

Informational Cover Page - Contract
THIS PAGE IS NOT PART OF THE CONTRACT
 Agreement No. 24-035-C

AGREEMENT INFORMATION	
Project Title:	Behavioral Health Talent Assessment
Effective Date:	Upon Execution
Expiration Date:	Date of Expiration
Contract Amount:	\$Dollar Amount
Funding Source:	Funding Source
VENDOR INFORMATION	
Vendor:	Vendor
Address:	Street Address City, State, Zip
Project Contact:	Project Contact
Phone:	Phone Number
Email:	Click or tap here to enter text.
Fiscal Contact:	Fiscal Contact
Phone:	Phone Number
Email:	E-mail
HECC INFORMATION	
Contract Administrator:	Contract Administrator
Phone:	Phone Number
Email:	E-mail
Procurement Contact:	Procurement Staff
Phone:	Phone Number
Email:	E-mail

STATE OF OREGON CONTRACT FOR SERVICES

This Contract for Services (this "Contract") is between the State of Oregon ("State") acting through its Higher Education Coordinating Commission ("HECC"), and Contractor ("Contractor") and is effective as of the Effective Date.

Contractor's Contract Administrator for this Contract is:

Contractor Contract Administrator
Street Address
City, State Zip
Phone: Phone Number
Email: E-mail

HECC's Contract Administrator for this Contract is:

HECC Contract Administrator
3225 25th Street SE
Salem, OR 97302
Phone: Phone Number
Email: E-mail

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

1. **CONTRACT TERM.**

The "Effective Date" of this Contract is the date this Contract has been fully executed by each party and, approved as required by applicable law. Unless extended or terminated earlier in accordance with its terms, this Contract terminates on Expiration Date. The termination of this Contract will not extinguish or prejudice HECC's right to enforce this Contract with respect to any default by Contractor that has not been cured.

2. **CONTRACT DOCUMENTS.**

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

- This contract less all exhibits;
- Exhibit C (Federal Terms and Conditions);
- Exhibit A (Statement of Work);
- Exhibit B (Required Insurance).

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

3. **SERVICES.**

3.1. Performance of Services. Contractor shall perform the services (the "Services") and deliver to HECC the deliverables ("Deliverables") set forth in Exhibit A, the Statement of Work (the "Statement of Work"). The Statement of Work includes the delivery schedule

for the Deliverables and Services. Contractor shall perform the Services in accordance with the terms and conditions of this Contract.

- 3.2. Submission and Acceptance of Deliverables.** When the Statement of Work requires Contractor to deliver Deliverables to HECC, then Contractor shall deliver Deliverables that comply with the requirements and acceptance criteria set forth in the Statement of Work.
- 3.3. Rejection of Deliverables; Corrections.** If HECC determines that a Deliverable(s) does not have the characteristics or otherwise meet the acceptance criteria set forth in the Statement of Work in all material respects, HECC will notify Contractor in writing of HECC's rejection of the Deliverable(s), and describe in reasonable detail in such notice HECC's basis for rejection of the Deliverable(s). Upon receipt of notice of non-acceptance, Contractor shall, within a 15 business day period, modify or improve the Deliverable(s) at Contractor's sole expense so that the Deliverable(s) has the characteristics described in the Statement of Work and meets, in all material respects, the acceptance criteria, and notify HECC in writing that it has completed such modifications or improvements and re-tender the Deliverable(s) to HECC. Failure of the Deliverables to have the characteristics or meet in all material respects the acceptance criteria set forth in the Statement of Work after the second submission will constitute a default by Contractor. In the event of such default, HECC may either, (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverables as set forth in this Section, or (ii) notify Contractor of such default and pursue its remedies for default provided for by law or the terms of this Contract.

4. COMPENSATION.

- 4.1. [OPTION 1: Fixed Fee.** HECC shall pay Contractor a fixed of \$_____ for the deliverables described in Exhibit A - Statement of Work, in addition to any allowable expenses described in Section 4.6 below.][**OPTION 2:** HECC shall pay Contractor a fixed fee for each task/deliverable as described in Exhibit A - Statement of Work, in addition to any allowable expenses described in Section 4.6 below.][**OPTION 3: Variable Fee.** HECC shall pay Contractor a rate of \$_____ per hour to complete the services/deliverables described in Exhibit A - Statement of Work, in addition to any allowable expenses described in Section 4.6 below. In no event shall HECC pay more than the payment limitation described in Section 4.2 below. If Contractor has failed to complete the services/deliverables described in in Exhibit A - Statement of Work within the payment limitation, Contractor agrees to complete the work at its own cost.]
- 4.2. Not-to-Exceed Compensation.** The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$Amount. HECC will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract, and will not pay for Services performed before the Effective Date or after the expiration or termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Services subject to the amendment.
- 4.3. Method of Compensation.** Contract performance shall be based on the tasks and deliverables described herein. Contractor shall invoice HECC based on work completed. All work must be performed to the satisfaction of HECC prior to release of payment for services.

- 4.4. Payments.** Payments, including interim payments, to Contractor are subject to ORS 293.462, will be made only for completed and accepted Deliverables and Services, and will be made in accordance with the payment schedule and requirements set forth in Exhibit A - Statement of Work.
- 4.5. Invoices.** Contractor shall submit invoices in accordance with the payment schedule set forth in Exhibit A - Statement of Work or, if no payment schedule is set forth therein, then no more frequently than once per month for accepted Deliverables and Services; regardless, any payments due shall be invoiced within 45 days of performance of the services or delivery of the goods. To be processed for payment, Contractor's invoice(s) must include the following information:
- Invoice date;
 - HECC's Contract number: Contact Number;
 - HECC's Contract Administrator;
 - A detailed description of all Services performed, including
 - the dates Contractor performed the Services for which it is requesting payment; and
 - the total amount due and the payment address.

Contractor shall send invoices to the Contract Administrator at their email address listed in Section 4 above.

- 4.6. Funds Available and Authorized.** Contractor will not be compensated for Services performed under this Contract by any agency or department of the State of Oregon other than HECC. HECC believes it has sufficient funds currently available and authorized for expenditure to make payments under this Contract within HECC's biennial appropriation or limitation. Contractor understands and agrees that HECC's payments under this Contract are contingent on HECC receiving appropriations, limitations, or other expenditure authority sufficient to allow HECC, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

5. CONTRACTOR'S PERSONNEL.

- 5.1. Key Persons.** Contractor acknowledges and agrees that HECC selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's key persons identified in the Statement of Work (each a "Key Person" and, together, "Key Persons"). Neither Contractor nor a Key Person may delegate performance of the powers and responsibilities that a Key Person is required to provide under this Contract to another Contractor employee, subcontractor or agent without first obtaining the written consent of HECC. Further, Contractor may not re-assign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide HECC with the required expertise, experience, judgment, and personal attention, without first obtaining HECC's written consent to such re-assignment or transfer, which HECC will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace a Key Person in the event the Key Person is no longer available due to circumstances beyond Contractor's reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that HECC approve a re-assignment or transfer of a Key Person, or if Contractor must replace a Key

Person, HECC may interview, review the qualifications of, and approve or reject the proposed replacement for the Key Person. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by HECC in writing (email acceptable) will thereafter be deemed a Key Person for purposes of this Contract, and the Statement of Work will be deemed amended to include such Key Person.

5.2. Payment for Replacement Key Personnel. If HECC is paying Contractor on an hourly or other periodic basis, then Contractor will not charge HECC, and HECC will not pay, for a replacement Key Person while such replacement acquires the project knowledge and skills necessary to perform the Services. Such period of non-charge will be agreed upon by the parties.

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

6. INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

6.1. Independent Contractor. Contractor shall perform all Services as an independent contractor. HECC reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, HECC may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

6.2. No Conflicts. Contractor, by signature to this Contract, represents and warrants that Contractor's performance of the Services under this Contract creates no potential or actual conflict of interest as defined by ORS 244; and no statutes, rules or regulations of any State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor from performing the Services under this Contract.

6.3. Affiliation. Contractor understands and agrees that it is not an "officer," "employee," or "agent" of the State of Oregon, as those terms are used in ORS 30.265 or otherwise.

6.4. Taxes and Benefits. Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless required by applicable law, HECC will not withhold from such compensation or payments any amount to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

7. SUBCONTRACTS, SUCCESSORS, AND ASSIGNMENTS.

7.1. Subcontracts. Contractor shall not enter into any subcontracts for any of the Services required by this Contract without HECC's prior written consent. In addition to any other provisions HECC may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that HECC will receive the benefit of subcontractor's performance as if the subcontractor were Contractor. HECC's consent

to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract.

7.2. Successors and Assigns. The provisions of this Contract are binding upon and inure to the benefit of the parties to this Contract, their respective successors, and permitted assigns, if any.

7.3. No Assignment. Contractor shall not assign or transfer any of its rights or delegate its obligations under this Contract without HECC's prior written consent.

8. REPRESENTATIONS AND WARRANTIES.

8.1. Contractor's General Representations and Warranties. Contractor represents and warrants to HECC that:

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

8.1.2. This Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;

8.1.3. Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services;

8.1.4. Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and

8.1.5. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date, faithfully has complied with:

8.1.5.1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

8.1.5.2. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;

8.1.5.3. Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor;

8.1.5.4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; and

8.1.6. Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

8.2. Contractor's Performance Warranties.

8.2.1. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor shall apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession;

8.2.2. The Services and each Deliverables delivered by Contractor pursuant to the Services will materially comply with any service descriptions, specifications, standards or requirements set forth in this Contract;

8.2.3. Except as otherwise provided in this Contract (including Section 9), Contractor shall transfer all Deliverables to HECC free and clear of any and all restrictions on or

conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind; and

- 8.2.4. Except as otherwise set forth in this Contract, any subcontractors performing work for Contractor under this Contract have assigned all of their rights in the Deliverables to Contractor or HECC and no third party has any right, title or interest in any Deliverables supplied to HECC under this Contract.

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

9. OWNERSHIP OF WORK PRODUCT.

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

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

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

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

- 9.4. License in Third Party Intellectual Property.** In the event that a Deliverable(s) delivered by Contractor under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on HECC's behalf and in the name of HECC an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Deliverables, and to authorize others to do the same on HECC's behalf.
- 9.5. No Rights.** Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by HECC. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon HECC any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.
- 9.6. Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.
- 9.7. Competing Services.** Subject to the provisions of this Section 9, and Contractor's obligations with respect to Confidential Information, including as defined in Section 10, nothing in this Contract precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in this Contract, or consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables delivered pursuant to this Contract. Each party is free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under this Contract free of any use restriction or payment obligation to the other.

10. CONFIDENTIAL INFORMATION.

- 10.1. Confidential Information.** Contractor acknowledges that it and its employees, officers, directors, agents or subcontractors (collectively, "Contractor Staff") may, in the course of performing the Services under this Contract, be exposed to or acquire information that is confidential to HECC or HECC's clients. Any and all information of any form (including but not limited to records, files, papers, materials, documents, and communications in written, verbal, oral and electronic form) that Contractor or any Contractor Staff may come into contact with or that is obtained by Contractor or Contractor Staff in the performance of this Contract shall be considered for the purposes of this Contract the confidential information of HECC ("Confidential Information"). Contractor shall, and shall cause Contractor Staff to treat any reports or other documents or items (including software) that result from the use of the Confidential Information in the same manner as the Confidential Information. Confidential Information does not include information that (i) is or becomes (other than by disclosure by Contractor or Contractor Staff acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still

restricts disclosure; (ii) is furnished by HECC to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than HECC without the obligation of confidentiality, (v) is disclosed with the written consent of HECC, or; (vi) is independently developed by Contractor or Contractor Staff who can be shown to have had no access to the Confidential Information.

- 10.2. Non-Disclosure.** Contractor shall hold, and shall cause Contractor Staff to hold, all Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer, distribute, or otherwise dispose of, give, make available or disclose, in whole or in part, directly or indirectly, Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to HECC hereunder, and shall advise Contractor Staff of their obligations to keep Confidential Information confidential. Contractor shall assist HECC in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise HECC immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract, and Contractor will at its expense cooperate with HECC in seeking injunctive or other equitable relief in the name of HECC or Contractor against any such person. Contractor shall not at any time during or after the term of this Contract, except as directed by HECC, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract. Upon expiration or termination of this Contract or at HECC's request, Contractor shall deliver to HECC all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Contract, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.
- 10.3. Confidentiality Policies.** Contractor shall, upon HECC's request, provide its policies and procedures for safeguarding Confidential Information to HECC for HECC's review and consent. Such policies must address information conveyed in oral, written, and electronic format and include procedures for how Contractor will respond when a violation or possible violation occurs.
- 10.4. Injunctive Relief.** Contractor acknowledges that breach of this Section 10, including disclosure of any Confidential Information, will cause irreparable injury to HECC that is inadequately compensable in damages. Accordingly, HECC may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of HECC and are reasonable in scope and content.
- 10.5. Publicity.** Contractor agrees that it will not disclose the form, content or existence of this Contract or any Deliverable(s) in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with HECC or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by HECC or the State of Oregon of Contractor's services, without the prior written consent of HECC.

11. INDEMNITY BY CONTRACTOR.

- 11.1. Claims.** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and HECC and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs (including attorneys' fees) and expenses (collectively, "Claims") of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract, including but not limited to, unauthorized disclosure of Confidential Information, professional malfeasance, infringement of intellectual property rights, intentional, willful, or wanton wrongful acts, and acts outside the scope of Services set forth in this Contract.
- 11.2. Legal Counsel.** If Contractor is required to defend the State of Oregon or HECC or their officers, employees or agents under Section 11.1, then Contractor shall select legal counsel reasonably acceptable to the Oregon Attorney General to act in the name of, or represent the interests of, the State of Oregon, HECC or their officers, employees and agents. Such legal counsel must accept appointment as a special assistant attorney general under ORS chapter 180 before such action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State of Oregon's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State of Oregon or its officers, employees and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State of Oregon are served thereby. Contractor's obligation to pay for all costs and expenses includes those incurred by the State of Oregon in assuming its own defense or that of its officers, employees, and agents under (i) and (ii) above.
- 11.3. Damages to State Property and Employees.** Contractor is liable for all Claims for personal injury, including death, damage to real property and damage to tangible and intangible personal property of the State of Oregon or any of its employees, subcontractors or agents resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract.
- 11.4. CONTRACTOR IS NOT AUTHORIZED TO SETTLE OR COMPROMISE ANY CLAIM REFERENCED IN THIS SECTION WITHOUT THE EXPRESS WRITTEN CONSENT OF HECC.**

12. LIMITATION OF LIABILITIES.

- 12.1. EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, CONTRACTOR'S LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO ONE AND ONE HALF TIMES THE MAXIMUM-NOT-TO-EXCEED AMOUNT OF THIS CONTRACT.**
- 12.2. EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.**

13. INSURANCE.

Contractor shall maintain insurance as set forth in Exhibit B.

14. DEFAULT; REMEDIES; TERMINATION.

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

- 14.1.1. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- 14.1.2. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after HECC's notice or such longer period as HECC may specify in such notice; or
- 14.1.3. Contractor commits any material breach or default of any covenant, warranty, obligation, certification, or agreement under this Contract, fails to perform the Services under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after HECC's notice, or such longer period as HECC may specify in such notice; or
- 14.1.4. Contractor has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State.

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

- 14.2.1. Termination of this Contract under Section 14.6.2; or
- 14.2.2. Withholding all monies due for Services and Deliverables that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively; or
- 14.2.3. Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
- 14.2.4. Exercise of its right of setoff, and withholding of amounts otherwise due and owing to Contractor, without penalty; or
- 14.2.5. Undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after the Contractor has been given notice if required by law.

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

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

- 14.4.1. HECC fails to pay Contractor any amount pursuant to the terms of this Contract, and HECC fails to cure such failure within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
- 14.4.2. HECC commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

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

14.6. Termination.

- 14.6.1. HECC's Right to Terminate at its Discretion. HECC may terminate this Contract:
 - 14.6.1.1. Upon 30 calendar days' prior written notice by HECC to Contractor;
 - 14.6.1.2. Immediately upon written notice by HECC to Contractor if HECC fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Services or Work Products; or
 - 14.6.1.3. Immediately upon written notice by HECC to Contractor if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that HECC's purchase of the Services or Work Products under this Contract is prohibited or HECC is prohibited from paying for such Services or Work Products from the planned funding source.
- 14.6.2. HECC's Right to Terminate for Cause. In addition to any other rights and remedies HECC may have under this Contract, HECC may terminate this Contract immediately upon written notice by HECC to Contractor, or at such later date as HECC may establish in such notice, if Contractor is in default under Section 14.1.
- 14.6.3. Contractor's Right to Terminate for Cause. Contractor may terminate this Contract immediately upon written notice to HECC, or at such later date as Contractor may establish in such notice, if HECC is in default under Section 14.4.

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

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

15. COMPLIANCE WITH LAW.

15.1. Compliance with Law Generally. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor and the Contract. HECC's performance under the Contract is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.045, 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein.

15.2. Compliance with Oregon Tax Laws.

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

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

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

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

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

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

15.3. Compliance with Federal Law. Contractor shall comply with all applicable federal laws, including, without limitation, those set forth in Exhibit C, which is attached and incorporated into this Contract by this reference.

15.4. Pay Equity Compliance. As required by ORS 279B.235 Contractor shall comply with ORS 652.220 and shall not discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on an employee's membership in a protected

class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor's compliance with this Section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles HECC to terminate this Contract for cause.

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

16. GOVERNING LAW; VENUE AND JURISDICTION.

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

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

17. MISCELLANEOUS PROVISIONS.

17.1. Records Maintenance; Access. Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract ("Records") in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that HECC and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to such financial records and other Records that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records and other Records for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

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

to perform the Services under this Contract in the State of Oregon prior to entering into this Contract.

- 17.3. Force Majeure.** Neither HECC nor Contractor may be held responsible for delay or default caused by fire, riot, epidemic, natural disaster, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of HECC or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 17.4. Survival.** All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 17.4, and provisions regarding Contract definitions, warranties and liabilities, independent Contractor status and taxes and withholding, maximum compensation, Contractor's duties of confidentiality, ownership and license of intellectual property and Deliverables, confidentiality and non-disclosure, Contractor's representations and warranties, control of defense and settlement, remedies, return of HECC property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.
- 17.5. Time is of the Essence.** Contractor agrees that time is of the essence under this Contract.
- 17.6. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, or mailing the same, postage prepaid, to Contractor or HECC at the email address, postal address or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 17.6. Any communication or notice so addressed and mailed is effective five business days after mailing. Any communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means that the email has been delivered to the intended email address.
- 17.7. No Third Party Beneficiaries.** HECC and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 17.8. Severability.** The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

- 17.9. Merger Clause; Waiver.** This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract will bind the parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of HECC to enforce any provision of this Contract in one instance will not constitute a waiver by HECC of its right to enforce that or any other provision.
- 17.10. Amendments.** HECC may amend this Contract to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract is effective unless it is in writing signed by the parties and has been approved as required by applicable law, unless explicitly stated in other Sections of this Contract.
- 17.11. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed constitutes an original.
- 17.12. Oregon False Claims Act.** Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract, including the procurement process relating to this Contract, that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or HECC under this Contract or any other provision of law.
- 17.13. Certifications.** The individual signing on behalf of Contractor hereby:
- 17.13.1. Certifies and swears under penalty of perjury to the best of the individual's knowledge that: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.657; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620; (c) Contractor is an independent contractor as defined

in ORS 670.600; and (d) the supplied Contractor tax identification numbers are true and accurate;

17.13.2. Certifies that, to the best of the undersigned’s knowledge, Contractor has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business certified under ORS 200.055 in obtaining any required subcontracts;

17.13.3. Certifies that Contractor has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of the Contract, to maintain the policy and practice in force during the entire Contract term; and

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

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates set forth below.

Contractor

By: _____ Date _____
Authorized Representative, Title

HIGHER EDUCATION COORDINATING COMMISSION

By: _____ Date _____
Office Director, Title

HECC - Review for procurement sufficiency

Reviewed by: _____ Date _____
Derek Dizney, Procurement Manager

DOJ - Review for legal sufficiency – Not applicable.

**EXHIBIT A
STATEMENT OF WORK**

A. GENERAL INFORMATION

TBD

B. REQUIRED SERVICES, DELIVERABLES, AND DELIVERY SCHEDULE

TBD

C. BUDGET

TBD

D. KEY PERSONS

Contractors' Key Persons under this contract include the following:

TBD

EXHIBIT B REQUIRED INSURANCE

INSURANCE REQUIREMENTS

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

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$1,000,000.

AUTOMOBILE LIABILITY INSURANCE:

Required **Not required**

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

PHYSICAL ABUSE AND SEXUAL MOLESTATION LIABILITY:

Required **Not required**

Abuse and Molestation Insurance in a form and with coverage that are satisfactory to HECC covering damages arising out of actual, perceived, or threatened physical abuse, mental injury, sexual molestation, negligent hiring, employment, supervision, training, investigation, reporting to proper authorities, and retention of any person for whom the Contractor is responsible including but not limited to Contractor and Contractor's

employees and volunteers. Policy endorsement's definition of an insured shall include the Contractor, and the Contractor's employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$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 shall be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, shall be treated as a separate occurrence for each victim. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.

PROFESSIONAL LIABILITY:

Required Not required

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability Insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

EXCESS/UMBRELLA INSURANCE:

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

ADDITIONAL INSURED:

The Commercial General Liability insurance and Automobile liability insurance required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

TAIL COVERAGE:

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

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to HECC Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. 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 HECC has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

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

INSURANCE REQUIREMENT REVIEW:

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

STATE ACCEPTANCE:

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

SAMPLE