

## INTERGOVERNMENTAL AGREEMENT

Agreement No. \_\_\_\_\_

This Intergovernmental Agreement (“Agreement”) is between the State of Oregon acting by and through its Department of Education (“Agency”) and [MERGE TABLE – ESD NAME] (“Contractor”), each a “Party” and, together, the “Parties”.

### SECTION 1: AUTHORITY

This Agreement is authorized by Oregon Revised Statute (ORS) 190.110 which provides that state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

Additionally, ORS 327.008 directs the Agency to provide support to school districts, ESDs and public charter schools at any time before, during or after a threat or hazard that may affect a school district, an education service district or a public charter school and for the purpose of helping to improve the safety and security of students and staff under the SSEM Program).

Finally, SB 1102 provides that each biennium, the Agency may expend from the State School Fund no more than \$3 million for expenses incurred by the department in providing support to school districts, ESDs and public charter schools at any time before, during or after a threat or hazard that may affect a school district, an ESD or a public charter school and for the purpose of helping to improve the safety and security of students and staff.

### SECTION 2: PURPOSE AND DEFINITIONS

Contractor is an ESD that will provide EOP training and technical assistance to Districts, Schools, Charters and ESDs within its region, [MERGE TABLE - REGION NAME], which includes the following counties: [MERGE TABLE - COUNTIES DATA].

The primary purposes of Contractor’s role in the SSEM Program and this Agreement are to:

- Develop Oregon’s education system’s long-term capacity to maintain school emergency management expertise and capability at local levels; and
- Assess, provide training, technical assistance and improve the capacity of Districts, Schools, Charters and ESDs within the Contractor’s region to develop and implement new, or strengthen existing, high-quality, all-hazards EOPs customized to their unique District, School, Charter, ESD and community culture and response capabilities that will enable them to better prepare for, respond to, and recover from any threat or hazard before, during or after an event.

For the purposes of this RFA, capitalized words will refer to the following project-specific definitions:

- “Annex” means a part of the EOP that provides specific information and direction that focuses on emergency operations: what the emergency response function is and who is responsible. An annex will identify actions to take before, during and after an incident,

either as a general function (Functional Annex) or as a distinct plan that addresses a specific threat or hazard (Threat- and Hazard-Specific Annex).

- “Capacity Assessment” means an assessment of a District or ESD’s capabilities and capacity to handle any threat or hazard before, during or after an event using Agency-provided assessment tool.
- “ESD” is an Educational Service District.
- “EOP” is a District, School, Charter or ESD’s Emergency Operations Plan.
- “FEMA” is the Federal Emergency Management Agency.
- “Functional Annex” means the goals, objectives, and courses of action of functions (e.g., evacuation, lockdown, shelter-in-place) that apply across multiple threats or hazards. Functional annexes set forth how a school manages a function before, during, and after an emergency.
- “ICS” is the Incident Command System.
- “Improvement Activity” means any formal training session, exercise activity (such as a tabletop or full-scale exercise), site assessment or documented improvement to a District, School, Charter or ESD’s EOP. A new or updated Capacity Assessment of the corresponding District or ESD must be completed within 30 days of an Improvement Activity in order for the activity to count toward a contracted ESD’s Deliverables.
- “Key Person(s)” means one or two Awarded ESD’s employee(s) who will serve as the regional representative(s) of the SSEM Program and be a subject matter expert(s) on school emergency management fundamentals.
- “NIMS” is the National Incident Management System.
- “OEM” is the Oregon Department of Emergency Management.
- “Program Materials” means any public-facing informational materials that describe or refer to the SSEM Program, its mission or Agency’s responsibility to implement an all-hazards program in support of Oregon Schools under ORS 327.008.
- “REMS” is the Readiness and Emergency Management for Schools.
- “SSEM Program” is the Oregon School Safety and Emergency Management program.
- “SSEM Plan” means the SSEM Program plan provided by Contractor that details how Contractor will help Districts, Schools, Charters and ESDs within Contractor’s region to develop new, or strengthen existing, all-hazards emergency plans that will enable them to better prepare for, respond to, and recover from any threat or hazard they could face.
- “Threat- and Hazard-Specific Annex” means the goals, objectives, and courses of action that a school will follow to address a particular type of threat or hazard (e.g., earthquake, tsunami). Threat- and hazard-specific annexes, like functional annexes, set forth how a school manages a threat or hazard before, during, and after an emergency.
- “Training Materials” means any material or communication solely used as an Improvement Activity.
- “Work Product” means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Contractor is required to deliver to Agency under

this Agreement, and all intellectual property rights therein. Both Program Materials and Training Materials are also included in this definition.

### **SECTION 3: EFFECTIVE DATE AND DURATION**

This Agreement shall be effective on July 1, 2023 and all necessary approvals have been obtained (“Effective Date”), and terminates on June 30, 2025, unless terminated earlier in accordance with Section 16.

### **SECTION 4: AUTHORIZED REPRESENTATIVES**

#### **4.1 Agency’s Authorized Representative is:**

Alex Haislip  
255 Capitol Street NE, Salem, OR 97310  
Phone: 503-551-4430  
alex.haislip@ode.oregon.gov

#### **4.2 Contractor’s Authorized Representative is:**

Name, Title:  
Entity or Department Name:  
Address:  
Phone:  
Email:

#### **4.3 A Party may designate a new Authorized Representative by written notice to the other Party.**

### **SECTION 5: RESPONSIBILITIES OF EACH PARTY**

**5.1 Contractor shall perform the work set forth on Exhibit A, attached hereto and incorporated herein by this reference.**

**5.2 Agency will pay Contractor as described in Section 6.**

### **SECTION 6: COMPENSATION AND PAYMENT TERMS**

**6.1 Agency shall reimburse Contractor, up to but not in excess of, \$330,000.00 (“Maximum Compensation”) for all expenses reasonably and necessarily incurred in performing the work and delivering the Deliverables required of Contractor under this Agreement. Payment will be made quarterly, for work performed to Agency’s satisfaction during the prior month, after submission of a satisfactory invoice and in accordance with the requirements of Exhibit A.**

**6.2 No Duplicate Payment.** Contractor shall not be compensated for, or receive any other form of duplicate, overlapping or multiple payments for the same costs financed by or costs and expenses

paid for by funds from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

## **SECTION 7: REPRESENTATIONS AND WARRANTIES**

Contractor represents and warrants to Agency that:

- 7.1 Contractor is an Educational Service District duly organized and validly existing. Contractor has the power and authority to enter into and perform this Agreement;
- 7.2 The making and performance by Contractor of this Agreement (a) have been duly authorized by Contractor, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Contractor’s charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Contractor is party or by which Contractor may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Contractor of this Agreement, other than those that have already been obtained;
- 7.3 This Agreement has been duly executed and delivered by Contractor and constitutes a legal, valid and binding obligation of Contractor enforceable in accordance with its terms;
- 7.4 Contractor has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Contractor will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and
- 7.5 Contractor shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Contractor.

## **SECTION 8: GOVERNING LAW, CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively “Claim”) between Agency or any other agency or department of the State of Oregon, or both, and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court.

CONTRACTOR, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **SECTION 9: OWNERSHIP OF WORK PRODUCT**

- 9.1 As used in this Section 9 and elsewhere in this Agreement, 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 work under this Agreement.
- 9.1.2 "**Third Party Intellectual Property**" means any intellectual property owned by parties other than Contractor or Agency.
- 9.1.3 "**Work Product**" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Contractor is required to deliver to Agency under this Agreement, and all intellectual property rights therein. Both Program Materials and Training Materials are also included in this definition.
- 9.2 All Work Product created by Contractor under this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Contractor agree that any Work Product that is an original work of authorship created by Contractor under this Agreement is a "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created by Contractor under this Agreement is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created by Contractor under this Agreement, 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 created by Contractor under this Agreement, 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.
- If the Work Product created by Contractor under this Agreement 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 Work Product, and to authorize others to do the same on Agency's behalf.
- If the Work Product created by Contractor under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on Agency's behalf and in the name of 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 element of the Third party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.
- 9.3 If Work Product is 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 Contractor Intellectual Property, and to authorize others to do the same on Agency's behalf.

- 9.4** If Work Product is Third Party Intellectual Property, Contractor shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Agency's behalf.
- 9.5** If state or federal law requires that Agency or Contractor grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Contractor shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

## **SECTION 10: CONTRIBUTION**

- 10.1** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 10 with respect to the Third Party Claim.
- 10.2** With respect to a Third Party Claim for which Agency is jointly liable with Contractor (or would be if joined in the Third Party Claim ), Agency will contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Contractor in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Contractor on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of Contractor on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 10.3** With respect to a Third Party Claim for which Contractor is jointly liable with Agency (or would be if joined in the Third Party Claim), Contractor shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of Contractor on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Contractor on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Contractor's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

## **SECTION 11: CONTRACTOR DEFAULT**

Contractor will be in default under this Agreement upon the occurrence of any of the following events:

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

## **SECTION 12: AGENCY DEFAULT**

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

## **SECTION 13: REMEDIES**

- 13.1** In the event Contractor is in default under Section 11, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment for work 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 satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement 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.

**13.2** In the event Agency is in default under Section 12 and whether or not Contractor elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Agency terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, Contractor’s sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by Agency, for work completed and accepted by Agency within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims Agency has against Contractor, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by Agency, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that Agency has against Contractor. In no event will Agency be liable to Contractor for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 13.2, Contractor shall promptly pay any excess to Agency.

#### **SECTION 14: RECOVERY OF OVERPAYMENTS**

If payments to Contractor under this Agreement, or any other agreement between Agency and Contractor, exceed the amount to which Contractor is entitled, Agency may, after notifying Contractor in writing, withhold from payments due Contractor under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

#### **SECTION 15: LIMITATION OF LIABILITY**

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

#### **SECTION 16: TERMINATION**

**16.1** This Agreement may be terminated at any time by mutual written consent of the Parties.

**16.2** Agency may terminate this Agreement as follows:

**16.2.1** Upon 30 days advance written notice to Contractor;

**16.2.2** Immediately upon written notice to Contractor, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency’s reasonable administrative discretion, to perform its obligations under this Agreement;

**16.2.3** Immediately upon written notice to Contractor, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency’s performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

**16.2.4** Immediately upon written notice to Contractor, if Contractor is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Contractor; or

16.2.5 As otherwise expressly provided in this Agreement.

16.3 Contractor may terminate this Agreement as follows:

16.3.1 Immediately upon written notice to Agency, if Contractor fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Contractor's reasonable administrative discretion, to perform its obligations under this Agreement;

16.3.2 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Contractor's performance under this Agreement is prohibited or Contractor is prohibited from paying for such performance from the planned funding source;

16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Agency; or

16.3.4 As otherwise expressly provided in this Agreement.

16.4 Upon receiving a notice of termination of this Agreement, Contractor will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, Contractor will deliver to Agency all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Contractor will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by Contractor under this Agreement.

## SECTION 17: INSURANCE

17.1 Contractor shall obtain and maintain during the term of this Agreement insurance in accordance with the requirements of ORS chapter 332.

17.2 **Subcontractor Insurance.** Contractor shall require its first tier subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to obtain insurance specified in Exhibit B.

**SECTION 18: NONAPPROPRIATION**

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.

**SECTION 19: AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

**SECTION 20: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

**SECTION 21: SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9, 10, 14, 15 and 21 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

**SECTION 22: SEVERABILITY**

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

**SECTION 23: COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

**SECTION 24: COMPLIANCE WITH LAW**

- 24.1** In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws.
- 24.2** 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 Agreement and a failure to comply constitutes a breach that entitles Agency to terminate this Agreement 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.

- 24.3 Section 508 Compliance.** Contractor, in its delivery of goods and services under this Agreement, shall comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), including as amended by the Workforce Investment Act of 1998 (P.L. 105-220), and deliver Deliverables and services that provide individuals with disabilities access to and use of information and data embodied in the goods and services that is comparable to the access provided to individuals without disabilities.

- 24.3.1 Mandatory Standard.** Goods and Services that must be delivered in compliance with Section 508 include all electronic and multimedia content to be available on Agency public websites, generated by Agency web applications, web applications provided to Agency by Contractor (Content). Contractor shall designed and formatted Content to meet at least the following standards, including as the standards are updated or replaced by subsequent versions (collectively, “Mandatory Standard”):

- 24.3.2** The Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI-ARIA) 1.0.
- 24.3.3** The World Wide Web Consortium’s (W3C’s) Web Content Accessibility Guidelines (WCAG) 2.0 Level AA for web content, including as each is updated (Mandatory Standard).
- 24.3.4** The web accessibility evaluation tool (WAVE), found at: <http://wave.webaim.org/extension/>.
- 24.3.5** Content to be posted on the web must adhere to: <https://www.webaccessibility.com/>
- 24.3.6** PDF files must comply with: <http://webaim.org/techniques/acrobat/>.
- 24.3.7** Word files must comply with: <http://webaim.org/techniques/word/>.
- 24.3.8** PPT files must comply with: <http://webaim.org/techniques/powerpoint/>.
- 24.3.9** Excel files must comply with: <https://webaim.org/techniques/excel/>

- 24.4 Content Delivered by Contractor.** Contractor shall design and deliver Content that meets the Mandatory Standard.

- 24.4.1** Acceptance criteria for Content includes the Content meeting the Mandatory Standard.

**24.4.2** Contractor shall test all Content prior to submission to Agency to ensure it meets the Mandatory Standard. Contractor represents and warrants that following Agency acceptance of the Content, the Content will meet the Mandatory Standard.

**24.5 Agency Content Review.** Acceptance review of Content will include Agency testing the submitted Deliverable to validate the Content meets the Mandatory Standard.

**24.5.1** Agency will complete a manual validation review of the Content against the current W3 Checklist for Web Content Accessibility (link included for reference: <https://www.w3.org/TR/1999/WAI-WEBCONTENT-19990505/full-checklist.pdf>).

**24.5.2** If Agency determines that submitted Content does not meet the Mandatory Standard, Contractor shall revise the Content to meet the Mandatory Standard as at no additional cost to Agency.

**24.5.3** If Agency determines that previously accepted Content does not meet the Mandatory Standard, Agency may issue a written notice to Contractor to remove the Content. Contractor shall remove Content identified in any such notice within three (3) Calendar Days and take other corrective action specified in the notice.

## **SECTION 25: INDEPENDENT CONTRACTORS**

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

## **SECTION 26: INTENDED BENEFICIARIES**

Agency and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

## **SECTION 27: FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to Contractor after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

## **SECTION 28: ASSIGNMENT AND SUCCESSORS IN INTEREST**

Contractor may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Contractor to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Contractor's assignment or transfer of its interest in this Agreement will not relieve Contractor of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

## **SECTION 29: SUBCONTRACTS**

Contractor shall not, without Agency’s prior written consent, enter into any subcontracts for any of the work required of Contractor under this Agreement. Agency’s consent to any subcontract will not relieve Contractor of any of its duties or obligations under this Agreement.

## **SECTION 30: TIME IS OF THE ESSENCE**

Time is of the essence in Contractor’s performance of its obligations under this Agreement.

## **SECTION 31: MERGER, WAIVER**

This Agreement and all exhibits and attachments, if any, 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 Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

## **SECTION 32: RECORDS MAINTENANCE AND ACCESS**

Contractor shall maintain all financial records relating to this Agreement 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 Agreement in such a manner as to clearly document Contractor's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as “Records.” 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 all Records to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, Contractor shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

## **SECTION 33: HEADINGS**

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

## **SECTION 34: AGREEMENT DOCUMENTS**

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (the Statement of Work), and Exhibit B (Insurance).

## **SECTION 35: SIGNATURES**

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The Parties further agree that by the exchange of this Agreement electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Agreement, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

**STATE OF OREGON acting by and through its Department of Education**

\_\_\_\_\_  
Name, Title Date

**[insert name of Contractor]**

\_\_\_\_\_  
Name, Title Date

**Approved for Legal Sufficiency in accordance with ORS 291.047**

\_\_\_\_\_  
Name, Title Date

## EXHIBIT A

### STATEMENT OF WORK

#### SCOPE OF ACTIVITIES

Contractor will serve as one of the ESDs tasked with providing EOP training and technical assistance within their region as described in Section 2. The primary work to be performed by Contractor involves assessing Districts, Schools, Charters and ESD's emergency preparedness capacity, providing regional EOP training and technical assistance services to the Districts, Schools, Charters and ESDs. Through assessment, training and technical assistance, Contractor will help to Districts, Schools, Charters and ESDs within Contractor's region to develop new, or strengthen existing, all-hazards emergency plans that will enable them to better prepare for, respond to, and recover from any threat or hazard they could face.

#### A. The SSEM Plan

Contractor will prepare and submit to Agency for Agency approval an SSEM Plan that describes how Contractor will carry out the services described herein. The SSEM Plan shall include, but is not limited to, a training schedule and an annual budget that describes all proposed expenditures received during the term of this Agreement. The SSEM Plan shall also include how Contractor will include diverse perspectives and how historically marginalized individuals will be considered and accommodated in school emergency preparedness training and technical assistance. Upon Agency's written approval of the SSEM Plan, Contractor shall deliver services in accordance with the SSEM Plan. Contractor may modify the SSEM Plan with Agency's prior written approval. Contractor shall annually review the SSEM Plan with Agency to confirm progress and adherence to the SSEM Plan.

#### B. Key Person

Contractor will provide one Key Person who will serve as the regional representative of the SSEM Program. Alternatively, if Contractor wishes to split the duties of the Key Person between two employees, they may provide two Key Persons as long as one or both employees are available to provide the required expertise and personal attention required. Contractor acknowledges and agrees that Agency will select Contractor(s) because of the special qualifications of Contractor 's Key Person(s) identified in the SSEM Plan. Neither Contractor nor a Key Person(s) may delegate performance of the powers and responsibilities that a Key Person(s) is required to provide 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(s) to other duties or positions such that the Key Person(s) 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(s) in the event the Key Person(s) 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 reassignment or transfer of a Key Person(s), or if Contractor must replace a Key Person(s), Agency may interview, review the qualifications of, and approve or reject the proposed replacement for the Key Person(s). Any such replacement must have substantially equivalent or better qualifications than the Key Person(s) being replaced. If Agency is paying Contractor on an hourly or other periodic basis, then Contractor will not charge Agency, and Agency will not pay, for a replacement Key Person(s) while such replacement acquires the project knowledge and skills necessary to perform the required role of the Key Person(s). Such period of non-charge will be agreed upon by the parties.

### **C. Key Person(s) & Certifications**

Contractor's Key Person(s) will be a subject matter expert on school emergency management fundamentals. Contractor's Key Person(s) must continue to stay trained and remain knowledgeable of school emergency management best practices as developed and implemented by the Federal Emergency Management Agency (FEMA), the Readiness and Emergency Management for Schools (REMS) Technical Assistance Center, Oregon Department of Emergency Management, the Oregon Department of Education and other relevant state and federal agencies throughout the term of the Agreement. Contractor's Key Person(s) shall maintain availability for monthly and annual SSEM Program meetings, conferences and training events. Contractor's Key Person(s) shall provide certificates of completion of the following training within 30 days of contract execution:

- a. FEMA Independent Study Course 362, Multi-hazard Emergency Planning for Schools.
- b. FEMA Independent Study Course 100, Introduction the Incident Command System.
- c. FEMA Independent Study Course 200, Basic ICS for Initial Response.
- d. FEMA Independent Study Course 700, An Introduction to National Incident Management System.
- e. FEMA Independent Study Course 800, National Response Framework, An Introduction.

### **D. Training and Technical Assistance**

Contractor will provide regional EOP training and related technical assistance to the Districts, Schools, Charters and ESDs within their region as described in Section 2, and in accordance with the Agreement. Training and technical assistance that is conducted should be targeted to the recipient District, School, Charter and ESD's identified needs as assessed by the Contractor.

### **E. SSEM Training Materials**

Training Materials that the Contractor develops should be for the purpose of building emergency preparedness capacity at every level: the Districts, Schools, Charters and ESDs of Contractor's region. Contractor shall ensure that all Training Materials developed and used are consistent with the FEMA "Guide for Developing High-Quality School Emergency Operations Plans," National Incident Management System ("NIMS"), and Incident Command System ("ICS") practices, state-specific guidelines, Oregon Emergency Management ("OEM") guidance, and Agency guidance. Any deviations from these standards and guidance must be pre-approved by Agency in writing. Agency will provide Contractor with Program Materials that can be used to promote and explain the SSEM Program. Contractor must get Agency approval prior to the use of any Program Materials not developed or provided by the Agency.

Contractor shall ensure all training and technical assistance provided under this Agreement meets or exceeds Agency's expectations for Quantity and Quality as follows in Sections F & G below.

### **F. Quantity**

Between July 1, 2023 and June 30, 2025, Contractor shall provide a minimum of 4 (four) Deliverables per quarter that meet the following requirements:

- i. Deliver, or co-deliver with Agency or other Contractors, at Agency's discretion EOP training and technical assistance that shall demonstrate an improvement to a given District, School, Charter or ESD's emergency preparedness capacity. Contractor shall deliver to Agency appropriate documentation of Improvement Activity that may also be used to support a community of knowledge and practice, and such documentation will be shared among other Contractors or on the Agency website for statewide access. Improvement Activities must be in one of the following six categories:
  - Planning for and accommodating students and staff with access and functional needs.
  - Community collaboration in emergency preparedness including the implementation of memorandums of understanding or agreement with appropriate community partners.
  - The incorporation of ICS fundamentals and training District, School, Charter or ESD's staff on ICS.
  - District, School, Charter or ESD's internal threat and hazard, site safety, and planning assessments and evaluation.
  - Creating or improving a functional annex for a District, School, Charter or ESD.
  - Creating or improving a threat or hazard-specific annex for a District, School, Charter or ESD.
- ii. Provide Agency with a Capacity Assessment of District and ESDs engaged with emergency preparedness Improvement Activities using Agency-provided assessment tool. The assessment tool will require Contractor to evaluate and record the capability of each District and ESD assessed in the six categories addressed in the above paragraph (i). A new or updated Capacity Assessment of the corresponding District or ESD must be completed within 30 days of an Improvement Activity in order for the activity to count toward Contractor's Deliverable requirement. The Capacity Assessment is used to track program engagement, identify regional and statewide trends in school emergency preparedness, and demonstrate improvements made in emergency preparedness by Oregon Districts and ESDs through the assistance of the SSEM program.

When complying with the requirements in paragraph (i) of this section, a single Improvement Activity can count toward multiple of Contractor's Deliverable requirements if it is implemented with and accompanies Capacity Assessments for multiple Districts, Schools, Charters or ESDs. For example: a single training package delivered to three Districts can count as three Deliverables if a Capacity Assessment is completed for each participating District.

## **G. Quality**

Contractor shall establish and consistently utilize evaluation criteria provided by Agency that, at a minimum, allows recipients of EOP training and technical assistance to provide feedback and ratings in the following areas:

- The extent to which the training and technical assistance services provided were clear, relevant, and effective in helping participants develop or improve their EOPs;

- How well the training and technical assistance services provided address EOP best practices, the emergency planning needs of the participants, and supports system change or improvement to build local capacity to manage emergency events effectively;
- The extent to which the training and technical assistance services provided were of sufficient quality, rigor, and duration to lead to improvements in practice among the recipients of those services; and
- The extent to which the training and technical assistance services provided ensure equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, sexual orientation, age, or disability.

## H. Deliverables

In addition to the services required in this Agreement, Contractor shall provide to Agency periodic reports that document progress as follows:

Due Date	Deliverable(s)
30 days after the end of each calendar quarter; 15 days after the end of each fiscal year (July 15 <sup>th</sup> of each calendar year).	A quarterly invoice for reimbursement of qualified expenditures. Reporting required with each quarterly invoice shall include a description of the services completed during the invoice period, specifically: <ul style="list-style-type: none"> <li>• The number of Capacity Assessments and Improvement Activities completed;</li> <li>• The date the Capacity Assessment and Improvement Activity was completed;</li> <li>• The names of participating Districts, Schools, Charters or ESDs;</li> <li>• The categories of improvement that were trained or implemented;</li> <li>• Copies of the Capacity Assessments that were completed;</li> <li>• Documents evidencing Improvement Activities delivered; and</li> <li>• Participant feedback.</li> </ul> Contractor shall complete at least four Deliverables per quarter.
45 days after the end of each fiscal year (August 14 <sup>th</sup> of each calendar year).	An Annual review and certification of the SSEM Plan. Any proposed changes by Contractor as part of annual review must be approved in writing by Agency.

## I. Payment

Contractor may request and receive payment of qualified expenditures in accordance with the following table:

Quarter	Maximum Compensation
January 1, 2024 – March 31, 2024	\$TBD

April 1, 2024 – June 30, 2024	\$TBD
July 1, 2024 – September 30, 2024	\$TBD
October 1, 2024 – December 31, 2024	\$TBD
January 1, 2025 – March 31, 2025	\$TBD
April 1, 2025 – June 30, 2025	\$TBD

Contractor may only request and receive payment under this Agreement in accordance with the terms of this section.

Agency may, at its sole discretion, request additional information or documentation from Contractor prior to payment under this Agreement.

**J. Payment Adjustments**

Contractor may expend Funds for reimbursement that differ up to 25% from the amounts agreed upon with Agency Grant Manager each quarter in Payment table located in Section I, Exhibit A Statement of Work with the prior written approval of Agency’s Grant Manager, as long as the total amount expended for all Agreement activities paid for with Funds does not exceed the amount identified in Section 6 of this Agreement. Any adjustments that result in an increase above 25% from the amounts agreed up on with Agency Grant Manager each quarter in Payment table located in Section I, Exhibit A Statement of Work may not be done without an amendment to this Agreement. Any changes to Deliverables or SSEM Plan are subject to the agreement and acceptance of Agency Grant Manager. Any adjustments that result in an increase to the amount identified in Section 6 of this Agreement may not be done without an amendment to this Agreement.

EXHIBIT B

**EXHIBIT B – IGA FOR LOCAL OREGON GOVERNMENTS ONLY**

**INSURANCE REQUIREMENTS**

Contractor shall require its first-tier Subcontractor(s) (Subcontractor) that are not units of local government as defined in ORS 190.003, if any, to:

- i) obtain the insurance specified under TYPES AND AMOUNTS and meet the requirements under ADDITIONAL INSURED, CONTINUOUS CLAIMS MADE COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the Subcontractor(s) perform under contracts between Contractor and the Subcontractors (the "Subcontracts"), and
- ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency.

Contractor shall not authorize Subcontractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Contractor shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Contractor shall incorporate appropriate provisions in the Subcontracts permitting it to enforce Subcontractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force, terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event, shall Contractor permit a Subcontractor to work under a Subcontract when the Contractor is aware that the Subcontractor is not in compliance with the insurance requirements. As used in this section, a "first-tier" Subcontractor is a Subcontractor with which the Contractor directly enters into a contract. It does not include a sub-subcontractor with which the Subcontractor enters into a contract.

If Subcontractor 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 Subcontractor.

**INSURANCE TYPES AND AMOUNTS**

**WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY:**

All employers, including Subcontractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Subcontractor shall require and ensure that each of its subcontractors complies with these requirements. If Subcontractor is a subject employer, as defined in ORS 656.023, Subcontractor shall also obtain Employers' Liability Insurance coverage with limits not less than \$500,000 each accident.

If Subcontractor is an employer subject to any other state's workers' compensation law, Subcontractor shall provide Workers' compensation Insurance coverage for its employees as required by applicable workers' compensation laws including Employers' Liability Insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

As applicable, Subcontractor 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 and/or the Longshoremen's and Harbor Workers' Compensation Act.

**COMMERCIAL GENERAL LIABILITY:**

Subcontractor shall provide Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State of Oregon. This insurance 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 \$1,000,000 per occurrence and not less than \$2,000,000 annual aggregate limit.

**AUTOMOBILE LIABILITY:**

**Required**  **Not required**

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

**PROFESSIONAL LIABILITY:**

**Required**  **Not required**

Subcontractor shall provide Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under the Contract/Subcontract by the Subcontractor and Subcontractor's sub-subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per claim and not less than \$2,000,000 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 Subcontractor and sub-subcontractors shall provide continuous claims made coverage as stated below.

**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 Excess or Umbrella policies must provide all of the insurance coverages required herein, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess or Umbrella policies must 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, are to be called upon to contribute to a loss until the Subcontractor'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 COVERAGE REQUIREMENTS:**

Subcontractor's insurance shall be primary and non-contributory with any other insurance. Subcontractor shall pay for all deductibles, self-insured retention (SIR), and self-insurance, if any.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, Pollution Liability and Network Security and Privacy Liability (if applicable), required under the Subcontract must include an Additional Insured Endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Subcontractor's services to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

Regarding Additional Insured status under the General Liability policy, the State of Oregon requires Additional Insured status with respect to liability arising out of ongoing operations and completed operations. The Additional Insured Endorsement with respect to liability arising out of Subcontractor's 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:**

Subcontractor shall waive rights of subrogation which Subcontractor or any insurer of Subcontractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Subcontractor must obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency or State of Oregon has received a waiver of subrogation endorsement from the Subcontractor or the Subcontractor'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 Subcontractor shall maintain Continuous Claims Made 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) Subcontractor's completion and Agency/Contractor's acceptance of all Services required under the Contract, or
- (ii) Agency or Subcontractor's termination of this Contract, or
- (iii) The expiration of all warranty periods provided under this Contract.

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

Contractor shall obtain from the Subcontractor a Certificate(s) of Insurance for all required insurance before Subcontractor delivers any goods and performs any Services required under this Contract. The Certificate(s) must list the State of Oregon, its officers, employees, and agents as a certificate holder and as an endorsed Additional Insured. The Certificate(s) of Insurance must 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/Contractor 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 Subcontractor or its insurer must provide at least 30 days' written notice to Contractor before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

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

**STATE ACCEPTANCE:**

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

**Additional Coverages That May Apply:**

**DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY:**

Required  Not required

Subcontractor shall provide Directors, Officers and Organization Liability Insurance covering Subcontractor's organization, directors, officers, and trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight - including improper oversight and/or use of grant funds and donor contributions which includes state or federal funds with a combined single limit of no less than \$1,000,000 per claim.

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

Required  Not required

Subcontractor shall provide Employee Dishonesty or Fidelity Bond coverages for loss of state-owned property by dishonest acts of an employee of the Subcontractor. Coverage limits shall not be less than \$350,000.

**PHYSICAL ABUSE AND MOLESTATION INSURANCE COVERAGE:**

Required  Not required

Subcontractor shall provide Abuse and Molestation Insurance in a form and with coverage that are satisfactory to the Agency/Contractor 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 Subcontractor is responsible including but not limited to Subcontractor and Subcontractor's employees and volunteers. Policy endorsement's definition of an insured must include the Subcontractor, and the Subcontractor's employees and volunteers. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000. Coverage can be provided by a separate policy or as an endorsement to the Commercial General Liability or Professional Liability policies. These limits must 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, must be treated as a separate occurrence for each victim. Coverage must include the cost of defense and the cost of defense shall be provided outside the coverage limit.