

STATE of OREGON

Standard Terms and Conditions for Services

**1. STATEMENT OF WORK:** Contractor shall perform the Services in accordance with the schedule set forth in the Statement of Work.

**2. ACCEPTANCE OF DELIVERED SERVICES:** Agency shall accept or reject each deliverable. If Agency rejects the deliverable, then Agency shall give Contractor a written notice of the reasons for the rejection and the method for curing, if any.

**3. PAYMENT:** (a) Contractor shall send invoices to Agency at Agency's address, including details and at a frequency as agreed upon with Agency. Contractor's invoice shall include at a minimum: the Contract number; Services performed, Service dates, what was delivered, the rates (as applicable), the total amount due, and the payment address. (b) Agency shall pay Contractor, in accordance with the Compensation and Payment Methodology, for Services delivered under this Contract and accepted by Agency. Contractor shall look solely to Agency for payment. Contractor shall not be compensated by anyone else. (c) Contractor agrees that Agency's payment is contingent on Agency receiving enough funding and other expenditure authority to allow the payment. (d) Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.

**4. TERMINATION:** The parties may terminate this Contract at any time by mutual written consent. Agency may terminate this Contract for its convenience upon written notice to Contractor. Agency or Contractor may terminate this Contract immediately or at a later designated date upon written notice to the other party, if the other party is in breach. Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor.

**5. RECOVERY OF OVERPAYMENTS:** IF BILLINGS UNDER THIS CONTRACT, OR UNDER ANY OTHER CONTRACT BETWEEN CONTRACTOR AND AGENCY, RESULT IN PAYMENTS TO CONTRACTOR TO WHICH CONTRACTOR IS NOT ENTITLED, AGENCY, AFTER GIVING WRITTEN NOTIFICATION TO CONTRACTOR, MAY WITHHOLD SUCH AMOUNTS FROM PAYMENTS DUE TO CONTRACTOR.

**6. INDEMNIFICATION:** CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND (SUBJECT TO ORS CHAPTER 180) THE STATE OF OREGON, AGENCY AND THEIR OFFICERS, EMPLOYEES, AGENTS, FROM ALL CLAIMS, SUITS OR ACTIONS OF ANY NATURE ARISING OUT OF OR RELATED TO THE ACTIVITIES OF CONTRACTOR, OR ITS OFFICERS, SUBCONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS CONTRACT.

**7. GOVERNING LAW, JURISDICTION, AND VENUE:** This Contract is governed by Oregon law, without regard to principles of conflicts of law. Any claim, action, suit, or proceeding between the State of Oregon and the Contractor that relates to this Contract ("Claim") shall be heard exclusively in the Circuit Court of Marion County for the State of Oregon. If the Claim must be brought in a federal forum, then it shall be heard exclusively in the US District Court for the District of Oregon. In no way will this Section or any other provision of this Contract be construed as a waiver by the State of Oregon of any form of defense, sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the US Constitution, or other immunity, from any Claim or from the jurisdiction of any court. Contractor consents to the in personam jurisdiction of these courts.

**8. FORCE MAJEURE:** No party is responsible for delay or default caused by an event beyond its reasonable control. The Agency may terminate this Contract without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this Contract.

**9. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS:** Contractor shall not assign, transfer, or subcontract rights or responsibilities under this Contract in whole or in part, without the prior written approval of the Agency. This Contract's provisions are binding upon and inure to the benefit of the parties to the Contract and their respective successors and assigns.

**10. ACCESS TO RECORDS:** Contractor shall maintain all accounting records relating to this Contract according to GAAP. Contractor shall retain its accounting records and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant the State of Oregon and its agencies, the Secretary of State Audits Division, the federal government, and their duly authorized representatives' access to the Records, including reviewing, auditing, copying, and making transcripts.

**11. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:** Contractor shall comply with all federal, state and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the performance of the Services, as such laws, regulations, executive orders, and ordinances may be adopted, amended, or repealed from time to time. These

laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. Agency's performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.230, and 279B.235 incorporated by reference herein.

**12. OWNERSHIP OF WORK PRODUCT:** Every invention, discovery, work of authorship and other tangible or intangible item that Contractor is required to deliver to Agency under this Contract (collectively, "Work Product") shall be the exclusive property of Agency. Agency and Contractor agree that all 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 any 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 such 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 acquire such further rights and execute such further documents and instruments as are necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**13. AMENDMENTS; WAIVER:** All amendments to this Contract must be in writing, signed by the both parties. The Agency's failure to enforce any provision of this Contract is not a waiver or relinquishment by the Agency of its rights to such performance in the future or to enforce any other provisions.

**14. SEVERABILITY:** If a court of competent jurisdiction declares any provision of this Contract to be illegal or in conflict with law, the parties intend that the validity of the remaining terms and provisions not be affected, and that the rights and obligations of the parties be construed and enforced as if the Contract did not contain the particular terms of provision held to be invalid.

**15. AWARD TO FOREIGN CONTRACTOR:** If Contractor is not registered to do business or has no office 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. The Agency may withhold final payment under this Contract until Contractor has met this requirement.

**16. INDEPENDENT CONTRACTOR:** Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by performance of this Contract, represents and warrants that Contractor's Services to be performed under this Contract create no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's performance under this Contract. If compensation under this Contract is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government. Contractor is responsible for all federal and state taxes applicable to compensation paid to Contractor under this Contract, and unless Contractor is subject to backup withholding, Agency will not withhold from such compensation any amounts to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or worker's compensation benefits from compensation paid to Contractor under this Contract, except as a self-employed individual. 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 and any Work Product, but 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. Contractor is an independent contractor as defined in ORS 670.600.

**17. BREACH:** (a) Contractor breaches this Contract if Contractor: (i) ceases doing business on a regular basis, including but not limited to ceasing to do business as a result of insolvency, receivership, bankruptcy proceedings, or an assignment for the benefit of creditors; (ii) no longer holds a required license or certificate for Contractor's performance; or (iii) commits any material breach under this Contract, and Contractor fails to cure any such breach as Agency may specify in the notice of breach. (b) Agency breaches this Contract if Agency: (i) fails to pay Contractor any amount owed under this Contract; or (ii) commits any material breach under this Contract, and Agency fails to cure any such breach as Contractor may specify in the notice of breach.

**18. AGENCY REMEDIES:** If Contractor is in breach under Section 17(a), 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: (a) termination of this Contract under Section 4, (b) reducing or withholding payment for Services or Work Product that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Contractor to perform, at Contractor's expense, additional work necessary to perform the Statement of Work or meet performance standards, (d) suspending Contractor's performance of the Services, (e) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (f) exercise of its right of recovery of overpayments under Section 5 of this Contract or setoff, or both. 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.

**19. CONTRACTOR REMEDIES:** (a) If Agency is in breach under Section 17(b), and whether or not Contractor elects to exercise its right to terminate the Contract under Section 4, Contractor's sole monetary remedy shall 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, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (ii) with respect to deliverable-based Services, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Contractor.

**20. INTENDED BENEFICIARIES:** State and Contractor are the only parties to this Contract and the only parties entitled to enforce the Contract.

**21. INFORMATION PRIVACY/SECURITY/ACCESS:** If the Services performed under this Contract require Contractor or, when allowed, its subcontractor(s), to have access to or use of any Agency computer system or other Agency Information Asset or Network and Information System for which Agency imposes security requirements, and Agency grants Contractor or its subcontractor(s) access to such Agency Information Assets or Network and Information Systems, Contractor shall comply, and require all subcontractor(s) to which Agency has granted such access to comply, with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

**22. MERGER CLAUSE/COUNTERPARTS:** This Contract constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representation, oral or written, not specified herein, regarding this Contract. Any amendments to this Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of an amendment so executed shall constitute an original.

**23. FUNDS AVAILABLE AND AUTHORIZED:** Contractor shall not be compensated for Services performed under this Contract by any other agency of the State of Oregon or the federal government. Agency certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within Agency's current biennial appropriation or limitation. marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this Section 8.

Contractor understands and agrees that Agency's payment for Services performed is contingent on Agency receiving appropriations, limitations, allotments and other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

**24. REPRESENTATIONS AND WARRANTIES:** Contractor represents and warrants to Agency that: (a) Contractor has the power and authority to enter into and perform this Contract, (b) the obligations set forth herein are valid and binding obligations of Contractor enforceable in accordance with its terms, (c) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession (d) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services, and (e) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**25. NOTICES:** Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Contractor or Agency at the address or number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this section. Any notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any 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 recipient, or on the next business day if transmission was outside normal business hours of the recipient. 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 at number set forth in this Contract. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

**26. TIME IS OF THE ESSENCE:** Contractor agrees that time is of the essence in Contractor's performance of the Services under this Contract.

**27. SURVIVAL:** In addition to any provisions of this Contract that by their express terms survive termination of this Contract, the confidentiality provisions of Exhibit A and the following provisions of Exhibit B shall remain in effect beyond any Contract termination or full performance: 3, 5, 6, 7, 10, 11, 12, 16, 17, 18, 19, 20, 23, 24, 25, 27 and 28.

**28. LIMITATION OF LIABILITIES:** THE STATE OF OREGON SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR RELIANCE DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST DATA, OR HARM TO BUSINESS), REGARDLESS OF THE FORSEEABILITY THEREOF, ARISING OUT OF OR RELATED TO THIS CONTRACT. CONTRACTOR HEREBY RELEASES THE STATE OF OREGON AND ITS AGENCIES AND THEIR DIVISIONS, OFFICERS, EMPLOYEES, AGENTS AND MEMBERS FROM ANY SUCH CLAIMS.

## EXHIBIT D

### Required Federal Terms and Conditions

**General Applicability and Compliance.** Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Contract, to Contractor, or to the Services, or to any combination of the foregoing. For purposes of this Contract, 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.** Contractor shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Contract or to the performance of the Services. Without limiting the generality of the foregoing, Contractor 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 Contract: (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 Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (f) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (g) all regulations and administrative rules established pursuant to the foregoing laws, (h) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (i) all federal laws requiring reporting of Client abuse. 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. No federal funds may be used to perform the Services in violation of 42 U.S.C. 14402.
2. **Clean Air, Clean Water, EPA Regulations.** If this Contract, including amendments, exceeds \$100,000 then Contractor 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 Agency, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor 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.
3. **Energy Efficiency.** Contractor 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).
4. **Truth in Lobbying.** By signing this Contract, the Contractor certifies, to the best of the Contractor's knowledge and belief that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, 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 Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - c. The Contractor 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 Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31 of the U.S. Code. 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 Contractor under this Contract 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 Contractor under this Contract 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 Contractor under this Contract 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.
5. **Pro-Children Act.** Contractor shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. section 6081 et. seq.).
  6. **Agency-based Voter Registration.** If applicable, Contractor 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.
  7. **Resource Conservation and Recovery.** Contractor 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.
  8. **Audits and associated fiscal responsibilities under this Contract.** Contractor shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
  9. **Debarment and Suspension.** Contractor shall not be, nor shall Contractor permit any person or entity to be through a subcontractor relationship with the Contractor, 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.

**10. Drug-Free Workplace.** Contractor shall comply and cause all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Contractor 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 Contractor's workplace or while providing services to Agency clients. Contractor's notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Contractor'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; (iii) Provide each employee to be engaged in the performance of Services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Contract, 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; (v) Notify Agency within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) 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; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither Contractor, or any of Contractor's employees, officers, agents or subcontractors may provide any service required under this Contract 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 Contractor or Contractor's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Contractor or Contractor's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to Agency 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 (x) Violation of any provision of this subsection may result in termination of the Contract.

**11. Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Services under this Contract, 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 Contractor 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 Product, and to authorize others to do so, for Federal Government purposes with respect to:
  - (1) The copyright in any Work Product 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.