

## INTERGOVERNMENTAL AGREEMENT

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

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

### SECTION 1: AUTHORITY

This Agreement is authorized by ORS 336.680 and OAR 581-030-0001.

### SECTION 2: PURPOSE

Contractor is an [ESD/SD/Public Charter School] (“Agency”) that shall establish an Approved Recovery Schools with a specialized educational approach to services for students in grades 9-12. Contractor shall provide a tailored high school education experience, designed to meet the needs of students in recovery from substance use disorders and co-occurring behavioral health challenges. Contractor shall follow the standards for graduation and recovery school accreditation, which leads to an Oregon high school diploma.

### SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement shall be effective on the date of the last signature, whichever occurs last and all necessary approvals have been obtained (“Effective Date”), and terminates on June 30, 2029, unless terminated earlier in accordance with Section 16.

### SECTION 4: AUTHORIZED REPRESENTATIVES

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

Brenda Martinek  
Office of the Director  
255 Capitol Street NE  
Salem, Oregon 97310  
(503) 580-5749  
brenda.martinek@ode.oregon.gov

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

\_\_\_\_\_ (insert name, Title)  
\_\_\_\_\_ (insert entity name or name of department)  
\_\_\_\_\_ (insert address)  
\_\_\_\_\_ (insert phone) Office or cell  
\_\_\_\_\_ (insert 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 (the “Statement of Work”), attached hereto and incorporated herein by this reference. When the Statement of Work requires Contractor to deliver Deliverables to Agency, then Contractor shall deliver Deliverables that comply with the requirements set forth in the Statement of Work and is otherwise acceptable to Agency. Agency will determine whether the Deliverables has the characteristics set forth in the Statement of Work and is otherwise acceptable. If Agency determines that the Deliverables does not have the characteristics set forth in the Statement of Work in all material respects and is otherwise not acceptable, Agency will notify Contractor in writing of Agency’s disapproval of the Deliverables and the requisite period of time allowed to cure defects.
- 5.2 Agency will pay Contractor as described in Section 6.

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

Agency will pay Contractor up to but not in excess of \$\_\_\_\_\_, as described in and in accordance with OAR 581-030-0001(14) and the terms of this Agreement. Payment will be made no more frequently than quarterly for completion of work and delivery of deliverables accepted by Agency.

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

Contractor represents and warrants to Agency that:

- 7.1 Contractor is a [SD/ESD/Public Charter School] 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.
- 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 Upon written notice to Agency, effective at the end of Contractor's semester or trimester so long as Contractor provides such prior written notice at least 180 calendar days prior to the proposed termination date;
  - 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; or
  - 16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 90 days after written notice thereof to Agency.
- 16.4 Upon receiving a notice of termination of this Agreement, Contractor shall comply with OAR 581-030-0001(8)-(9) and any other written closure instructions otherwise provided by Agency 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 maintain insurance specified in Exhibit B, attached hereto and incorporated herein by this reference.
- 17.2 **Subcontractor Insurance.** Contractor shall require its first tier contractor(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 design and format 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**

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Contracting Officer

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Date

**[NAME of Contractor]**

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Name, Title

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Date

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

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Name, Title

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Date

## EXHIBIT A

### STATEMENT OF WORK

#### SECTION 1: OVERVIEW

Contractor shall operate a Primary Campus of an Approved Recovery School which is an Oregon public high school serving students in grades 9-12 and provide students in recovery from substance use and co-occurring behavioral health challenges with the educational and recovery services that will lead to an Oregon diploma. Contractor shall provide a school of choice for students which will not to be used as placement options.

Contractor shall also operate a Satellite Campus of an Approved Recovery School which shall provide students with the same services and educational opportunities as a Primary Campus. The Satellite Campus shall meet the exact requirements and Deliverables as a Primary Campus.

Approved Recovery School Location: [Insert location of Approved Recovery School].

Approved Recovery School Satellite Campus Location: [Insert location of Satellite Campus].

#### SECTION 2: GOALS

**Create a Safe and Supportive Environment:** Contractor shall provide a safe and supportive environment where enrolled students can focus on their recovery from substance use and pursue a traditional high school diploma.

**Ensure Academic Continuity:** Contractor shall ensure that students continue an educational path that leads to graduation, while receiving the necessary support, differentiated instruction and resources needed to address their substance use and co-occurring behavioral health care needs.

**Provide Comprehensive Substance Use and Behavioral Health Related Services:** Contractor shall provide a comprehensive approach to recovery support, integrating substance use education, mental and behavioral health supports, and coping skills development into academic and social emotional learning (“SEL”) coursework.

**Establish and Maintain Peer Supports and Forge a Sustainable Sense of Community:** Contractor shall provide a sense of community and belonging for students who are in recovery. These communities are small by design and incorporate peer support to enhance bonds between students and enable staff to provide social emotional learning opportunities and support recovery practices for students to live in recovery with their peers.

**Empower Long-Term Recovery:** By addressing substance use and co-occurring behavioral health challenges early in adolescence, Contractor shall help students develop the skills, resources, and support networks they need to maintain long-term recovery and lead healthy, fulfilling lives beyond high school.

#### SECTION 3: DEFINITION OF TERMS

For the purposes of this Intergovernmental Agreement, capitalized words will refer to the following definitions:

“ADM” means Average Daily Membership as calculated based on the procedures and definitions in OAR 581-023-0006.

“ADMw” means the weighted Average Daily Membership for an Approved Recovery School.

“Approved Recovery School” means a publicly funded school established by agreement with Agency and operated by an education service district, school district, or public charter school to provide students enrolled in the school with educational services leading up to a diploma for grades 9 through 12 and behavioral health services related to recovery and relapse prevention from substance use disorders.

“Approved Recovery School Program Fund” means the estimated amount of funding that Approved Recovery Schools will receive from Agency; these amounts include the State School Fund (SSF) amount per 2.0 weighted ADMw and the Statewide Education Initiatives Act (SEIA); funding will be calculated and distributed according to OAR 581-030-0001(14).

“ARS” means the Association of Recovery Schools.

“Behavioral Health Services” means recovery support services for substance use disorders and mental health; for the purpose of operating an Approved Recovery School, this does not include substance use disorders treatment services, medical, or psychiatric services; examples of behavioral health services may include providing Certified Recovery Mentors, Peer Support Specialists, Certified Alcohol and Drug Counselors.

“ESD” means an education service district as defined in ORS 334.003.

“Minimum Basis of Funding” means an amount that is determined by the program administrator to provide a minimum level of funding for an Approved Recovery School, where enrollment levels may not be adequate to provide sufficient funding for startup.

“Primary Campus” means the school facility located within the Applicant’s geographic boundary.

“Public Charter School” means a public school as defined in ORS 338.005.

“Recovery” has the meaning described by the Association of Recovery Schools in the Accreditation Manual document.

“Satellite Campus” means a school facility that is not the Primary Campus and may be located outside of the Applicant’s geographical boundary.

“School District” means a common or union high school district as defined in ORS 332.002.

“SEL” means social emotional learning.

“Substance Use Disorder” as defined in DSM-5-TR, means disorders related to the taking of a drug of abuse including alcohol, the side effects of a medication, or a toxin exposure; the disorders include substance use disorders and substance-induced disorders, which include substance intoxication and withdrawal, and substance-related disorders such as delirium, neuro-cognitive disorders, and substance-induced psychotic disorder.

“Substance Use Disorders Treatment Services” means outpatient, intensive outpatient, and residential services and supports for individuals with substance use disorders.

“Urinalysis Test” means a sensitive, rapid, and inexpensive immunoassay screen that identifies the presence of a specific drug or metabolite in a urine specimen to eliminate "true negative" specimens from further consideration.

Section 4: Services and Deliverables

Contractor shall operate an Oregon public high school serving students in grades 9-12 at each Approved Recovery School Primary Campus and Satellite Campus location. Each Approved Recovery School operated by Contractor shall provide students, who are in recovery from substance use and co-occurring behavioral health challenges, the educational and recovery services leading to an Oregon diploma. These schools shall remain a school of choice for students and shall not to be used as placement options. At all times, Contractor shall comply with ORS 336.680 and OAR 581-030-0001.

Contractor shall complete the following activities or services and associated deliverables within the schedule provided:

<b>Requirements</b>	<b>Deliverables</b>	<b>Schedule</b>
Contractor shall operate as a “Standard School” (OAR 581-022-0102(46)) in accordance with OAR Chapter 581, Division 22, except when not required by ORS Chapter 338 or 336.680.	Submission of required reports, assurances, data collections, and notices as required by all applicable standards schools in OAR Chapter 581, Division 22 to Agency by email or other agreed upon format.	Annually or as specified.
Contractor shall complete applicable and required data collections listed in the Schedule of Due Dates according to Exhibit C and according to the timelines and requirements of each collection.	Submission of applicable data in the format specified in each data collection.	Annually or as required by the Schedule of Due Dates according to Exhibit C.
Contractor shall annually adopt a budget to sustain the school's operation and all programing.	Submit the approved operating budget for the Approved Recovery School to Agency by email or other agreed upon format.	Annually by May 1.
Contractor shall maintain a sound financial management system and provide regular financial reports or audits clearly reflecting all revenue, expenditures, and donations (including in-kind donations).	Submit quarterly financial revenue, expenditures and donation reports to Agency by email or other agreed upon format.	By the 15 <sup>th</sup> day of the month following the close of each quarter of each fiscal year the Approved Recovery School is in operation.
Contractor shall maintain appropriate attendance records and submit ADM reports.	Submit regular attendance data and ADM reports to Agency by email or other agreed upon format.	By the 15 <sup>th</sup> of each month for the prior month in which students of the Approved Recovery School were being served.
Contractor shall report estimated ADM and enrollment to support the calculation of state allocations.	Submit estimated ADM and enrollment for the upcoming school year and provide regular updates by email or	By December 1 of the prior year and monthly until the school submits current school year ADM reports.

	other agreed upon format.	
Contractor shall comply with the required Instructional Time and maintain a School Calendar.	Submit the school academic and programmatic calendars with a description and calculation of how the Approved Recovery School complies with required instructional time to Agency by email or other agreed upon format.	Annually before the Approved Recovery School begins serving students each school year.
Contractor shall ensure that eligible students receive special education and related services.	Maintain appropriate records and submit required reports to the Agency related to the identification, location, and evaluation of students who may be in need of special education and related services. All records and reports must comply with relevant state and federal regulations.	Annually or as required by the Schedule of Due Dates according to Attachment C.
Contractor shall participate in monitoring visits related to the provision of special education and related services.	Provide records, evidence, and access to Agency as requested to review compliance with state and federal laws related to the provision of special education and related services	Available for comprehensive programmatic review annually, including monthly check-ins, or as required by applicable regulations.
Contractor shall maintain a Food Service program in compliance with applicable local, state, and federal regulations relating to the provision of child nutrition services.	Compliance with and submission of the necessary reporting requirements of local, state, and federal certifications and data collections.	Available for review annually or as required by applicable agencies.
Contractor shall adopt and maintain policies and procedures, handbooks, and school manuals covering necessary operations and state or federal requirements.	Submit copies of all adopted school policies, procedures, handbooks, or school manuals to Agency by email or other agreed upon format.	Prior to initial operation and upon adoption or new or revised documents.
Contractor shall report actual operating expenditures described in OAR 581-030-0001.	Submit annual operating expenditure report for the prior fiscal year with information listed in OAR	Within 60 days of the end of a fiscal year.



	581-030-0001 to Agency by email or other agreed upon format.	
Contractor shall comply with applicable state and federal laws related to employees and provide annual report verifying required certifications, training, and background checks.	Submit report with a list of all employees with the applicable licenses, certifications, training, background checks, and fingerprinting to Agency by email or other agreed upon format.	Before the first instructional day of each school year.
Contractor shall establish and maintain an admission process for students that describes the requirements for students to be enrolled in the Approved Recovery School.	Submit student application and admission procedure to Agency by email or other agreed upon format.	Before the procedure is used in the first year of operation as an Approved Recovery School and upon revision or update.
Contractor shall conduct a self-evaluation using the Association of Recovery Schools standards for accreditation or other tool provided by the Agency.	Submit results of the self-evaluation to Agency by email or other agreed upon format.	Annually, by June 30.
Contractor shall complete an annual self-evaluation of educational, financial, operational, and recovery programs.	Submit results of the evaluation to Agency by email or other agreed upon format.	Annually, by June 30.
Contractor shall participate in annual site visits conducted by Agency to evaluate the school’s compliance with state and federal laws, academic and recovery performance, operational performance, financial performance, and progress toward or maintenance of accreditation by the Association of Recovery Schools.	Participate in site visits and produce reports or documents necessary for Agency’s evaluation of the school.	Annually, on a schedule agreed upon by Agency and Contractor prior to each school year. At least one site visit, to be conducted during the school year with students present.
Contractor shall be accredited by the Association of Recovery Schools before June 30 of the fifth year of operation and will maintain accreditation status for each year after.	Submit evidence of accreditation to Agency by email or other agreed upon format.	By June 30 of the fifth year of operation and each subsequent year.
Contractor shall provide a comprehensive high school education aligned to Oregon adopted content standards that meets the Oregon diploma requirements for each student enrolled, developing an explicit	Submit curriculum map with scope and sequence across all content areas as required for an Oregon diploma and as offered by the school to Agency by email or other agreed upon format.	By June 30 of each year as reviewed during site visits, desk audits, or through Agency monitoring activities.

<p>plan leading to high school graduation for each student. Graduation credits shall be accrued and diplomas awarded in accordance with ORS 336.680.</p>	<p>Submission shall include sample individualized student recovery goal plans for students with different needs.</p>	
<p>Contractor shall provide a recovery program with differentiated instruction and resources needed to address student substance use and co-occurring behavioral health care needs.</p>	<p>Submit the recovery program description, manual, and supporting materials that clearly outlines the specific program offerings, layers of support, staffing, credentials, and partnerships in place (or being developed) that meet the individual and collective needs of the students enrolled in the school to Agency by email or other agreed upon format.</p>	<p>By June 30 of each year as reviewed during site visits, desk audits, or through Agency monitoring activities.</p>
<p>Contractor shall implement a student transition plan with supports to help students develop the skills, resources, and support networks they need to maintain long-term recovery and lead healthy, fulfilling lives beyond high school.</p>	<p>Submit evidence of a transition supports and supporting materials to Agency by email or other agreed upon format.</p>	<p>By June 30 of each year as reviewed during site visits, desk audits, or through Agency monitoring activities.</p>
<p>Contractor shall participate in regular meetings with Agency to review current performance, provide updates, and share information.</p>	<p>Attendance in meetings as documented by Agency.</p>	<p>Quarterly or as required by Agency.</p>
<p>Contractor shall design, implement, and maintain a family engagement plan that provides support, education, and resources to families of students. Contractor may partner with other organizations and agencies to implement this plan.</p>	<p>Submit evidence of a family engagement plan and supporting materials to Agency by email or other agreed upon format.</p>	<p>By June 30 of each year as reviewed during site visits, desk audits, or through Agency monitoring activities.</p>
<p>Contractor shall cultivate partnerships with local, regional, and state organizations to support the education and recovery programs offered at the school, made available to enrolled students, Approved Recovery School staff, and families of enrolled students, to maximize services and additional funding</p>	<p>Submit evidence of a partnerships cultivated and supporting materials to Agency by email or other agreed upon format.</p>	<p>By June 30 of each year as reviewed during site visits, desk audits, or through Agency monitoring activities.</p>

opportunities for the school.		
Contractor shall establish alternative peer group programming for students during the school year, beyond regular school days, and during breaks during the academic calendar. Programming may be satisfied through partnerships with local organizations.	Submit description of alternative peer group program, calendar of activities, and participation data to Agency by email or other agreed upon format.	Annually before the school begins serving students each school year and participation reports submitted quarterly.

## **EXHIBIT B – IGA for local Oregon governments only**

### **SUBCONTRACTOR INSURANCE**

Local Government shall require its first-tier Contractor(s) (Contractor) 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 Contractor(s) perform under contracts between Local Government and the Contractors (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.

Local Government shall not authorize Contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Local Government shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Local Government shall incorporate appropriate provisions in the Subcontracts permitting it to enforce Contractor 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 Local Government permit a Contractor to work under a Subcontract when the Local Government is aware that the Contractor is not in compliance with the insurance requirements. As used in this section, a "first-tier" Contractor is a Contractor with which the Local Government directly enters into a contract. It does not include a subcontractor with which the Contractor enters into a contract.

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

### **INSURANCE TYPES AND AMOUNTS**

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

All employers, including Contractor, 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). 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.

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

**COMMERCIAL GENERAL LIABILITY:**

Contractor shall provide Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State 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 \$2,000,000.00 per occurrence and not less than \$4,000,000.00 annual aggregate limit.

**AUTOMOBILE LIABILITY:**

**Required**

Contractor shall provide Automobile Liability Insurance covering Contractor’s business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$5,000,000.00 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**

Contractor 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 Contractor and Contractor’s subcontractors, agents, officers or employees in an amount not less than \$5,000,000.00 per claim and not less than \$10,000,000.00 annual aggregate limit.

If coverage is provided on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability Insurance coverage, or the Contractor and subcontractors shall provide continuous claims made coverage as stated below.

**NETWORK SECURITY AND PRIVACY LIABILITY:**

**Required**

Contractor shall provide Network Security and Privacy Liability Insurance for the duration of the sub/contract and for the period of time in which Contractor (or its business associates or subcontractor(s)) maintains, possesses, stores or has access to agency, State of Oregon or client data, whichever is longer, with a combined single limit of no less than \$1,000,000.00 per claim or incident. This insurance must include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of agency or client data (which may include, but is not limited to, Personally Identifiable Information (“PII”), payment card data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of agency, State of Oregon data.

**DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY:**

**Required**

Contractor shall provide Directors, Officers and Organization Liability Insurance covering Contractor’s organization, directors, officers, and trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight - including improper oversight and/or use of grant funds and donor contributions which includes state or federal funds with a combined single limit of no less than \$1,000,000.00 per claim.

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

**Required**

Contractor shall provide Employee Dishonesty or Fidelity Bond coverages for loss of state-owned property by dishonest acts of an employee of the Contractor. Coverage limits shall not be less than funding amount.

**PHYSICAL ABUSE AND MOLESTATION INSURANCE COVERAGE:**

**Required**

Contractor shall provide Abuse and Molestation Insurance in a form and with coverage that are satisfactory to the Agency/Local Government 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 must include the Contractor, and the Contractor’s employees and volunteers. Coverage must be written on an occurrence basis in an amount of not less than \$5,000,000.00 per occurrence. Any annual aggregate limit shall not be less than \$10,000,000.00. 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.

**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 Contractor’s primary and Excess liability policies are exhausted.

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

**ADDITIONAL COVERAGE REQUIREMENTS:**

Contractor’s insurance shall be primary and non-contributory with any other insurance. Contractor 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, Directors and Officers 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 Contractor'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 Contractor’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:**

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor 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 Contractor or the Contractor's insurer(s).

**CONTINUOUS CLAIMS MADE COVERAGE:**

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

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

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

Local Government shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before Contractor 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/Local Government 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 Local Government before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

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

**STATE ACCEPTANCE:**

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