assign or transfer any of its rights or delegate its obligations under this Contract without Agency's prior written consent.

## **8. Representations and Warranties**

- 8.1. Contractor's General Representations and Warranties.** Contractor represents and warrants to Agency that:

8.1.1. Contractor has the power and authority to enter into and perform this Contract;

- 8.1.2. This Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;
- 8.1.3. Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services;
- 8.1.4. Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty;
- 8.1.5. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date, faithfully has complied with:
  - 8.1.5.1. All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
  - 8.1.5.2. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts or income, or to Contractor's performance of or compensation for any work performed by Contractor;
  - 8.1.5.3. Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor;
  - 8.1.5.4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; and
- 8.1.6. Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

## **8.2. Contractor's Performance Warranties**

- 8.2.1. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade, or profession and Contractor shall apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade, or profession;
- 8.2.2. The Services and each Deliverable delivered by Contractor pursuant to the Services will materially comply with any service descriptions, specifications, standards, or requirements set forth in this Contract;
- 8.2.3. Except as otherwise provided in this Contract (including Section 9), Contractor shall transfer all Deliverables to Agency free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind; and
- 8.2.4. Except as otherwise set forth in this Contract, any subcontractors performing work for Contractor under this Contract have assigned all of their rights in the Deliverables to Contractor or Agency and no third party has any right, title, or interest in any Deliverables supplied to Agency under this Contract.

**8.3. Warranties cumulative.** The warranties set forth in Section 8 are in addition to, and not in lieu of, any other warranties set forth elsewhere in this Contract.

## **9. Ownership of Work Product**

**9.1. Definitions.** As used in this Section 9, and elsewhere in this Contract, the following terms have the meanings set forth below:

- 9.1.1. "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Services.
- 9.1.2. "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.
- 9.1.3. "Work Product" means everything that is originally made, conceived, discovered, or reduced to practice by Contractor or Contractor's subcontractors or agents (either alone or with others) pursuant to this Contract, including every invention, modification, discovery, design, development, customization, configuration, improvement, process, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection).

**9.2. Original Works.** All Work Product created by Contractor pursuant to the Services, including derivative works and compilations of Work Product, and whether or not such Work Product is considered a work made for hire or an employment to invent, is the exclusive property of Agency. Agency and Contractor agree that such Work Product is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the Work Product is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction, or limitation on use or subsequent modifications.

**9.3. License in Contractor Intellectual Property.** In the event that a Deliverable delivered by Contractor under this Contract is or is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Deliverables, and to authorize others to do the same on Agency's behalf.

**9.4. License in Third Party Intellectual Property.** In the event that a Deliverable delivered by Contractor under this Contract is or is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the Agency's behalf and in the name of the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Deliverables, and to authorize others to do the same on Agency's behalf.

- 9.5. No Rights.** Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by Agency. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Agency any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.
- 9.6. Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks, or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.
- 9.7. Competing Services.** Subject to the provisions of this Section 9, and Contractor's obligations with respect to Confidential Information, including as defined in Section 10, nothing in this Contract precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in this Contract, or consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, Deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables delivered pursuant to this Contract. Each party is free to utilize any concepts, processes, know-how, techniques, improvements, or other methods it may develop during the course of performance under this Contract free of any use restriction or payment obligation to the other.

## **10. Confidential Information**

- 10.1. Confidential Information.** Contractor acknowledges that it and its employees, officers, directors, agents, or subcontractors (collectively, "Contractor Staff") may, in the course of performing the Services under this Contract, be exposed to or acquire information that is confidential to Agency or Agency's clients. Any and all information of any form (including but not limited to records, files, papers, materials, documents, and communications in written, verbal, oral, and electronic form) that Contractor or any Contractor Staff may come into contact with or that is obtained by Contractor or Contractor Staff in the performance of this Contract shall be considered for the purposes of this Contract the confidential information of Agency ("Confidential Information"). Contractor shall, and shall cause Contractor Staff to treat any reports or other documents or items (including software) that result from the use of the Confidential Information in the same manner as the Confidential Information. Confidential Information does not include information that (i) is or becomes (other than by disclosure by Contractor or Contractor Staff acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by Contractor or Contractor Staff who can be shown to have had no access to the Confidential Information.
- 10.2. Non-Disclosure.** Contractor shall hold, and shall cause Contractor Staff to hold, all Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer, distribute, or otherwise dispose of, give, make available, or disclose, in whole or in part, directly or indirectly, Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to Agency hereunder, and shall advise

Contractor Staff of their obligations to keep Confidential Information confidential. Contractor shall assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Agency immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract, and Contractor shall at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Contractor against any such person. Contractor shall not at any time during or after the term of this Contract, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract. Upon expiration or termination of this Contract or at Agency's request, Contractor shall deliver to Agency all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Contract, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of performance of the Services.

**10.3. Confidentiality Policies.** Contractor shall, upon Agency's request, provide its policies and procedures for safeguarding Confidential Information to Agency for Agency's review and consent. Such policies must address information conveyed in oral, written, and electronic format and include procedures for how Contractor shall respond when a violation or possible violation occurs.

**10.4. Injunctive Relief.** Contractor acknowledges that breach of this Section 10, including disclosure of any Confidential Information, will cause irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

**10.5. Publicity.** Contractor agrees that it will not disclose the form, content, or existence of this Contract or any Deliverables in any advertising, press releases, or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with Agency or the State of Oregon, whether or not such disclosure, publicity, or association implies an endorsement by Agency or the State of Oregon of Contractor's Services, without the prior written consent of Agency.

## **11. Indemnity by Contractor**

**11.1. Claims.** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees, and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs (including attorneys' fees), and expenses (collectively, "Claims") of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract, including but not limited to, unauthorized disclosure of Confidential Information, professional malfeasance, infringement of intellectual property rights, intentional, willful, or wanton wrongful acts, and acts outside the scope of Services set forth in this Contract.

**11.2. Legal Counsel.** If Contractor is required to defend the State of Oregon or Agency or their officers, employees, or agents under Section 11.1, then Contractor shall select legal counsel reasonably acceptable to the Oregon Attorney General to act in the name of, or represent the interests of, the State of Oregon, Agency or their officers, employees, and agents. Such legal counsel must accept appointment as a special assistant attorney general under ORS Chapter 180 before such



action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees, and agents, at any time when in the State of Oregon's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State of Oregon or its officers, employees, and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State of Oregon are served thereby. Contractor's obligation to pay for all costs and expenses includes those incurred by the State of Oregon in assuming its own defense or that of its officers, employees, and agents under (i) and (ii) above.

**11.3. Damages to State Property and Employees.** Contractor is liable for all Claims for personal injury, including death, damage to real property, and damage to tangible and intangible personal property of the State of Oregon or any of its employees, subcontractors, or agents resulting from, arising out of, or relating to the intentional, reckless, or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract.

**11.4.** CONTRACTOR IS NOT AUTHORIZED TO SETTLE OR COMPROMISE ANY CLAIM REFERENCED IN THIS SECTION WITHOUT THE EXPRESS WRITTEN CONSENT OF AGENCY.

## **12. Limitation of Liabilities**

**12.1.** EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, CONTRACTOR'S LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO ONE AND ONE HALF TIMES THE MAXIMUM-NOT-TO-EXCEED AMOUNT OF THIS CONTRACT.

**12.2.** EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

**13. Insurance.** Contractor shall maintain insurance as set forth in Exhibit B.

## **14. Default; Remedies; Termination**

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

14.1.1. Contractor institutes or has instituted against it insolvency, receivership, or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

14.1.2. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after Agency's notice or such longer period as Agency may specify in such notice; or

14.1.3. Contractor commits any material breach or default of any covenant, warranty, obligation, certification, or agreement under this Contract, fails to perform the Services under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default, or failure is not cured within 14 calendar days after Agency's notice, or such longer period as Agency may specify in such notice; or

14.1.4. Contractor has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State.

**14.2. Agency's Remedies for Contractor's Default.** In the event Contractor is in default under Section 14.1, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

14.2.1. Termination of this Contract under Section 14.6.2; or

14.2.2. Withholding all monies due for Services and Deliverables that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively; or

14.2.3. Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or

14.2.4. Exercise of its right of setoff, and withholding of amounts otherwise due and owing to Contractor, without penalty; or

14.2.5. Undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after the Contractor has been given notice if required by law.

**14.3. Remedies Cumulative.** The remedies set forth in Section 14.2 are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever. If a court determines that Contractor was not in default under Section 14.1, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 14.6.1.

**14.4. Default by Agency.** Agency will be in default under this Contract if:

14.4.1. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or

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

**14.5. Contractor's Remedies.** In the event Agency terminates this Contract under Section 14.6.1, or is in default under Section 14.4, and whether or not Contractor elects to exercise its right to terminate the Contract under Section 14.6.3, Contractor's sole monetary remedy will be (i) with respect to Services compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced and authorized expenses incurred and interest, subject to ORS 293.462, and (ii) with respect to Deliverables-based Services, a claim for the sum designated for completing the Deliverables multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Contractor. In no event will Agency be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 14.5, Contractor shall pay immediately any excess to Agency upon written demand.

## 14.6. Termination

14.6.1. **Agency's Right to Terminate at its Discretion.** Agency may terminate this Contract:

14.6.1.1. Upon 30 calendar days' prior written notice by Agency to Contractor;

14.6.1.2. Immediately upon written notice by Agency to Contractor if Agency fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient to pay for the Services or Work Products; or

14.6.1.3. Immediately upon written notice by Agency to Contractor if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's purchase of the Services or Work Products under this Contract is prohibited or Agency is prohibited from paying for such Services or Work Products from the planned funding source.

14.6.2. **Agency's Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract immediately upon written notice by Agency to Contractor, or at such later date as Agency may establish in such notice if Contractor is in default under Section 14.1.

14.6.3. **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract immediately upon written notice to Agency, or at such later date as Contractor may establish in such notice, if Agency is in default under Section 14.4.

14.7. **Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation any Services or Work Products for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time.

14.8. **Effect of Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects, or other tangible things needed to complete the Services and the Deliverables.

## 15. Compliance with Law

15.1. **Compliance with Law Generally.** Contractor shall comply, and cause all subcontractors to comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to this Contract and the performance of the Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to this Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans'

Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. These laws, regulations, and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235, and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

## **15.2. Compliance with Oregon Tax Laws**

15.2.1. Contractor shall, throughout the duration of this Contract, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes the tax laws described in Section 8.1.5.1 through 8.1.5.4.

15.2.2. Any violation of Section 15.2.1 constitutes a material breach of this Contract. Further, any violation of Contractor's warranty in Section 8.1.5 of this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also constitutes a material breach of this Contract. Any violation entitles Agency to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

15.2.2.1. Termination of this Contract, in whole or in part;

15.2.2.2. Exercise of the right of setoff, or garnishment if applicable, and withholding of amounts otherwise due and owing to Contractor without penalty; and

15.2.2.3. Initiation of an action or proceeding for damages, specific performance, declaratory, or injunctive relief. Agency is entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services.

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

**15.3. Compliance with Federal Law.** Contractor shall comply with all applicable federal laws.

**15.4. Pay Equity Compliance.** As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor'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. Contractor's compliance with this Section constitutes a material element of this

Contract and a failure to comply constitutes a breach that entitles Agency to terminate this Contract for cause.

Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor 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.

## **16. Governing Law; Venue and Jurisdiction**

**16.1. Governing Law.** This Contract is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

**16.2. Venue and Jurisdiction.** Any claim, action, suit, or proceeding between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event may this Section be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim, action, suit, or proceeding, or (ii) consent by the State of Oregon to the jurisdiction of any court.

## **17. Miscellaneous Provisions**

**17.1. Records Maintenance; Access.** Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipments and payments, and writings of Contractor, whether in paper, electronic, or other form, that are pertinent to this Contract ("Records") in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to such financial records and other Records that are pertinent to this Contract, whether in paper, electronic, or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records and other Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.

**17.2. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to entering into this Contract.

**17.3. Force Majeure.** Neither Agency nor Contractor may be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts or other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**17.4. Survival.** All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 17.4, and provisions regarding Contract definitions, warranties and liabilities, independent Contractor status and taxes and withholding, maximum compensation, Contractor's duties of confidentiality, ownership and license of intellectual property and Deliverables, confidentiality and non-disclosure, Contractor's representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.

**17.5. Time is of the Essence.** Contractor agrees that time is of the essence under this Contract.

**17.6. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the email address, postal address, or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 17.6. Any communication or notice so addressed and mailed is effective five business days after mailing. Any communication or notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means that the email has been delivered to the intended email address.

**17.7. No Third Party Beneficiaries.** Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**17.8. Severability.** The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**17.9. Merger Clause; Waiver.** This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification, or change of terms of this Contract will bind the parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract in one instance will not constitute a waiver by Agency of its right to enforce that or any other provision.

**17.10. Amendments.** Agency may amend this Contract to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract is effective unless it is in writing signed by the parties and has been approved as required by applicable law.

**17.11. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed constitutes an original.

**17.12. Oregon False Claims Act.** Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract, including the procurement process relating to this Contract that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or Agency under this Contract or any other provision of law.

**17.13. Certifications.** The individual signing on behalf of Contractor hereby:

- 17.13.1. Certifies and swears under penalty of perjury to the best of the individual's knowledge that: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws and that for a period of no fewer than six (6) calendar years preceding the Effective Date of this Contract, Contractor faithfully has complied with: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; (c) Contractor is an independent contractor as defined in ORS 670.600; and (d) the supplied Contractor tax identification numbers are true and accurate;
- 17.13.2. Certifies that, to the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns, or emerging small business certified under ORS 200.055 in obtaining any required subcontracts;
- 17.13.3. Certifies that Contractor has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor

agrees, as a material term of the Contract, to maintain the policy and practice in force during the entire Contract term;

17.13.4. Certifies that the information provided on the attached Exhibit D, Independent Contractor Certification, is true and correct as of the Effective Date; and

17.13.5. Certifies that Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>.

**SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE**

Contractor's Legal Name: @@@@ @@@@

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

By: (Insert Name and Title) \_\_\_\_\_

Contact Person Name: \_\_\_\_\_

U.S. Postal Address: \_\_\_\_\_

Contact Telephone Number: \_\_\_\_\_

Contact E-Mail Address: \_\_\_\_\_

**SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE**

**AGENCY:** STATE OF OREGON, acting by and through its Oregon Youth Authority

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

**ATTORNEY GENERAL:** Approved for legal sufficiency

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

**PROCUREMENT UNIT:** Reviewed by Contract Specialist

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

**CONTRACT ADMINISTRATOR:** Reviewed and Approved

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

*Signatures Continued on Next Page*



**Exhibit A**  
**Statement of Work**

**Commented [RS\*03]:** Draft Note: Depending on the service OYA may use a different SOW version. e.g medical services

## 1. STATEMENT OF SERVICES

Contractor shall perform Services as described below:

### 1.1. GENERAL INFORMATION

The mission of the Agency is to protect the public and reduce crime by holding youth accountable and providing opportunities for reformation in safe environments. Youth are committed to state custody as a result of criminal acts in one of Oregon's 36 counties. Youth may remain in Agency custody until a maximum age of 25 years. The Agency provides a continuum of services and sanctions including: parole and probation services, residential and foster care services, individualized treatment and support, juvenile crime prevention programs, and secure close-custody facilities for youth who represent an unacceptable risk to the public. The Agency currently serves approximately 600 youth in state owned and operated close-custody facilities and an additional 900 youth on parole or probation.

In support of the Agency's mission, (Insert a summary of project and services to be delivered if applicable. Sometimes this may not be needed)

### 1.2. REQUIRED SERVICES, DELIVERABLES, AND DELIVERY SCHEDULE

1.2.1. Contractor shall (list the detailed services and deliverables provided by the CA/Contract request)

1.2.2. Contractor agrees to comply with the Agency's Security Policy for Facility Access (see [II-A-1.0](#)) as it may be from time to time amended. Anyone entering a facility must read and sign Facility Access Form YA 4015 (see [YA 4015](#)).

#### 1.2.3. Electronic Access

1.2.3.1. The Contract Administrator may approve, in advance, in writing, for Contractor to have limited electronic access at a facility to the Agency's electronic systems. The Contractor may be provided only the electronic access necessary to be able to safely and professionally exercise independent judgment in the performance of the contracted duties. This access might include access to the electronic medical records, JJIS, use of an Agency email account designated for contractors, and other such access as may be necessary to enable the Contractor to provide integrated medical services to youth at the facilities.

1.2.3.2. The Contractor must comply with all requirements set forth in Agency's policies with respect to the use of the computer and access to electronic records as may be from time to time amended. The Agency's policies include policies for Mobile Communication Devices and Other Mobile Data Storage Devices (see [I-C-9.0](#)) and Use of Electronic Information Assets and Systems (see [0-7.0](#)).

1.2.3.3. Provided, however, Contractor may NOT:

Use access to Agency's electronic systems for personal use. Personal use includes any use not directly connected with providing contracted Services under this Contract. Personal use includes accessing any electronic records not directly related to the provision of the Contractor's professional Services under this Contract.

Connect any non-Agency issued portable and removable storage devices to Agency equipment. These devices include floppy diskettes, CDs, DVDs, laptops, backup tapes, smart phones, USB flash drives, or any kind of device that can store information.

### 1.3. ACCEPTANCE CRITERIA AND PROCESS

Agency will consider the Services complete when (list detailed conditions on when Services will be considered accepted and complete)

## 2. COMPENSATION. The total not to exceed amount available for payment to Contractor is as follows:

Exhibit A, Section 2.1 Services	\$ __.00
Exhibit A, Section 2.3 Expense Reimbursement	\$ __.00
<b>Total Not to Exceed Amount for this Contract</b>	<b>\$ __.00</b>

### 2.1. METHOD OF PAYMENT FOR SERVICES

Agency will pay the Contractor at the rate of \$ \_\_00.00 per (insert criteria for approving payment such as monthly, by unit of service or lump sum) for completed Services required under this Contract.

### 2.2. BASIS OF PAYMENT FOR SERVICES

Monthly progress payments for completed Services.

Agency will pay Contractor monthly progress payments upon Agency's approval of Contractor's invoice submitted to Agency for completed Services and delivered Goods, but only after Agency has determined that Contractor has completed, and Agency has accepted the completed Services and Agency has accepted the delivered goods in accordance with Exhibit A, Section 1.3.

### 2.3. EXPENSE REIMBURSEMENT

Agency will reimburse Contractor, within the not to exceed amount identified in Exhibit A, Section 2, for travel expenses at the rates specified in the Oregon Accounting Manual as of the date Contractor incurs the travel expenses under this Contract. The Oregon Accounting Manual is available at <http://www.oregon.gov/das/Financial/Acctng/Pages/Travel.aspx>. Travel expenses will include \_\_\_\_\_. Contractor shall submit a request for reimbursement on an Agency approved form, YA 2228C, Travel Expense Sheet for Contractors and Volunteers, available at <http://www.oregon.gov/oia/Pages/contracts.aspx>.

## 3. INVOICES

- 3.1.** Contractor shall send invoices to Agency no more often than monthly for Services completed and Goods delivered and accepted by Agency in accordance with Exhibit A, Section 1. In addition to the information in Section 4.3 of the Contract document, Contractor shall include in each invoice:
- 3.1.1. The Contract number; and
  - 3.1.2. The total amount due and the payment address.
- 3.2.** Contractor shall send all invoices to Agency's Contract Administrator at the address specified on page one of this Contract or to any other address as Agency may indicate in writing to Contractor. Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.
- 3.3.** If payments to Contractor by the Agency under this Contract, or under any other contract between the Contractor and the Agency, are made in error or are found by the Agency to be excessive under the terms of this Contract or the other contract, the Agency, after giving written notification to the Contractor, may withhold payments due to Contractor under this Contract in such amounts, and over such periods of time, as are deemed necessary by the Agency to recover the amount of the overpayment. This Exhibit X, Section 3.3, shall survive expiration or earlier termination of this Contract and be fully enforceable thereafter.
- 3.4.** Contractor must submit its final invoice to the Agency no later than 60 days after the termination or expiration date of this Contract. The Agency will be under no obligation to pay for Services not billed within 60 days after the termination or expiration date of this Contract.
- 3.5.** Contractor certifies with each invoice and reporting form submitted to Agency that the materials, Services, or expenses included in the invoice have been furnished, rendered, or expended pursuant to the terms of this Contract, that they are as stated in the Contract, and the Contractor has not previously requested payment for the item(s) from the Agency.

**Exhibit B**  
**Required Insurance**

**INSURANCE REQUIREMENTS**

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit B prior to performing under this Contract. Contractor shall maintain such insurance in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or continuous claims made 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 Agency. All 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.

If Contractor maintains broader coverage and/or higher limits than the minimums shown in this insurance requirement exhibit, Agency requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor.

**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 **\$500,000.00** 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 **\$500,000.00** and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

As applicable, Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than **\$5,000,000.00** and/or the Longshoremen's and Harbor Workers' Compensation Act.

**COMMERCIAL GENERAL LIABILITY**

☒ **Required**

Contractor shall provide Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance must 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 must be written on an occurrence basis in an amount of not less than **\$@@@@@** per occurrence and not less than **\$@@@@@** annual aggregate limit.

**AUTOMOBILE LIABILITY INSURANCE**

☐ **Required** ☐ **Not required**

Contractor shall provide 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

\$@@@@@ 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.

#### PROFESSIONAL LIABILITY

☐ Required ☐ Not required

Contractor shall provide Professional Liability 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 \$@@@@@ per claim and not less than \$@@@@@ annual aggregate limit.

If coverage is provided 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 Continuous Claims Made coverage as stated below.

#### 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 Agency or client data, whichever is longer, with a combined single limit of not less than \$\_\_\_\_\_ per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of Agency 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 Agency data.

#### POLLUTION LIABILITY

☐ Required ☐ Not required

Contractor shall provide Pollution Liability Insurance covering Contractor's or appropriate subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract is required. Combined single limit per occurrence not less than \$\_\_\_\_\_ and not less than \$\_\_\_\_\_ annual aggregate limit.

An endorsement to the Commercial General Liability or Automobile Liability policy, covering Contractor's or subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related clean-up cost incurred by the Contractor that arise from the Goods delivered or Services (including transportation risk) performed by Contractor under this Contract is also acceptable.

#### DIRECTORS, OFFICERS, AND ORGANIZATION LIABILITY

☐ Required ☐ Not required

Contractor shall provide Directors, Officers and Organization Liability 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 not less than \$\_\_\_\_\_ per claim.

**CRIME PROTECTION COVERAGE: EMPLOYEE DISHONESTY or FIDELITY BOND**

☐ Required ☐ Not required

Contractor shall provide Employee Third party Dishonesty or Fidelity Bond coverages for the loss of state-owned property by dishonest acts of an employee of the Contractor with coverage limits of not less than \$\_\_\_\_\_.

**PHYSICAL ABUSE AND MOLESTATION INSURANCE COVERAGE**

☐ Required ☐ Not required

Contractor shall provide Abuse and Molestation Insurance in a form and with coverage that are satisfactory to the State covering damages arising out of actual, perceived, or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, training, investigation, 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 \$@@@@@ per occurrence and not less than \$@@@@@ annual aggregate. 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.

**(DRONE) / UNMANNED AIRCRAFT SYSTEMS / UNMANEED AERIAL VEHICLE LIABILITY**

☐ Required ☐ Not required

Contractor shall provide Drone Liability Insurance covering bodily injury, property damage, and personal and advertising injury caused by owned and non-owned drones including the drone's payload and/or dispensable loads in a form and with coverage that are satisfactory to the State. This insurance shall include premises 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, operation or territory of operation. Coverage shall be written on an occurrence basis in a combined single limit amount of not less than \$\_\_\_\_\_ per occurrence.

**AIRCRAFT LIABILITY**

☐ Required ☐ Not required

Contractor shall provide Aircraft Liability Insurance with a combined single limit for bodily injury and property damage liability including passengers (if carrying passengers other than crew members) of not less than \$\_\_\_\_\_ per occurrence/aggregate.

**AIR CARGO LIABILITY INSURANCE**

☐ Required ☐ Not required

Contractor shall provide Air cargo insurance covering loss of cargo in transit during the performance of this contract. Combined single limit per occurrence of not less than \$\_\_\_\_\_ per occurrence.

**AIRCRAFT AERIAL APPLICATION LIABILITY**

☐ Required ☐ Not required

Contractor shall provide Aircraft Aerial Application Liability Insurance covering claims arising from spraying operations. Coverage shall be not less than \$\_\_\_\_\_ combined single limit (alternate language

if combined single limit cannot be provided: \$\_\_\_\_\_ per person and \$\_\_\_\_\_ per occurrence for bodily injury and \$\_\_\_\_\_ for property damage). This insurance requirement can also be met with an endorsement to the Aircraft Liability coverage.

#### **MOTOR CARRIER CARGO LIABILITY**

☐ Required ☐ Not required

Contractor shall provide Motor Truck Cargo Liability Insurance covering loss to cargo in transit during the performance of this contract. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence of not less than \$\_\_\_\_\_.

#### **GARAGE LIABILITY**

☐ Required ☐ Not required

Contractor shall provide Garage Liability Coverage for Garage Operations. Coverage shall include Garage Keepers legal liability for autos left for service or repair and be not less than \$\_\_\_\_\_ combined single limit.

#### **GARAGE KEEPERS LEGAL LIABILITY**

☐ Required ☐ Not required

Contractor shall provide Garage Keepers' Legal Liability Coverage for autos left for service, repair, storage, or safekeeping, with a combined single limit of not less than \$\_\_\_\_\_ per location.

#### **BAILEE'S COVERAGE**

☐ Required ☐ Not required

Contractor shall provide Bailee's Customers Property Insurance covering any and all State property left in the care, custody, or control of the Contractor. Coverage shall include valuable papers, including but not limited to microfilm. Coverage shall be written on an occurrence basis with a combined single limit per occurrence of not less than \$\_\_\_\_\_ for each site or location.

#### **MARINE PROTECTION LIABILITY**

☐ Required ☐ Not required

Contractor shall provide Marine Protection and Indemnity Coverage with a combined single limit per occurrence of not less than \$\_\_\_\_\_.

#### **EXCESS/UMBRELLA INSURANCE**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance. When used, all of the primary and umbrella or excess policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The umbrella or excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance.

#### **ADDITIONAL INSURED**

All liability insurance, except for Workers' Compensation, Professional Liability, Pollution 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, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other activities to be performed under this Contract.

Regarding Additional Insured status under the General Liability policy, we require 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. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on or at least as broad as ISO Form CG 20 10 and the Additional Insured endorsement with respect to completed operations must be on or at least as broad as ISO form CG 20 37.

#### **WAIVER OF SUBROGATION**

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

#### **CONTINUOUS CLAIMS MADE COVERAGE**

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Contract, for a minimum of 24 months following the later of:

- (i) Contractor's completion and Agency's acceptance of all Services required under the Contract, or
- (ii) Agency or Contractor termination of this Contract, or
- (iii) The expiration of all warranty periods provided under this Contract.

#### **CERTIFICATE(S) AND PROOF OF INSURANCE**

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

#### **NOTICE OF CHANGE OR CANCELLATION**

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

#### **INSURANCE REQUIREMENT REVIEW**

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

#### **STATE ACCEPTANCE**



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

## Exhibit C

### Special Terms and Conditions

1. **Media Disclosure:** The Contractor shall not provide information to the media regarding a recipient of Services purchased under this Contract without first consulting the Agency. The Contractor shall make immediate contact with the Agency's Communications Office when media contact occurs. The Agency's Communications Office will assist the Contractor with an appropriate follow-up response for the media.
2. **Client Records:** Contractor shall appropriately secure all records and files to prevent access by unauthorized persons. Contractor shall, and shall require its employees and subcontractors to, comply with all appropriate federal and state laws, rules, and regulations regarding confidentiality of client records.
3. **Conflict of Interest:** Contractor shall notify Agency in writing when a current employee or newly hired employee is also an employee of the Agency. Contractor shall submit the notification to the Contract Administrator and the Agency Procurement Unit and shall include the name of the employee and their job description. The Agency will review the employment situation for actual and potential conflicts of interest as identified under ORS Chapter 244.
4. **Mandatory Reporting:** As required by Oregon Law (ORS 419B.005 through ORS 419B.050), all the Agency contractors must immediately inform either the local office of the Department of Human Services ("DHS") or a law enforcement agency when they have reasonable cause to believe that any child with whom the Contractor comes in contact has suffered abuse, or that any person with whom the Contractor comes in contact has abused a child. Oregon Law recognizes child abuse to be: physical injury; neglect or maltreatment; sexual abuse and sexual exploitation; threat of harm; mental injury; and child selling.

Reports must be made immediately upon awareness of the incident. The Contractors are encouraged to contact the local DHS office if any questions arise as to whether an incident meets the definition of child abuse.

5. **Criminal Records Checks:** Any individuals who will have direct contact with Agency youth in the provision of Services under this Contract shall have passed a criminal records check based on the Agency's criminal records check standards as set forth in OAR 416-800-0000 to 416-800-0095 and a child abuse registry check prior to any Services being provided under this Contract. Criminal records checks must be updated at least every five years.
6. **Prison Rape Elimination Act ("PREA"):** Agency is committed to a zero-tolerance standard toward all forms of youth sexual abuse and sexual harassment. PREA and related Agency policies provide uniform guidelines and procedures to reduce the risk of sexual abuse and sexual harassment in Agency facilities, field offices, and community residential programs. If applicable, and before Services under this Contract can begin, the Contractor shall complete Agency's PREA Questionnaire ([YA 8037](#)) and return to the Agency's Contract Administrator.

Contractor acknowledges that it has training and reporting obligations as outlined below:

**Training Obligations:** If applicable, Contractor shall complete any required training as outlined in [Agency's Policy I-A-10.0](#) (Preventing, Detecting, and Responding to Youth Sexual Abuse and Sexual

Harassment). The required training enables the Contractor to understand their responsibilities to ensure the ongoing safety and security of all parties when providing Services in an Agency facility.

**Reporting Obligations:** If the Contractor obtains knowledge, suspicion, or information about (i) an incident of sexual abuse or sexual harassment that occurred while in custody (or while a youth is placed with the Contractor), or (ii) retaliation against reporters of such incidents, or (iii) any staff neglect or violation of responsibilities that may have contributed either to the incident or the retaliation, the Contractor shall immediately notify the facility's Superintendent and the Agency Professional Standards Office. The Professional Standards Office number is: 503-378-5313 and is open from Monday through Friday from 8:00 a.m.-5:00 p.m. The after-hours cell number is: 503-508-4813.

7. Agency will have the right to deny Contractor and its agents and employees--and the agents and employees of its subcontractors (if any)--access to any premises controlled, held, leased, or occupied by Agency if Agency at its sole discretion determines that such personnel pose a threat to any of Agency's reasonable safety or security interests including orderly facility operations. Contractor agrees that action taken pursuant to this authority by Agency will not give rise to any contractual, tort, or constitutional claims.

**Exhibit D**

**Independent Contractor Certification**

**Contractor certifies he/she meets the following standards:**

1. I am registered under ORS Chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following):**

- ☐ A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
- ☐ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.
- ☐ C. Telephone listing used for the business is separate from the personal residence listing.
- ☐ D. Labor or services are performed only pursuant to written contracts.
- ☐ E. Labor or services are performed for two or more different persons within a period of one year.
- ☐ F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

**Contractor Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Exhibit @  
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