

NOTICE AND DISCLAIMER

The Crook County Court is the governing body of Crook County and holds public meetings (generally on the first and third Wednesday of each month) to deliberate upon matters of County concern. As part of its efforts to keep the public apprised of its activities, the Crook County Court has published this PDF file. This file contains the material to be presented before the County Court for its next scheduled regular meeting.

Please note that while County staff members make a dedicated effort to keep this file up to date, documents and content maybe added, removed or changed between when this file is posted online and when the County Court meeting is held. The material contained herein maybe changed at any time, with or without notice.

CROOK COUNTY MAKES NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING ANY WARRENTY OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE OR FOR ANY OTHER MATTER. THE COUNTY IS NOT RESPONSIBLE FOR POSSIBLE ERRORS, OMMISSIONS, MISUSE OR MISINTERPERTATION.

Please also note that this file does not contain any materials scheduled to be discussed at an executive session or material the access to which maybe restricted under the terms of Oregon law.

If you are interested in obtaining additional coples of any of the documents contained herein, they maybe obtained by completing a Crook County Public Records Request form. Request forms are available on the County's website.

**CROOK COUNTY COURT MINUTES
OF JULY 19, 2022 WORK SESSION
Open Portion**

Be It Remembered that the Crook County Court met in a regularly scheduled Work Session on July 19, 2022, at 9:00 a.m. in the Administration Conference room located at 203 NE Court Street, Prineville, Oregon 97754.

Court Members Present: Judge Seth Crawford and Commissioner Brian Barney

Absentees: Commissioner Jerry Brummer

Others Present in Person or Via WebEx: Legal Counsels Eric Blaine and John Eisler; Administration Executive Assistant Amy Albert; Legal Assistant Lindsay Azevedo; Director Kim Barber; Director Will VanVactor and members of the public.

WORK SESSION

The meeting was **called to order at 9:00 a.m.**

Agenda Item #1, Measure 109 Psilocybin Ordinance Discussion: This matter was discussed at a prior work session, it was decided at that work session the County would correspond with the City before making any decisions. As of today, the City has not made a decision on this topic. Due to time constraints the County will draft an Ordinance for the August 3rd Regular Meeting, so this matter may be placed on the November ballot.

At 9:08 a.m. the Court read into Executive Session under the following statute(s): ORS 192.660(2)(e) For the purpose of conducting deliberations with persons designated by the governing body to negotiate real property transactions.

EXECUTIVE SESSION

MOTION to delegate Judge Crawford authority to grant a temporary access license. Motion seconded. No further discussion. Motion carried 3-0.

MOTION to correspond with counter party as discussed in the executive session. Motion seconded. No further discussion. Motion carried 3-0. There being no further business before the Court, the meeting was **adjourned at 9:38 a.m.**

Respectfully submitted,

Amy Albert

**CROOK COUNTY COURT MINUTES
OF JULY 26, 2022 WORK SESSION
Open Portion**

Be It Remembered that the Crook County Court met in a regularly scheduled Work Session on July 26, 2022, at 9:00 a.m. in the Administration Conference room located at 203 NE Court Street, Prineville, Oregon 97754.

Court Members Present: Judge Seth Crawford, Commissioner Jerry Brummer and Commissioner Brian Barney

Absentees: None

Others Present in Person or Via WebEx: Legal Counsels Eric Blaine and John Eisler; Administration Executive Assistant Amy Albert; Legal Assistant Lindsay Azevedo; Assessor Jon Soliz; Mike Warren and Kelsey Lucas.

WORK SESSION

The meeting was **called to order at 9:00 a.m.**

Agenda Item #1, Center for Rural Innovation: Kelsey Lucas presented County Court with an opportunity to work with Facebook on broadband upgrades and accelerating digital growth and scalable startups within Crook County. Facebook would seek federal funding for these projects. The County's only obligation would be to find individuals willing to be meet several times per month to assist with these projects. The County Court would like to move forward with both projects. Ms. Lucas has a presentation scheduled with City Counsel.

At 9:18 a.m. the Court read into Executive Session under the following statute(s): ORS 192.660(2)(e) For the purpose of conducting deliberations with persons designated by the governing body to negotiate real property transactions.

EXECUTIVE SESSION

At the conclusion of the Executive Session, the County Court convened back into Open Session, inviting members of the public into the meeting room.

MOTION to direct staff to correspond with counter party as discussed in the Executive Session. Motion seconded. No further discussion. Motion carried 3-0. There being no further business before the Court, the meeting was **adjourned at 10:08 a.m.**

Respectfully submitted,

Amy Albert

**CROOK COUNTY COURT MINUTES
OF JULY 20, 2022 REGULAR MEETING
Open Portion**

Be It Remembered that the Crook County Court met in a Regular Court meeting on July 20, 2022, at 9:00 a.m. in the County meeting room located at 320 NE Court Street, Prineville, Oregon 97754.

Court Members Present: Judge Seth Crawford and Commissioner Brian Barney

Absentees: Commissioner Jerry Brummer

Others Present in Person or Via WebEx: Legal Counsels Eric Blaine and John Eisler; Administration Executive Assistants Amy Albert; Legal Assistant Lindsay Azevedo; Director Kim Barber; Director Will VanVactor; Manager Brent Bybee; Assessor Jon Soliz; Director Dodge Kerr and Sheriff Gautney.

REGULAR SESSION

The meeting was **called to order at 9:00 a.m.**

Public Comment: None given.

MOTION to approve the Consent Agenda as presented with these changes. Motion seconded. No discussion. Motion carried 2-0.

Discussion item #: Community Development Director Will VanVactor presented the Court with Order 2022-23, the naming of a private drive. The naming of the road has been approved by the Planning Department and would benefit the Fire Department, for safety purposes. A public hearing was held with no comment.

MOTION to approve the road naming of Marilyn Way. Motion seconded. No further discussion. Motion carried 2-0.

EXECUTIVE SESSION

None Scheduled

There being no further business before the Court, the meeting was **adjourned at 9:07 a.m.**

Respectfully submitted,

Amy Albert

**CROOK COUNTY COURT MINUTES
OF JULY 20, 2022 BRASADA PHASE 15 APPEAL
Open Portion**

Be It Remembered that the Crook County Court met in a Brasada Phase 15 Appeal hearing on July 20, 2022, at 9:30 a.m. in the County meeting room located at 320 NE Court Street, Prineville, Oregon 97754.

Court Members Present: Judge Seth Crawford and Commissioner Brian Barney

Absentees: Commissioner Jerry Brummer

Others Present in Person or Via WebEx: Legal Counsels Eric Blaine and John Eisler; Administration Executive Assistants Amy Albert; Legal Assistant Lindsay Azevedo; Director Will VanVactor; Manager Will Bybee; Laura Cooper; Megan Burgess; Brent McLean; Dan Cooper; Jeff Ramirez; Jim Ferraris and Greg Kelso.

BRASADA PHASE 15 APPEAL HEARING

The meeting was **called to order at 9:30 a.m.**

This is the second hearing for Brasada Phase 15 Appeal hearing. Judge Crawford read the required process and procedure before opening a public hearing.

County Counsel Eric Blaine informed the Court of the additional submission from the Applicant on July 18th.

Planning Manager Brent Bybee provided the Staff's response to the Appellant's appeal and refund request. Mr. Bybee also provided Staff's recommendations to the Court.

Applicant's Counsel Laura Cooper discussed findings set forth by Staff, agreeing that the overnight lodging units are permanent and although County Code changed in 2019, overnight lodging does not mention separate fire-rated lock-off doors and firewalls.

Appellant's Counsel Megan Burgess requested time to review the Applicant's submission from July 18th, as it was not sent to her. The Court took a thirty-minute break. At the conclusion of the break, Ms. Burgess requested until the end of business Monday to submit her response. Ms. Cooper would like until the 29th for her rebuttal. The hearing proceeded, with the exception of the July 18th submittal.

Ms. Burgess stated she disagrees with the Staff's findings regarding the permanent fire-rated lock-off doors and firewalls. Ms. Burgess responded to the Staff's findings that the fees were just, stating the request for a refund establishes good cause.

Ms. Cooper concluded by stating the Court should sustain the Planning Commissions discission.

Mr. Bybee stated the fire-rated lock-off doors and firewalls are a matter for the Building Department, not planning and this is not something the Planning Department addresses.

The public hearing was closed. The record will remain open until July 29th for the limited purposes stated above.

MOTION to continue until August 3, 2022, at 9 a.m. at 320 NE Court Street, Prineville, Oregon. Motion seconded. No further discussion. Motion carried 2-0.

There being no further business before the Court, the meeting was **adjourned at 10:50 a.m.**

Respectfully submitted,

Amy Albert

**IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CROOK**

**IN THE MATTER OF INSTRUCTING
THE COUNTY JUDGE TO FILE WITH
THE COUNTY CLERK A NOTICE OF
COUNTY MEASURE ELECTION IN
THE MATTER OF THE BOWMAN
MUSEUM LOCAL OPERATING LEVY**

ORDER 2022-34

WHEREAS, the local operating levy which supports the Bowman Museum is scheduled to expire; and

WHEREAS, the Bowman Museum provides an important service to the citizens of Crook County by preserving the historical record of the County for the education and enjoyment of citizens and visitors; and

WHEREAS, the Bowman Museum is dependent upon continuing support from taxpayers in order to have needed funds to operate;

WHEREAS, unless renewed by voters, the present levy will expire after the 2022-2023 fiscal year.

NOW, THEREFORE, IT IS HEREBY ORDERED that the County Court instructs and empowers the County Judge to file with the County Clerk a Notice of County Measure Election asking voters of Crook County if they will consent to the continuation of the levy at the new rate of 0.10 cents per thousand dollars of assessed taxable valuation for a term of four years, and

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IT IS FURTHER ORDERED that the County Court authorizes the Judge to revise the language of such submission as needed to meet such legal requirements as the County Clerk and Oregon law may impose.

Dated this _____ day of August 2022.

CROOK COUNTY COURT

Seth Crawford
County Judge

Jerry Brummer
County Commissioner

Brian Barney
County Commissioner

Notice of Measure Election

County

SE 801

rev 01/18: ORS 250.035, 250.041,
250.175, 254.103, 254.465

Notice

Date of Notice

Name of County or Counties

Date of Election

Crook County

Final Ballot Title The following is the final ballot title of the measure to be submitted to the county's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

Caption 10 words which reasonably identifies the subject of the measure.

Change the Bowman Museum four-year operating local option levy.

Question 20 words which plainly phrases the chief purpose of the measure.

Shall the current levy supporting the Bowman Museum change to four years beginning at \$0.10 per \$1,000.00 taxable assessed value?

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

The Bowman Museum is operated by the Crook County Historical Society in an historic building donated for the purpose of a museum. The museum operates on taxes and funding provided by donations, memberships, grants, and retail proceeds. The amount of the current levy will increase from \$0.06 per thousand of taxable assessed valuation to \$0.10 per thousand of taxable assessed valuation. For example: A property with a \$200,000 taxable assessed value would pay \$20 per year. If the levy is not renewed, it will not be collected after 2022-23. Levy proceeds fund ongoing expenses including building maintenance and upkeep, staffing, and collection development. Voting "yes" continues the levy. Voting "no" will force the Museum to reduce hours, reduce staff, or otherwise reduce its efforts to educate the public about the history of Crook County. The levy will generate approximately \$295,3000 in 2023-24, \$311,541 in 2024-25, \$328,676 in 2025-26, and \$346,753 in 2026-27. The estimated tax revenue for this measure is an ESTIMATE ONLY.

Explanatory Statement 500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:

→ any measure referred by the county governing body; **or**
→ any initiative or referendum, if required by local ordinance.

Explanatory Statement Attached?

☒ Yes

☐ No

Authorized County Official Not required to be notarized.

Name

Title

Seth Crawford

Crook County Judge

Mailing Address

Contact Phone

300 NE 3rd Street, Prineville, OR 97754

541-447-6555

By signing this document:

→ I hereby state that I am authorized by the county to submit this Notice of Measure Election; **and**

→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature

Date Signed

Request for Ballot Title

Preparation or Publication of Notice

No later than the **81st day before an election**, a governing body that has referred a measure must prepare and file with the local elections official the text of the referral for ballot title preparation or the ballot title for publication of notice of receipt of ballot title. This form may be used to file the text of the referral and request the elections official begin the ballot title drafting process or file a ballot title and request the elections official publish notice of receipt of ballot title.

Filing Information

Election Date

Tuesday, November 8, 2022

Authorized Official

Judge Seth Crawford

Contact Phone

541-447-6555

Email Address

seth.crawford@co.crook.or.us

Referral Information

Title, Number or other Identifier**This Filing is For**

☐ Drafting of Ballot Title Attach referral text.

☒ Publication of Notice Ballot title below.

Ballot Title Additional requirements may apply

Caption 10 words which reasonably identifies the subject of the measure.

Change Bowman Museum four-year operating local option levy.

Question 20 words which plainly phrases the chief purpose of the measure.

Shall the current levy supporting the Bowman Museum change to four years beginning 2023 at \$0.10 per \$1,000 taxable assessed value?

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

The Bowman Museum is operated by the Crook County Historical Society in an historic building donated for the purpose of a museum. The museum operates on taxes and funding provided by donations, memberships, grants, and retail proceeds. The amount of the current levy will increase from \$0.06 cents per thousand of taxable assessed valuation to \$0.10 cents per thousand of taxable assessed valuation. For example: A property with a \$200,000 taxable assessed value would pay \$20 per year. If the levy is not renewed, it will not be collected after 2022-23. Levy proceeds fund ongoing expenses including building maintenance and upkeep, staffing, and collection development. Voting "yes" continues the levy. Voting "no" will force the Museum to reduce hours, reduce staff, or otherwise reduce its efforts to educate the public about the history of Crook County. The levy will generate approximately \$295,300 in 2023-24, \$311,541 in 2024-25, \$328, 676 in 2025-26, and \$346,753 in 2026-27. The estimated tax revenue for this measure is an ESTIMATE ONLY.

By signing this document:

→ I hereby state that I am authorized by the county or city governing body, or district elections authority to submit this Request for Ballot Title – Preparation or Publication of Notice.

Signature

Date Signed

Crook County Counsel's Office

Mailing: 300 NE Third St., Prineville, OR 97754

• Phone: 541-416-3919

Physical: 301 NE 3rd St., Ste 200, Prineville, OR 97754

• Fax: 541-447-6705



MEMO

TO: Crook County Court

FROM: County Counsel

DATE: July 25, 2022

RE: OR126 Redmond – Powell Butte IGA
Our File No.: Road 365

Enclosed is Intergovernmental Agreement OR126: Redmond – Powell Butte (K20167) between ODOT, Crook County, and Deschutes County (the "IGA"). The IGA covers a 3R pavement preservation project with pedestrian enhancements from Evergreen Avenue in Redmond to the OR 126/Powell Butte Highway intersection.

According to the IGA, pedestrian improvements are limited to the urban area of Redmond. The Crook County portions will be improved through repaving, signing, and striping. The Powell Butte Highway intersection will also get a new ITS camera and warning signs.

The County has no monetary obligation in this IGA. The County's main obligations are to provide access, communication, and comply with various state and federal laws.

Please let me know if you have any questions.

Please place this memo and the attached document(s) on the Wednesday, August 3rd, 2022 County Court Agenda as a CONSENT ITEM, for approval and signatures.

**INTERGOVERNMENTAL AGREEMENT
OR126: Redmond – Powell Butte (K20167)
Crook County / Deschutes County**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT" or "State;" and Crook County, acting by and through its elected officials, hereinafter referred to as "Crook County;" and Deschutes County, acting by and through its elected officials, hereinafter referred to as "Deschutes County;" all herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. State's OR126: Redmond – Powell Butte project (Key No. 20167) is a 3R pavement preservation project that also contains some pedestrian enhancements. OR126 from the US97 intersection east to Powell Butte Highway will be repaved. The western most project limits are within the City of Redmond and will also receive ADA curb ramp upgrades, sidewalk infill, storm water improvements, shoulder widening to facilitate bike lane construction and improved pedestrian crossing(s) in the urban section of the project from US97 to SE Evergreen Ave. There will be a Cascades East Transit (CET) transit stop installed for westbound traveling buses stopping on OR126 just west of NE Warsaw Ave. Signing and striping will also be upgraded throughout the project and a new ITS camera will be installed at the intersection of OR 126 and Powell Butte Highway. Advance intersection warning signs will be installed at the OR126 and Powell Butte Highway intersection.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, Parties agree to allow State to access Deschutes County and Crook County's road system for the purpose of field work, project construction, traffic control signing, and staging for the portion of State's OR126: Redmond – Powell Butte project within their respective jurisdictions, hereinafter referred to as "Project."
2. State shall provide traffic control plans including detours and closures, if applicable, to Crook County and Deschutes County for review and approval prior to the commencement of Project construction.

Deschutes County, Crook County, and ODOT
Agreement No. 73000-00006098

3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

CROOK COUNTY OBLIGATIONS

1. Crook County grants State the right to enter onto Crook County property for the performance of State's duties as set forth in this Agreement.
2. Crook County shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Crook County expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
3. Crook County shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. All employers, including Crook County, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Crook County shall ensure that each of its contractors complies with these requirements.
5. Crook County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Crook County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Crook County.
6. Crook County's Project Manager for this Project is Robert O'Neal, Road Master, 300 NE 3rd Street, Prineville, OR 97754, 541-447-4644, Bob.Oneal@co.crook.or.us) or assigned designee upon individual's absence. Crook County shall notify the other Party in writing of any contact information changes during the term of this Agreement.

DESCHUTES COUNTY OBLIGATIONS

Deschutes County, Crook County, and ODOT
Agreement No. 73000-00006098

1. Deschutes County grants State the right to enter onto Deschutes County property for the performance of State's duties as set forth in this Agreement.
2. Deschutes County shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Deschutes County expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
3. Deschutes County shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. All employers, including Deschutes County, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Deschutes County shall ensure that each of its contractors complies with these requirements.
5. Deschutes County acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Deschutes County which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
6. Deschutes County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Deschutes County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Deschutes County.
7. Deschutes County's Project Manager for this Project is Cody Smith, County Engineer, 61150 NE 27th St, Bend, OR 97702, (541) 322-7113, Cody.Smith@deschutes.org, or assigned designee upon individual's absence. Deschutes County shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall access Crook County and Deschutes County Right of Way and jurisdiction for the purpose of completing the work as identified in the TERMS OF AGREEMENT, Paragraph 1 above.
2. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
3. State's Project Manager for this Project is Cari Charlton, Resident Engineer – Consultant Projects, 63055 N. Highway 97, Building M, Bend, Oregon, 97703, (541) 815-6831, cari.charlton@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
2. State may terminate this Agreement effective upon delivery of written notice to Crook County and Deschutes County, or at such later date as may be established by State, under any of the following conditions:
 - a. If Crook County and/or Deschutes County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Crook County and/or Deschutes County fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Crook County and/or Deschutes County fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

Deschutes County, Crook County, and ODOT
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3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. Americans with Disabilities Act Compliance:
 - a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
 - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>; and
 - b. Crook County and Deschutes County shall ensure that any portions of the Project under their respective maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Crook County and Deschutes County ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Crook County and Deschutes County identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Crook County and Deschutes County, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,

Deschutes County, Crook County, and ODOT
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- iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- c. Maintenance obligations in this section shall survive termination of this Agreement.
- 5. 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 ("Third Party Claim") against State or Crook County and Deschutes County with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. 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 a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- 6. With respect to a Third Party Claim for which State is jointly liable with Crook County and Deschutes County (or would be if joined in the Third Party Claim), State 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 Crook County and Deschutes County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Crook County and Deschutes County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Crook County and Deschutes County 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. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
- 7. With respect to a Third Party Claim for which Crook County and Deschutes County is jointly liable with State (or would be if joined in the Third Party Claim), Crook County and Deschutes County 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 State in such proportion as is appropriate to reflect the relative fault of Crook County and Deschutes County on the one hand and of State on the other hand in connection with the events which resulted in such

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Agreement No. 73000-00006098

expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Crook County and Deschutes County on the one hand and of State 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. Crook County and Deschutes County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. As federal funds are involved in this Agreement, EXHIBITS B and C are attached hereto and by this reference made a part hereof, and are hereby certified to by Crook County and Deschutes County representative.
10. Crook County and Deschutes County, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Crook County and Deschutes County's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Crook County and Deschutes County's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Crook County and Deschutes County, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
11. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
12. This Agreement 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 Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

Deschutes County, Crook County, and ODOT
Agreement No. 73000-00006098

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2021-2024 Statewide Transportation Improvement Program (STIP), (Key #20167) that was adopted by the Oregon Transportation Commission on July 16, 2020 (or subsequently by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

Deschutes County, Crook County, and ODOT
Agreement No. 73000-00006098

CROOK COUNTY, by and through its
elected officials

By _____
Seth Crawford, County Judge

Date _____

By _____
Jerry Brummer, County Commissioner

Date _____

By _____
Brian Barnie, County Commissioner

Date _____

**LEGAL REVIEW APPROVAL (If required
in Crook County's process)**

By _____
Crook County's Counsel

Date _____

DESCHUTES COUNTY, by and through
its elected officials

By _____

Date _____

By _____

Date _____

**LEGAL REVIEW APPROVAL (If required
Deschutes County's process)**

By _____
Deschutes County's Counsel

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 4 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By n/a _____
Assistant Attorney General (If Over
\$150,000)

Date _____

Crook County Contact:

Robert O'Neal, Road Master 300 NE 3rd
Street, Prineville, OR 97754
(541) 447-4644
Bob.Oneal@co.crook.or.us

Deschutes County Contact:

Cody Smith, County Engineer
61150 NE 27th St, Bend, OR 97702,
(541) 322-7113
Cody.Smith@deschutes.org

State Contact:

Cari Charlton
Resident Engineer – Consultant Projects
63055 N. Highway 97, Building M
Bend, Oregon, 97703
(541) 815-6831
cari.charlton@odot.oregon.gov

Deschutes County, Crook County, and ODOT
Agreement No. 73000-00006098

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Crook County and Deschutes County and references to Contract shall mean Agreement.

**EXHIBIT B
CONTRACTOR CERTIFICATION**

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

EXHIBIT C

Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

Agency/State
Agreement No.

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or Crook County and Deschutes County;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating Crook County and Deschutes County, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION,

AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-2710) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or Crook County and Deschutes County entering into this transaction.

Deschutes County, Crook County, and ODOT
Agreement No. 73000-00006098

7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273,
REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and

Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or Crook County and Deschutes County with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or Crook County and Deschutes County with which this transaction originated.

Deschutes County, Crook County, and ODOT
Agreement No. 73000-00006098

6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or Crook County and Deschutes County with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment,
Suspension, Ineligibility, and Voluntary
Exclusion--Lower Tier Covered
Transactions**

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended,

proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or Crook County and Deschutes County.

- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and

Deschutes County, Crook County, and ODOT
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successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto.

Deschutes County, Crook County, and ODOT
Agreement No. 73000-00006098

Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS
ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Crook County and Deschutes County has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Crook County and Deschutes County agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that

Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

Deschutes County, Crook County, and ODOT
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VII. LOBBYING

REQUIREMENT CONTACT OFFICE OF
CIVIL RIGHTS AT (503)986-4354.

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal Crook County and Deschutes County, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal Crook County and Deschutes County, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING
DEPARTMENT'S DBE PROGRAM

Crook County Counsel's Office

Mailing: 300 NE Third St., Prineville, OR 97754

• Phone: 541-416-3919

Physical: 301 NE 3rd St., Ste 200, Prineville, OR 97754

• Fax: 541-447-6705



MEMO

TO: Crook County Court

FROM: County Counsel

DATE: July 25, 2022

RE: *OHA/Moda Participation Prescription Voucher Program (#163689)*
Our File No.: JAIL 22

The Sheriff's Office is interested in executing a participating program agreement under an umbrella contract executed by Moda Health Plan, Inc. and the State of Oregon. Under this agreement, the County would name Moda as its agent to negotiate and settle prices for prescription drugs, and thereafter facilitate their deliver. Such services will, hopefully, help to keep costs down for the provision of prescribed medications to inmates. The negotiated prices would be the same, give or take shipping costs, for all similarly situated participating entities.

Though lengthy, the agreement has terms which the County has agreed to in the past, and, in fact, contains provisions that are frequently to the County's advantage.

However, the agreement makes clear that Moda will serve as the County's exclusive provider for such services. Presumably, if all participating entitles grant Moda this exclusivity, they will have a large-enough purchasing base to negotiate a volume discount from drug wholesalers.

I will need to defer to the Sheriff's Office whether the drug prices are tolerable, but otherwise, this agreement is legally sufficient.

Please place this memo and the attached document(s) on the Wednesday, August 3, 2022, County Court Agenda as a CONSENT ITEM, for approval and signatures.

PARTICIPATING PROGRAM VOUCHER PROGRAM AGREEMENT

This Participating Program Voucher Program Agreement (“Agreement”) is entered into by and between the following (each a “Party” and collectively the “Parties”):

- (1) Crook County, an Oregon municipality (“Participating Program”); and
- (2) Moda Health Plan, Inc., an Oregon Corporation (“Contractor”).

This Agreement 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 this Agreement so executed constitutes an original.

RECITALS

WHEREAS, the state of Oregon (“State”), acting by and through its Oregon Health Authority (“OHA”), Oregon Prescription Drug Program (“OPDP”), hereafter called “Benefiting Agency,” and the Oregon Prescription Drug Program have formed an interstate drug purchasing consortium (the “Consortium”);

WHEREAS, through the Consortium, Benefiting Agency arranges Pharmacy Benefit Administrative Services for Participating Program, using Contractor under the contract for Comprehensive Services for Pharmacy Benefit Administration OHA #163689 dated December 17, 2020, as amended from time to time, the “Consortium Contract”);

WHEREAS, Participating Program has established and maintains a Pharmacy Benefit Plan(s) and provides its Members and their dependents benefits for prescription drugs and certain devices and supplies dispensed by pharmacies; and

WHEREAS, Participating Program desires to implement the Pharmacy Benefit Plan(s) pursuant to the Consortium Contract and the Services of Contractor; and

WHEREAS, Participating Program and Contractor desire to establish this Participating Program Agreement (Agreement) for the management of the Pharmacy Benefit Plan(s) sponsored by Participating Program;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties agree as follows:

AGREEMENT

1. Contract Administrators

Benefiting Agency is represented for purposes of the Consortium Contract and this Participating Program Agreement by a Co-Administrator, who is:

**Trevor Douglass, Administrator,
Oregon Prescription Drug Program (OPDP)
500 Summer St. NE, E-65
Salem, OR 97301
Phone: (971) 209-8491
E-mail: Trevor.Douglass@state.or.us**

Participating Program is represented for purposes of this Agreement by Participating Program Administrator, who is:

**Crook County
300 NE 3rd Street Prineville
Crook County, OR 97754**

Contractor is represented for purposes of this Agreement by Contractor Administrator, who is:

**Chandra Wahrgren, Senior Vice President
Moda Health Plan, Inc.
601 SW 2nd Ave
Portland, OR 97204
Phone: (503) 265-5607
E-mail: Chandra.Wahrgren@modahealth.com**

2. Effective Date and Duration

This Agreement is effective when all necessary signatures have been obtained. Unless terminated earlier or extended by Participating Program in accordance with its terms, this Agreement terminates on December 31, 2026. The Service Effective Date is **August 2, 2022**.

3. Purpose

The purpose of this Agreement is for Contractor to provide comprehensive Pharmacy Benefit Administration Services for Participating Program. As elected by Participating Program within this Agreement, the Services may include: administrative Services such as Prescription Drug Claims adjudication, prescription utilization management, Preferred Drug List (PDL) management, Member Services, account management, online Services, in-State and national pharmacy network management, Participating Mail-Order, and Participating Specialty Pharmacy management.

4. Agreement Documents

This Agreement consists of (a) this Agreement without attachments, together with (b) the following listed attachments (each an “Attachment” and collectively the “Attachments”) and Schedules which are attached and are hereby incorporated into this Agreement by reference:

Attachment 1	Administrative Service Fees
Attachment 2	General Financial Terms
Attachment 3	Pharmacy Network Rates and Financial Guarantees
Attachment 4	Rebate Guarantees
Attachment 5	[RESERVED]
Attachment 6	Business Associate Agreement
Attachment 7	[RESERVED]
Schedule 1	Participating Program-Specific Requirements

The Attachments set forth certain terms and conditions of the Agreement that are relevant to Contractor’s administration of Pharmacy Benefit Services for Participating Program. The Agreement, the Attachments, and Schedule 1 may be amended or replaced from time to time as provided in Article XXII, Section 22.01, Extent of Amendment; Required Amendments.

5. Responsibilities of Contractor

Contractor shall perform Pharmacy Benefit Administration Services as described in this Agreement.

6. Responsibilities of Participating Program

Participating Program authorizes Contractor to perform the Services in exchange for Participating Program’s payment to Contractor of the fees described in Attachment 1, Administrative Service Fees, and Participating Program’s satisfaction of its responsibilities set forth in this Agreement.

[Signature Page Follows]

**THE PARTIES HAVE EXECUTED THIS PARTICIPATING PROGRAM AGREEMENT BY
THEIR AUTHORIZED SIGNATORIES:**

PARTICIPATING PROGRAM:

Signature 8/3/2022
Date

Name of Person Signing _____
Title

Email address:

CONTRACTOR:

Signature _____
Date

Chandra Wahrgren
Name of Person Signing _____
Title Senior Vice President

chandra.wahrgren@modahealth.com
Email address: _____

**APPROVED:
BENEFITING AGENCY:**

Signature _____
Date

Trevor Douglass
Name of Person Signing _____
Title Administrator

trevor.douglass@state.or.us
Email address: _____

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ARTICLE I DEFINITIONS

Section 1.01. Definitions and Meaning.

The terms below, including their single and plural forms, shall have the meanings set forth in this Article I:

“Affiliate” means all assignees, subsidiaries, parent companies, Successors and transferees, and persons under common control with a person; any officers, directors, partners, agents, and employees of such person; and all others acting or claiming to act on their behalf or in concert with them.

“Affordable Care Act” means the Patient Protection and Affordable Care Act of 2010 and the health care provisions of the Health Care and Education Reconciliation Act of 2010.

“Agreement” means the documents identified in Paragraph 4 (Agreement Documents) page 3.

“Assessment” means any amount Benefiting Agency charges to a Participating Program for Benefiting Agency’s operating expenses.

“Average Wholesale Price” or **“AWP”** means the Average Wholesale Price listed in the Drug Pricing Reference as updated Monday through Friday, excluding holidays.

“Base Administrative Fee” or **“BAF”** means a Participating Program’s estimated annual per Paid Claim administrative fees for purposes of calculating the financial consequences set forth in Attachment 5 (Performance Standards, Guarantees, and Incentives).

“Benefit Plan Design” or **“BPD”** means a description of the essential elements of the Pharmacy Benefit Plan, provided by Participating Program to Contractor for the initial program Implementation and ongoing program management.

“Benefiting Agency” has the meaning defined in the Recitals.

“Brand Drug” means a product whose National Drug Code number, has a Medi-Span multi-source indicator of “M” (co-branded product), “O” (originator brand) or an “N” (single source brand) for the Covered Drug on the date the claim was adjudicated. Claims for Covered Drug with a Medi-Span multi-source indicator of “O” and where such claim is submitted with a DAW code of “5”, shall be considered a Generic Drug. Contractor shall not change the Generic Product Flag for any given Paid Claim.

“Broker” means a consultant, broker, agent, representative, or other person responsible for evaluating pharmacy benefit Services on behalf of a Participating Program.

“Business Associate” has the meaning defined in 45 CFR, Part 160.103 and includes any entity that performs or assists in performing a function or activity involving the use/disclosure of Individually Identifiable Health Information or involving any other function or activity regulated by HIPAA; or provides legal, accounting, actuarial, consulting, data aggregation, management, accreditation, or financial service where the services involve Individually Identifiable Health Information.

“Business Associate Agreement” or **“BA Agreement”** means the separate Business Associate Agreement between Contractor as a Business Associate and Participating

Program as Covered Entity or Business Associate of Covered Entity as defined in the Privacy and Security Rules (45 CFR 160.103).

“Carrier” means an entity that provides health insurance or health plan administrative services.

“CFR” means Code of Federal Regulations.

“Clean Claim” means a Prescription Drug Claim that has no defect or impropriety, including any lack of any required substantiating documentation, or does not have any particular circumstances requiring special treatment that prevents timely payments from being made on the claim.

“CMS” means the federal Centers for Medicare & Medicaid Services.

“Confidential Information” means (a) proprietary, trade secret, or otherwise confidential technical and business information which may be in the form of, without limitation, databases, reporting packages and formats, utilization and management reports, Participating Program specific Prescription Drug Claims information, manuals, computer programs, software, or clinical or PDL-related operations or programs; (b) information marked or designated in writing by the disclosing party as “confidential” prior to initial disclosure; and (c) enrollment information, medical records, Prescription Drug Claims, payment information, Personal Information, and Protected Health Information. “Confidential Information” does not include any information which: (a) is or becomes public knowledge through no wrongful act of the receiving party; (b) was previously known by the receiving party without use of information obtained under this Contract; (c) was independently developed by the receiving party without use of Confidential Information; (d) becomes known to the receiving party from a source who had the right to disclose it without restriction; or (e) is disclosed with the written consent of the disclosing party.

“Consortium” or **“NW Consortium”** means Benefiting Agencies of Member States when acting jointly for procurement, contracting, contract administration, or negotiating Services for Participating Programs.

“Contractor” means that company identified in the preamble to this Agreement or the Successor to such company.

“Covered Drugs” means those Prescription Drugs, Specialty Drugs, and other items for which benefits may be paid according to the Benefit Plan Design.

“Covered Entity” means Participating Program that is a Covered Entity as such phrase is defined in the Privacy and Security Rules (45 CFR 160.103).

“Critical Access Pharmacy” or **“CAP”** means (a) a pharmacy in Oregon that is further than a ten-mile radius from any other pharmacy. If one CAP’s ten-mile radius intersects with that of another CAP, both shall be considered a CAP if either CAP’s closure could result in impaired access for rural areas, or (b) any pharmacy in Member State for which the Member State has requested reimbursement rates other than those listed in Attachment 3 (Pharmacy Network Rates and Financial Guarantees).

“Custom Preferred Drug List” means the Oregon/Washington Preferred Drug List including its Wrap-around Drug List and any Preferred Drug List created and maintained by Contractor or its Subcontractors.

“Customized Projects” means a project requested of Contractor by a Benefiting Agency or Participating Program that involves systems development or programming specific to the requesting Benefiting Agency or Participating Program. This excludes enterprise-wide changes made by Contractor to systems that are not related specifically to the Benefiting Agency or Participating Program. “Customized Project” excludes: (a) routine and minor support from Contractor, defined as production support or ongoing maintenance of existing systems; (b) requests to implement Contractor’s standard programs; or (c) annual changes in the Pharmacy Benefit Plan or the BPD.

“Days” means calendar days, unless business days are expressly specified.

“Disease Management” means the use of strategies and programs to manage patients at risk or those affected by a particular disease or medical condition.

“Dispensing Fee” means the dollar amount Contractor pays to a Participating Pharmacy for dispensing a Covered Drug to a Member.

“Drug Pricing Reference” means Medi-Span.

“Drug Utilization Review” or **“DUR”** means an evaluation of Prescription Drug use, prescribing patterns, or Member drug utilization to determine the appropriateness of drug therapy on the basis of clinical protocols utilized by Contractor and approved by the Participating Program.

“Effective Date” means the date on which this Contract is effective.

“Eligibility” or **“Eligible”** refers to persons eligible under Participating Program rules or procedures to enroll in the Pharmacy Benefit Plan.

“Eligible Participating Program” means any public-sector or private-sector Programs that are eligible to participate in either the OPDP or WPDP according to applicable statutes.

“Eligible Utilization” means Prescription Drug Claims for Prescription Drugs on a Participating Program’s Preferred Drug List dispensed by Participating Pharmacies to Members.

“Exclusive Specialty Pharmacy” means the Participating Specialty Pharmacy designated by Contractor as the primary Participating Specialty Pharmacy to dispense and deliver Prescription Drugs in accordance with the Specialty Pharmacy Program to Members or Prescribing Providers for Members.

“Facility” means an entity that primarily serves an institutional population, such as a jail, prison, correctional center, youth detention center, state hospital, or long-term care facility.

“FDA” means the United States Food and Drug Administration.

“Fiduciary” means a person or entity (including Contractor) who exercises discretionary control or authority over Pharmacy Benefit Plan administration, management, or assets. A Fiduciary owes the duties of good faith, trust, confidence, and candor to Participating Program and the Members of the Pharmacy Benefit Plan.

“Generic Drug” means a product whose National Drug Code number has a Medi-Span multi-source indicator for the Covered Drug of “Y” on the date dispensed. Claims submitted with a Multi-Source Code, as defined by Medi-Span, of “O” and also submitted

with a DAW code of “5” shall also be considered a Generic Drug. Contractor shall not change the Generic Product Flag for any given Paid Claim.

“Governmental Program” means a Participating Program operated or sponsored by a state, a local government of a state, the federal government, or a tribal government.

“Group” means the group, organization, employer, or other sponsor that establishes and maintains a Pharmacy Benefit Plan that provides for payment for Covered Drugs provided to Eligible Participating Program Members. Groups may be insured, ASO, or partially insured.

“Health Care Authority” or **“HCA”** means the Washington State Health Care Authority, any division, section, office, unit, or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

“HIPAA” means the health information privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended from time to time, together with any regulations there under (the “Federal Privacy and Security Rules”).

“HITECH” means the Health Information Technology for Economic and Clinical Health Act of the American Recovery and Reinvestment Act of 2009 (“ARRA”), together with any regulations there under.

“Implementation” means transitioning a Participating Program from the Prior Agreement to this Agreement or transitioning a new Participating Program onto this Agreement.

“Implementation Project Plan (IPP)” means the project plan for Implementation and shall include tasks, individual or team responsibility, time allocations, dependencies, deadlines, and priorities for each task. When agreed upon and signed by Contractor and Participating Program, this document is referred to as the Implementation Project Plan (IPP).

“Indian Health Service/Tribal/Urban Indian Organization Pharmacy” means a pharmacy operated by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization, as these entities are defined in the Indian Health Care Improvement Act, 25 U.S.C. § 1603.

“Ingredient Cost” means Contractor's actual cost for the actual drug dispensed for each Paid Claim.

“Limited Distribution Drug” or **“LDD”** means a Specialty Drug that can only be dispensed by certain Participating LDD Pharmacies.

“Mail-Order” or **“Mail-Order Program”** means the program in which Members may order Prescription Drugs through a Participating Mail-Order Pharmacy.

“Materials” means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, or sound reproductions that derive exclusively from Contractor's work under this Agreement. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

“Maximum Allowable Cost” or “MAC” means the price for certain Multi-Source Drugs paid to Participating Mail-Order and Participating Retail Pharmacies. The price is developed and maintained by Contractor, and updated periodically to reflect changes in Multi-Source Drug prices.

“Member” means an individual who participates in the Pharmacy Program of Participating Program, pursuant to Participating Program’s rule or procedure on Eligibility and who is enrolled to receive Services under this Agreement as established by the Eligibility file.

“Member State” means Oregon, Washington, and any State which has joined the Consortium Contract as a Member State at the time a Target Opportunity is being considered, and whose Benefiting Agency has the authority to purchase or materially influence decisions for the purchase of Pharmacy Benefit Administration services for certain public-sector entities in that State.

“Multi-Source Drug” means those products whose National Drug Code number has a Medi-Span Multi-Source Code equal to M, O, or Y on the date the claim was adjudicated.

“National Average Drug Acquisition Cost (NADAC)” means the average invoice amount that pharmacies pay wholesalers for Prescription Drugs in the U.S., as determined by CMS.

“National Drug Code” or “NDC” means a unique nine or eleven digit number assigned to each Prescription Drug based on ingredient, strength, dosage form, and package size.

“Non-Drug Item” means those products whose National Drug Code number has a Medi-Span Third Party Exclusion (TPE) Field value of “3” or a Medi-Span GPI number beginning with “97” or “94” on the date the claim was adjudicated.

“Non-Participating Pharmacy” means a pharmacy that does not have a contract with Contractor to dispense Covered Products to the Members receiving benefits under this Agreement.

“OAR” means Oregon Administrative Rules.

“OPDP” means the Oregon Prescription Drug Program established under the OPDP Statute, ORS 414.312 through 414.320, as amended from time to time.

“Oregon Health Authority” or “OHA” means the Oregon Health Authority established by ORS 413.032.

“ORS” means Oregon Revised Statutes.

“P&T” means Pharmacy and Therapeutics Committee.

“Paid Claim” means only those Prescription Drug Claims that are approved and paid and shall not include reversed Prescription Drug Claims.

“Participating Mail-Order Pharmacy” means a Participating Pharmacy that fulfills prescriptions for Covered Drugs, by mail or other delivery service.

“Participating Pharmacy” means a duly licensed pharmacy that has executed a Pharmacy Provider Contract with Contractor or Subcontractor to dispense Prescription Drugs to Members.

“Participating Program” means the Group or Facility that is Party to this Participating Program Agreement.

“Participating Program Administrator” means the responsible party within Participating Program who manages its Benefit Plan Design, Eligibility, and payments in regard to a Participating Program Agreement. Participating Program Administrator for purposes of a Participating Program Agreement is not necessarily the plan administrator within the meaning of ERISA or HIPAA.

“Participating Program Agreement” means the agreement under which a Participating Program shall participate in the Consortium to purchase Services from Contractor, in substantially the form of a Participating Program Agreement Template, unless otherwise agreed by Participating Program, the applicable Benefiting Agency, and Contractor.

“Participating Program Agreement Template” means the template for the Participating Program Agreement that has been approved by the Benefiting Agencies.

“Participating Program-Specific Requirements” means terms and conditions in a schedule that is incorporated into the Participating Program Agreement in order to give effect to requirements of a specific Participating Program and is not in the Participating Program Agreement Template. “Participating Program-Specific Requirements” do not include parameters filled into blank spaces in the Participating Program Agreement Template for Participating Program such as name, Service Effective Date, contact information, and the like.

“Participating Retail Pharmacy” means a Participating Pharmacy that is a pharmacy in a retail setting, and excludes any Participating Mail-Order Pharmacies and Participating Specialty Pharmacy.

“Participating Specialty Pharmacy” means a Participating Pharmacy that primarily dispenses and delivers Specialty Drugs on the Specialty Drug List to Members or to Prescribing Providers for Members.

“Pass-Through” means that all Rebates provided to Participating Program in accordance with Article IV and Prescription Drug Claims invoiced to Participating Program in accordance with Article V below are processed at the net amount Contractor receives from drug manufacturers or pays the Participating Pharmacy for such Rebates and Prescription Drug Claims. Contractor does not retain any Rebates, spread, or any other direct financial benefits from drug manufacturers or pharmacies, and pays all such amounts to Participating Programs.

“Personal Information” includes but is not limited to, information identifiable to an individual that relates to a natural person’s health, finances, education, business, use or receipt of governmental services or other activities, names, addresses, telephone numbers, social security numbers, driver’s license numbers, financial profiles, credit card numbers, financial identifiers, other identifying numbers or information, and any other information required by applicable law (other than HIPAA or HITECH) to be confidential. Except as required by applicable law to be protected as confidential, “Personal Information” does not include aggregated information that is maintained or disclosed in the normal course of business operations and in which individual identities are de-identified.

“Pharmacy Benefit Administration” and “Pharmacy Benefit Management” (PBM) mean the administration or management of Pharmacy Benefit Plans.

“Pharmacy Benefit Plan” means the unique plan or plans that provide for payment for Covered Drugs provided to Members on behalf of a Group. A Pharmacy Benefit Plan can be a standalone insured or self-insured plan, or a separately rated insured or self-insured plan within a combined pharmacy/medical benefit plan.

“Pharmacy Network” means all Participating Retail Pharmacies, Participating Mail-Order Pharmacies, and Participating Specialty Pharmacies, collectively.

“Pharmacy Program” includes, but is not limited to, the following to the extent offered by a Participating Program: (a) insured or self-insured Pharmacy Benefit Plans; or (b) any other pharmacy program issued within the scope of this Agreement.

“Pharmacy Provider Contract” means the written agreement that has been established and contracted on behalf of a Participating Program between Contractor or a Subcontractor and a Participating Pharmacy to provide Covered Drugs and other pharmacy Services to Members.

“Point of Service (POS)” means at the time service is rendered at a Retail Pharmacy, a Mail-Order Pharmacy or a Specialty Pharmacy, as designated.

“Preferred Drug List” or “PDL” means a list of Covered Drugs that are suggested to Members and Prescribing Providers or that designates each item as “generic”, “preferred,” or “non-preferred” for the purposes of the Benefit Plan Design and coverage decisions. Each Participating Program may have its own PDL.

“Prescribing Provider” means a physician or other provider authorized by law to prescribe Prescription Drugs.

“Prescription Drug” means a drug (including a vaccine) whose sale without a prescription by a Prescribing Provider is prohibited by law.

“Prescription Drug Claim” means a claim for payment submitted to Contractor by a Participating Pharmacy through Contractor’s claims processing system, or submitted by a Member, as a result of dispensing Prescription Drugs, Non-Drug Items, vaccine administration, or other covered benefits listed in the Benefit Plan Design.

“Pricing Change” means a change of the pricing source for average wholesale price or change in methodology for determining Ingredient Cost from a discounted Average Wholesale Price to another methodology.

“Prior Authorization” or “PA” means a process where Members must receive approval regarding the appropriateness of a Prescription Drug before it can be dispensed.

“Privacy and Security Rules” means the rules in 45 CFR parts 160, 162, and 164 under HIPAA and HITECH pertaining to privacy and security.

“Project Manager” means person assigned by Contractor, and approved by the Consortium, responsible for ensuring completion of special projects or a planned program of work requested by the Consortium. The Project Manager is responsible for developing, organizing, managing the project plan, and directing the project team's performance of project tasks. The Project Manager has the authority to prioritize project-

related deliverables across all Contractor business segments in coordination with senior management.

“Protected Health Information” or **“Electronic Protected Health Information”** or **“PHI”** or **“EPHI”** means Protected Health Information or Electronic Protected Health Information as such phrases are defined in the Privacy and Security Rules (45 CFR 160.103).

“Public Records Laws” means the Public Records Law of the State of Oregon (ORS 192.311 to 192.478) or the State of Washington (RCW 42.56 and WAC chapter 143.06).

“RCW” means Revised Code of Washington.

“Rebates” means retrospective payments or discounts, including promotional or volume-related refunds, incentives, or other credits however characterized, pre-arranged with pharmaceutical companies on certain Prescription Drugs, which are paid to or on behalf of Contractor, and are directly attributable to the utilization of certain drugs by Members, including administrative fees, and software or data fees paid by pharmaceutical companies to Contractor. “Rebate” includes all rebates, discounts, payments or benefits (however characterized) generated by Participating Program’s Prescription Drug Claims, or derived from any other payment or benefit for the dispensing of Prescription Drugs, or classes or brands of drugs, within Participating Program or arising out of any relationships Contractor has with pharmaceutical companies, including but not limited to rebate sharing, market share allowances, educational allowances, gifts, promotions, or any other form of revenue whatsoever.

“Retail Pharmacy Network” means all Participating Retail Pharmacies, collectively.

“Service Effective Date” means the date on which Contractor is to begin providing Services to Participating Group’s members, apart from Implementation Services.

“Services” means the Services required to be performed, and the deliverables required to be delivered, by Contractor under this Agreement.

“Small Participating Program” means a Participating Program that has 20,000 lives or less.

“Specialty Drug” means a pharmaceutical, or biotech or biological drug, as offered by Contractor for the treatment of chronic or genetic disease, including but not limited to, injectables, infused, or oral medications, or otherwise requiring special handling and enhanced clinical monitoring and management.

“Specialty Drug List” means the list maintained by Contractor for medications subject to the specialty Pharmacy Program and serviced by the Participating Specialty Pharmacies. Contractor shall provide a copy of the Specialty Drug List to Participating Programs prior to the commencement of Services and upon reasonable request.

“Spread” means the difference between what is charged to Members or Participating Programs and what is paid to a Participating Pharmacy.

“State” means a state or territory of the United States.

“Subcontractor” means a person, including an Affiliate, holding a subcontract (at any tier) with Contractor for performing Services.

“Successor” means any entity or individual which, through amalgamation, consolidation, or other legal succession becomes invested with rights and assumes burdens of the first Contractor or any person who succeeds to the office, rights, responsibilities, or place of another.

“System Enhancements” means information systems upgrades that provide Benefiting Agencies and Participating Programs with new capabilities or functionalities that extend the Services provided by Contractor. Routine system maintenance, ad hoc reporting, upgrades to new versions of existing software, and upgrades to hardware are not considered System Enhancements.

“Third Party Administrator” means an organization that is under contract to a Participating Program to provide employee benefit services, such as employee benefit plan administration, health care planning services, eligibility management, actuarial services, or other related Member benefit management services.

“Third Party Intellectual Property” means any intellectual property owned by parties other than Benefiting Agency, Participating Program, Contractor, or a Subcontractor.

“Third Party Rebate “Wrap” Services” means ancillary Rebate services that may be provided and administered in conjunction with a third party for select drugs when Contractor does have a direct Rebate contract with a manufacturer and for which Rebates are available, or if additional third party services will benefit a Participating Program.

“Transparency” or “Transparent” means Contractor must use its best efforts to provide the Benefiting Agencies with a copy of proposed contracts including confidentiality agreements with any third party who fulfills Services under this Agreement prior to executing the Agreement. In cases where contract is in force prior to this Agreement, Contractor shall use its best efforts to provide third party contracts including confidentiality agreements with any third party who fulfills Services under this Agreement. The contract and confidentiality agreement between Contractor and any third party cannot in any way circumscribe any work the third party needs to fulfill the Services of this Agreement.

“Usual and Customary” or “U&C” means the minimum retail price charged by a Participating Pharmacy for a Covered Drug in a cash transaction (in the quantity dispensed), on the date the Prescription Drug is dispensed, as reported to Contractor by the Participating Pharmacy, including any discounts or special promotions offered on that date.

“Wholesale Acquisition Cost” means the U.S. dollar wholesale list price established by the pharmaceutical company in its sole discretion for each pharmaceutical company's product, by National Drug Code (NDC) number, as reported by the Drug Pricing Reference.

“Work Order” means any agreed to Services that are not explicitly outlined in the Agreement that require additional scope and resource estimates.

“Work Product” means every invention, discovery, work of authorship, trade secret, or other tangible or intangible item, and all intellectual property rights therein that Contractor is required to deliver pursuant to the Services.

“**WPDP**” means the Washington State Prescription Drug Program established under RCW 70.14.050 and RCW 70.14.060 and administered by the Washington State Health Care Authority.

“**Wrap Around Rebate Management Program**” means a Rebate option that is independent from Contractor’s Standard Rebate Management Program or Optional Third Party Rebate Management Program.

ARTICLE II CONTRACTOR RESPONSIBILITIES

Section 2.01. Implementation Services

Contractor shall perform the following Implementation Services for Participating Program:

1. Contractor shall designate an Implementation Project Manager to oversee implementation for Participating Program, and to serve as the liaison between the Participating Program and Contractor’s Implementation Project Team during the implementation period.
2. The Implementation Project Manager shall conduct regular implementation meetings with the Participating Program, and shall ensure that all contracted elements are implemented timely according to the Implementation Plan.
3. The Implementation Project Manager shall develop an Implementation Plan that addresses key areas and meets the required completion dates to ensure Participating Program is fully operational by the Service Effective Date established by the Participating Program.
4. The Implementation Plan shall include tasks, individual or team responsibility, time allocations, dependencies, deadlines, and priorities for each task. Contractor shall provide Participating Programs with standard Implementation Services at no additional cost unless otherwise identified in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees) and Paragraph 2 (Optional Professional Services Administrative Fees). These Services include:
 - a. Implementation Project Team;
 - b. Load eligibility files;
 - c. Benefit structure and PDL already created in Contractor’s systems;
 - d. Pharmacy Network;
 - e. Standard reports;
 - f. Standard Prescription Drug Claims system edits;
 - g. Prescription voucher templates;
 - h. Telephonic and web-based training for web tools;
 - i. Connectivity virtual private network (VPN), file transfer protocol (FTP);
 - j. Standard Prior Authorization guidelines and letters (if selected);
 - k. Mail-Order transition Services; and

I. Testing of all systems.

Section 2.02. Account Management

Contractor shall assign to Participating Program an Account Executive to direct Participating Program's pharmacy benefit program following Implementation. The Account Executive, assisted by pharmacists and other Contractor personnel, will respond to general inquiries and requests from Participating Program and will provide general support and consultative services related to the administration of all Services outlined in this Agreement.

1. Contractor shall assign an Account Executive who is experienced, knowledgeable, and accessible to Benefiting Agencies and Participating Program Administrators.
2. Contractor shall assign an account management team responsible for Implementation and ongoing administration of the Services. The account management team members must have the appropriate clinical, technical, business, and operations experience. Contractor shall make additional staff available as necessary to implement and administer this Agreement. Upon request of Participating Program, Contractor shall replace any account team member Participating Program finds to be unacceptable or unable to satisfactorily perform his or her duties.
 - a. The account management team shall consist of the following:
 - (1) Account Executive;
 - (2) Account Coordinator;
 - (3) Data Analyst;
 - (4) Clinical Pharmacist;
 - (5) Actuary;
3. [RESERVED]
4. [RESERVED]
5. Contractor shall within 24 hours (excluding weekends and holidays) acknowledge and respond to any program management and service issues identified by Participating Program Administrator.
6. [RESERVED]
7. Upon request from the Participating Program, Contractor shall regularly support and attend all benefit fairs and ensure that key subject matter experts are available to answer questions.
8. Contractor shall analyze Pharmacy Benefit Plan performance, identify improvement opportunities, Benefit Plan Design changes, and coordinate implementation with Benefiting Agencies or Participating Programs.
9. Contractor shall provide reports on quarterly performance including key features of Pharmacy Benefit Plan operations and presentation of analyses and recommendations in response to reported performance outcomes.
10. Contractor shall submit written work plans to Participating Program Administrator for

issues that require computer programming or additional employees, or that are long-term in nature.

11. Contractor shall reasonably cooperate with all vendors and contractors of Participating Program. Where necessary to effectively administer this Agreement, Contractor shall seek to negotiate with vendors and contractors as identified by Participating Program on mutually agreeable terms. Contractor shall not knowingly commit any act, and shall refrain from any act, that interferes with the work performance of any vendor, contractor, or government entity affecting Participating Program.
12. Emergency Response Account Management
 - a. Contractor shall maintain uninterrupted core business operations to the extent reasonably possible during national disasters, local disasters, or other abnormal events, according to its emergency response plan.
 - b. Contractor shall assist Members who are affected by national disasters, local disasters, or other abnormal events including the replacement of lost or destroyed medications.
 - c. Upon request of Participating Program, Contractor shall provide its written emergency response plan that describes how Contractor shall maintain uninterrupted core business operations during national disasters or other abnormal events.

13. [RESERVED]

Section 2.03. Member Services

1. Contractor shall provide Participating Program with a Member service center available to Members 24 hours a day, seven days a week, and 365 days a year (24/7/365). The telephone support system may include touch-tone or interactive voice recognition ("IVR") routing to Contractor's call center.
2. Contractor shall have qualified Customer Service Representatives (CSRs) to accommodate inquiries from Members who are speech, hearing or visually impaired, elderly, or speak a foreign language. Contractor shall use interpretive services to provide interpretation for customers who speak foreign languages. For the hearing impaired, Contractor shall provide a dedicated phone number and a TTY machine to which Contractor can quickly respond.
3. Contractor shall log all Member calls and track relevant service data including average speed of answer, average time on hold, nature of problems or requests, and call resolution. Contractor shall respond to Member phone calls not resolved at the first point of contact within 24 hours (excluding weekends and holidays), and provide issue resolution or plan of action within 48 hours (excluding weekends and holidays) of receiving the call. Upon request, Contractor shall provide the Participating Programs with a quarterly report summarizing Member calls and Services.
4. Contractor shall track inquiries online in real-time, and track inquiries through multiple communication channels such as phone, chat, SMS/text messaging, email, and written correspondence.

5. Upon request, Contractor shall provide Participating Programs call tracking reports that include call types, contact method, and who made the contact.
6. Upon request, Contractor shall Provide Participating Programs reports including customer service average speed to answer, call abandonment rate, and number of calls received.
7. Contractor shall provide a dedicated pharmacy and provider help desk with a toll-free telephone number 24 hours a day, seven days a week, 365 days a year (24/7/365) where pharmacists and Prescribing Providers can contact customer service representatives and registered pharmacists about adjudication issues, eligibility questions, or clinical concerns regarding Member claims.
8. Contractor shall have provisions for alternative customer service when local phone service is disrupted.

Section 2.05. Eligibility Systems Requirements and Voucher ID Cards

1. Contractor shall at the request of Participating Program use Participating Program's assigned ID number, which may be up to nine alpha and numeric characters.
2. Contractor shall provide online eligibility systems that allow Participating Programs to update their own enrollment and make their own changes. Participating Program access to the eligibility systems is set forth in Attachment 1 (Administrative Service Fees), Paragraph 3 (Access to Online Systems and Reporting Tools).
3. Contractor shall pick up and within 2 business days, process eligibility or changes-only files from Participating Program or its contracted vendor at a frequency required by Participating Program.
4. Contractor shall process retroactive terminations at the request of the Participating Program.
5. Contractor shall capture primary care provider information at the clinic or individual provider level as required by the Participating Program.

Section 2.06. Pharmacy Network

1. General Network Requirements
 - a. Contractor shall provide a Pharmacy Network that supports the guaranteed network reimbursement rates in Attachment 3 (Pharmacy Network Rates and Financial Guarantees), Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Broad Network Pharmacy Network Financial Guarantees).
 - b. The total amount reimbursed to the Participating Retail, Participating Mail-Order, and Participating Specialty Pharmacies is the exact amount the Participating Program will pay for the prescription; and 100% of manufacturer Rebates, fees, incentives, etc., are passed in full to Participating Programs.
 - c. Contractor shall not adjudicate or reimburse Prescription Drug Claims for repackaged drug items unless authorized to do so by Benefiting Agencies.
 - d. Contractor shall not keep a Spread between what Benefiting Agencies and its Participating Programs pay and what any Participating Pharmacy receives on any Prescription Drug Claim or Non-Drug Item dispensed to a Member.

Contractor shall provide quarterly reports to Participating Program that demonstrate fulfillment of this requirement. The reports are due 60 days after end of quarter measured.

- e. Contractor shall require Participating Pharmacies to verify Eligibility and submit Prescription Drug Claims for processing online through Contractor's online real time claims processing system.
- f. Contractor shall maintain criteria, which it may amend from time to time, to audit a Participating Pharmacy to determine compliance with its Pharmacy Provider Contract and the Prescription Drug Programs administered under this Agreement. Annually, Contractor shall, at no additional cost, perform desk audits of at least five percent (5%) of the Participating Pharmacies in each Member State that filled 250 or more prescriptions for Members in the previous 12 months. Contractor shall maintain documentation related to each audit performed and shall provide that documentation to Participating Program upon request. Contractor shall return 100% of all recoveries attributed to an audit, to the applicable Participating Program.
- g. Contractor may not steer, require, incentivize, or otherwise encourage a Member to utilize the services of a Retail Pharmacy Network for which the PBM has a vested interest.
- h. Contractor shall require the Participating Pharmacies to comply with all laws and regulations of Member States to the extent allowable under the laws of the state where the Participating Pharmacy is physically located.
- i. Contractor shall require Participating Pharmacies to comply with laws regarding drug substitutions, specifically ORS 689.515 if it is in Oregon. If the Participating Pharmacy is not in Washington or Oregon, then it must comply with the drug substitution requirements under the laws of the state in which it operates, by faxing the Prescribing Provider a form authorizing the substitution called for by that law and asking the Prescribing Provider to fax it back, or by other methods agreed by Contractor and Benefiting Agencies.
- j. On Behalf of the Participating Program or Member State (each, a "Principal") and acting as the Principal's agent, Contractor shall, subject to acceptance by the Principal:
 - (1) Identify retail, Mail-Order, and specialty pharmacies that meet the Principal's eligibility standards for participation in the Pharmacy Network;
 - (2) Contract with retail, Mail-Order, and specialty pharmacies to participate in the Pharmacy Network;
 - (3) Negotiate reimbursement rate methodologies with Participating Pharmacies; and
 - (4) Process payments and pass through payments to Participating Pharmacies the lesser of the contracted reimbursement rate negotiated on behalf of the Participating Program or Member State (including Dispensing Fee), Participating Pharmacy's U&C, or MAC if applicable. Payment to Participating Pharmacies is contingent upon receipt of

payment from or on behalf of Participating Programs.

Contractor shall perform its responsibilities pursuant to this paragraph (k) in compliance with all policies, procedures, and guidelines established by the applicable Principal from time to time.

- k. Upon request of the Participating Program, Contractor shall assist Participating Programs to negotiate reimbursement rates with 340B entities.
- l. Contractor shall give Benefiting Agencies 90 days advance notice of material changes to the Pharmacy Network, including any changes to network structure based on performance, fees, or other effects on Participating Programs. Contractor shall work with Benefiting Agencies to develop a communication strategy to notify Participating Programs no less than 60 days in advance of such major network changes. However, if the change is not within Contractor's control or is initiated by a Participating Pharmacy, Contractor shall provide notice as soon as practical.
- m. Contractor shall not directly or indirectly retroactively deny or reduce payment, to a Participating Pharmacy, for a claim or aggregate of claims after the claim or aggregate of claims has been adjudicated, unless:
 - (1) The original claim was submitted fraudulently; or
 - (2) The denial or reduction is the result of a pharmacy audit conducted in accordance with applicable State law; or
 - (3) Unless such recoveries are otherwise permitted by law or policy.
- n. Contractor shall not charge any access, credentialing, or enrollment fees to a pharmacy as a condition of participating in the Retail Pharmacy Network.

2. Payments to Participating Pharmacy

- a. Contractor shall on behalf of Participating Program and acting as an agent for Participating Program's BPD, pay to the Participating Pharmacy, such reimbursement as may be agreed upon by Participating Program and Contractor for dispensing of prescriptions to Members, no later than thirty (30) days from confirmation of receipt of funds from Participating Program for this purpose.
- b. Notwithstanding the foregoing, the Parties acknowledge that the Participating Pharmacy and Contractor rely solely and exclusively on the Participating Program for payment of Pharmacy Claims.
- c. Participating Pharmacy and Contractor agree that in the event of Participating Program delays, failure, refusal, or inability to pay Prescription Drug Claim invoices, Contractor shall have no obligation to pay the Participating Pharmacies for Pharmacy Claims.

3. Retail Pharmacy Networks

- a. Contractor shall negotiate reimbursement rates with Critical Access Pharmacies ("CAP") in each Member State as directed by each Benefiting Agency. Reimbursement rate for CAP will be negotiated based on access distance between pharmacies and the density of population being served by

the pharmacy, or as directed by the Benefiting Agency. CAP reimbursement rates will reflect fair market value to ensure the access needed is available to Members.

- b. The Benefiting Agency for the Member State will provide Contractor with an annual list of CAP pharmacies for their respective state and will notify Contractor about any future changes to the CAP reimbursement rates or list of CAP pharmacies within 30 days prior to Service Effective Date. Contractor may make premium adjustments if Participating Program is insured based on applicable changes to CAP reimbursement rates.
- c. Contractor shall maintain and manage an adequate nationwide Retail Pharmacy Network composed of both large chain and local, independent pharmacies and shall include representation in rural areas that meets the performance standards in Attachment 5 (Performance Standards, Guarantees, and Incentives), Paragraph 3 (Particular Functions), Subparagraph (a), (Core Business Functions), Item 5. unless Participating Program requires other standards to be consistent with any applicable laws and regulations governing the Participating Program.
- d. Contractor shall perform an annual Retail Pharmacy Network geo access analysis. If a Benefiting Agency determines that there is disruption that creates an access to care issue as defined by the Participating Program, Contractor shall, at the request of the Participating Program solicit additional pharmacies, for participation in the network.
- e. Contractor shall make available to Benefiting Agencies an electronic updated list of the Retail Pharmacy Network upon request at least quarterly (which list Benefiting Agencies may disclose to anyone or make public), and shall update the Retail Pharmacy Network on Contractor's web site at least monthly.

4. Mail-Order Pharmacy Program

- a. Contractor shall supply one or more Mail-Order Pharmacy options for Participating Program either through its Subcontractor or direct arrangements with other Mail-Order pharmacies. Participating Program may select more than one Participating Mail-Order Pharmacy, if available, for Members to choose from.
- b. Contractor shall maintain a 99.5% accuracy rate for prescriptions dispensed from the Participating Mail-Order Pharmacy(ies) serving Participating Program. If a prescription is filled incorrectly, Contractor shall replace it at no charge to the Member or Participating Program. If a dispensing error does occur, Contractor shall contact the Member to assess the situation. Following this consultation, the appropriate medication must be sent via overnight mail to the Member at Contractor's expense. Included with the corrected prescription, Contractor shall provide a postage paid envelope to the Member to return the incorrect prescription.
- c. Contractor shall consolidate refills on prescriptions written for less than a 90-day supply (e.g. if the Rx is written for a 30-day supply with 11 refills

Contractor shall dispense a 90-day supply with 3 refills if allowed in the BPD). This does not apply to controlled substances.

- d. Upon request of a Member, Contractor shall provide Member with envelopes, addressed to the Participating Mail-Order Pharmacy, for submission of Prescription Drug orders. Contractor shall also allow for Members to order refills of prescriptions by telephone and over the Internet.
- e. Contractor shall have a documented emergency transition plan to move Mail-Order prescription distribution to a secondary location or to a new vendor if there is an interruption lasting more than ten (10) days at the existing Participating Mail-Order Pharmacy due to national or local disasters. The transition should be completed within 30 days or within a mutually agreeable time period of the request to change Mail-Order pharmacies.
- f. Contractor shall have a documented transition plan to move the Mail-Order prescription distribution to a new Participating Mail-Order Pharmacy if the existing Participating Mail-Order Pharmacy cannot meet Performance Standards in Attachment 5 (Performance Standards, Guarantees, and Incentives), Paragraph 3 (Particular Functions), Subparagraph (a) (Core Business Functions), Item 7 upon implementation of Participating Program or at any time throughout the term of this Contract. The transition should be completed within 30 days or within a mutually agreeable time period of the request to change Participating Mail-Order Pharmacies.
- g. Contractor shall require Participating Mail-Order Pharmacies to:
 - (1) Maintain an average turnaround time of five days for all Mail-Order prescriptions. This requirement is subject to the performance guarantees outlined in Attachment 5 (Performance Standards, Guarantees, and Incentives), Paragraph 3 (Particular Functions), Subparagraph (a) (Core Business Functions), Item 7.
 - (2) Contact the Member if fulfillment of the Member's order for a covered drug will be delayed ten (10) or more days and offer to assist in arranging for a short-term supply (generally, up to a ten-day supply) from a conveniently located Participating Pharmacy. When the Covered Drug becomes available, Contractor shall ship it via expedited delivery to the Member at Contractor's expense.
 - (3) Mail the available portion of the order without delay when Contractor expects there to be a significant delay in a portion of the order. Any delayed prescription must be shipped separately as soon as Contractor is able to complete the order. Contractor shall give the Member notification regarding the status of any delayed prescription in the same manner as for short-term delays.
 - (4) To have implemented the Inventory Information Approval System ("IIAS") or have certified that 90% of all cash register receipts for the previous calendar year were Flexible Spending Account-eligible expenses.

(5) Fully integrate with the Participating Retail Pharmacy Network and Participating Specialty Pharmacy through Contractor's on-line, real-time claims adjudication system. The Participating Mail-Order Pharmacy(ies) shall have capacity to accommodate the current and future Prescription Drug Claim volume of the Participating Programs.

(6) Not require a minimum charge for Mail-Order paid Prescription Drug Claims.

5. Specialty Pharmacy Program

- a. Contractor shall designate an Exclusive Specialty Pharmacy provider to dispense and deliver medications in accordance with the Specialty Pharmacy Program to Members or Prescribing Providers.
- b. Contractor shall provide Specialty Drugs through the Exclusive Specialty Pharmacy, subject to the Specialty Drug reimbursement rate guarantees listed in Attachment 3 (Pharmacy Network Rates and Financial Guarantees), Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Broad Network Financial Guarantees).
- c. Upon request of the Participating Program, Contractor shall allow Members to have Specialty Drugs filled through any Participating Pharmacy. Specialty Drugs dispensed by a Retail, Mail-Order or Limited Distribution Drug (LDD) pharmacy are not subject to the Specialty Drug financial guarantees and are subject to the reimbursement rate guarantees detailed for the respective channel (Mail-Order, Retail, etc.) listed in Attachment 3 (Pharmacy Network Rates and Financial Guarantees), Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Core Network Financial Guarantees).
- d. Contractor shall maintain a network of Participating Specialty Pharmacies for LDDs that allow Participating Members access to all specialty medications that are not otherwise available through the Exclusive Specialty Pharmacy.
- e. Contractor shall require Participating Specialty Pharmacies to ship Specialty Drugs and supplies, at pharmacy's expense to the Member or Prescribing Provider, for arrival on the date requested using the appropriate shipping method to ensure timely delivery aligning with therapy requirements and refill schedules.
- f. Contractor shall require Participating Specialty Pharmacies to provide comprehensive clinical support for the Specialty Pharmacy Program that targets specific disease states in collaboration with Contractor, Benefiting Agencies, and Participating Programs to achieve:
 - (1) Compliance and adherence support and measurement;
 - (2) Clinical management and support outside of the Prescribing Provider's office (such as, side effect management, clinical monitoring as applicable, appropriate use protocols);
 - (3) Waste management (such as dose and assay management); and
 - (4) Twenty-four hour, seven days a week, 365 days a year (24/7/365) access to experienced pharmacists or nurses.

- g. Contractor shall require the Exclusive Specialty Pharmacy to:
 - (1) Provide an enhanced level of patient care and coordination including:
 - i. Patient education;
 - ii. Complex clinical service coordination;
 - iii. Financial assistance and Prior Authorization support;
 - iv. Integrated supervised injection training; and
 - v. Increased disease state and drug therapy knowledge and understanding.
 - (2) Transfer prescriptions for LDD Specialty Drugs if it is unable to dispense to an authorized Participating Specialty Pharmacy by the next business day after receiving the LDD prescription.
 - (3) Maintain strict quality standards and third party program accreditation in accordance with URAC or Accreditation Commission for Health Care (ACHC).
 - (4) Perform concurrent DUR which will consist of review of patient records prior to dispense, during refills, and throughout therapy regimens.
 - (5) Perform retrospective DUR to detect patterns in prescribing, dispensing, or administering drugs that may cause issues (such as but not limited to, adverse events, suboptimal adherence, and inappropriate use). Patient reported experiences will be analyzed and pharmacy may contact Prescribing Providers when patient experience indicates changes in clinical appropriateness of current Specialty Drug.
- h. Upon request, Contractor shall supply Participating Program with a list of LDDs and the guaranteed reimbursement rate, quarterly.
- i. Contractor shall perform periodic reviews of the Specialty Drug List, and upon request shall distribute it to Participating Programs with Contractor's recommendations for incorporation into BPDs. Contractor shall research newly approved products. Upon request, Contractor shall provide Participating Programs with prescribing information, clinical protocols, and pricing prior to adding the new product to the Specialty Drug List.
- j. Upon request, self-funded Participating Programs will retain full authority of what drugs are to be included in the Specialty Drug List.
- k. Contractor shall require the Participating Specialty Pharmacies to have implemented the IIAS, or have certified that 90% (Merchant Rule) of all cash register receipts for the previous calendar year were Flexible Spending Account-eligible expenses.
- l. At the request of the Participating Program, Contractor shall coordinate with a third party medical claims administrator to manage use of Specialty Drugs administered pursuant to an office visit or outpatient infusion center and billed under the medical benefit, including PDL management and Prior Authorization of medications.

- m. Contractor shall explore alternative sites of care for administering intravenously infused Covered Drugs that can be managed through the pharmacy benefit.
- n. Contractor shall provide a utilization management program designed specifically to manage the utilization and treatment compliance of Specialty Drugs as mutually agreed.
- o. Contractor shall provide a designated team to Participating Program to optimize their Specialty Drug programs.
- p. Contractor shall evaluate new products to assess the need for specific utilization management strategies including Prior Authorization, step therapy, or quantity limits. Strategies must be based on FDA approved indications or evidence-based, peer reviewed literature to identify the individual product's place in therapy compared to previously available treatment options.
- q. Contractor shall work in collaboration with Participating Program and Prescribing Providers to manage appropriate utilization, optimize dosing, maximize therapy benefit, and contain cost for Participating Program and its Members.
- r. Contractor shall adopt an integrated strategy that combines clinical management with appropriate utilization of Specialty Drugs including clinical programs that leverage assessment and cost of medication regimens or products with known safety concerns and potential for hospitalization.
- s. Contractor shall support therapeutic interchange through the Prior Authorization process, when appropriate, and by working with the Participating Specialty Pharmacies to ensure clinical appropriateness, adverse drug reactions, therapeutic response, and cost-effectiveness are considered prior to dispensing.

Section 2.07. Claim Processing and Benefit Administration

Based on the eligibility file provided on behalf of or by the Participating Program:

1. Contractor shall document and track program changes and Participating Program requests in writing. Each change request must be tracked using the receipt date, the requestor's name, a summary of the project scope, priority level, target completion date, programming status, and related comments. Contractor shall provide periodic updates to Participating Programs on the status of the changes as agreed to by Participating Program.
2. At the request of Participating Program, Contractor shall prepare a formal project work plan that clearly defines the Project scope, deliverables, due dates, and periodic updates.
3. Contractor shall provide ongoing Pharmacy Benefit Plan administration and annual changes for each BPD offered by Participating Program.
4. Contractor shall thoroughly test Participating Programs' benefit designs, clinical rules/edits, etc., to ensure the system processes claims and addresses intervention messages correctly, and applies clinical rules accurately. If annual BPD and PDL changes are not functioning accurately, on or after the Service Effective Date,

- Contractor shall immediately correct the errors and reimburse Participating Program for any loss as a result of the error.
5. Contractor shall complete Participating Program BPD changes such as deletion of restriction edits or PDL changes within two business days upon receipt of request and shall complete complex requests requiring multiple changes within 10 business days. Large projects such as quarterly PDL changes must be completed dependent upon the scope of work as mutually agreed upon by Participating Program and Contractor. Simple benefit coding must be performed within two business days of receipt of the request unless the change has a complexity otherwise agreed upon by Contractor and Participating Program. Contractor shall accommodate urgent coding exceptions.
 6. Contractor shall perform Prescription Drug Claims processing and payment Services for Covered Drugs dispensed to Members from retail, Mail-Order, and Specialty Pharmacies in accordance with Participating Program's BPD. All claims, regardless of the distribution channel, are processed through this system and are subject to the same comprehensive safety and compliance edits, which can be varied to accommodate method of delivery (e.g., Mail-Order, retail, specialty, and non-network retail).
 7. Contractor shall provide custom point-of-service messaging at no additional cost.
 8. Contractor shall, accurately perform regular updates, as required by the Participating Program, to Contractor's online Prescription Drug Claims processing system using the eligibility file supplied by Participating Program or its vendor as required for Participating Program's BPD. Contractor shall host a Secure File Transfer Protocol (SFTP) site for the exchange of data files, and require data exchanges be transmitted in an efficient, secure, verifiable format as mandated by HIPAA and SAS 70 procedures and controls.
 9. Contractor shall use the current NCPDP standard transaction format to adjudicate claims and shall perform necessary System Enhancements or undertake new systems development, in order to ensure that all systems used in the processing of electronic pharmacy claims comply with HIPAA.
 10. Contractor shall provide Members with a Prescription Drug Claim form through Contractor website or by calling its pharmacy customer service center, where a representative mails, emails, or faxes the form to the Member.
 11. Contractor shall process (approve, pay, or reject) Participating Program's Indian Health Service/Tribal/Urban Indian Organization Pharmacy Prescription Drug Claims as in network as required by Participating Program.
 12. Upon request of the Participating Program, Contractor shall support electronic prescribing (e-prescribing) by enabling Prescribing Providers to send a prescription directly to a Member's pharmacy for fulfillment, access the Member's information in real time at the point of care, review the Member's PDL, inform the Member of the medication's tier placement, suggest available therapies, and view Eligibility confirmation, patient medication history, PDL information and tier placement, and copay structure. Fees for electronic prescribing are outlined in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees).

Section 2.08. Data File Transfers

Upon request, Contractor shall:

1. Process electronic data files. The mode for data transmission shall be via a Secure File Transfer Protocol (SFTP) service, and based on terms mutually agreeable to Contractor and Participating Program.
2. Accept and execute electronic data file transfers on behalf of Participating Program to Business Associates of Participating Program. Contractor shall neither accept nor transfer data with any other vendor unless that vendor has an executed Business Associate Agreement or Data Sharing Agreement in place with Participating Program.
3. Enter into separate data sharing contracts with Participating Program vendors for the purpose of sharing Participating Program data only when necessary.
4. Use and disclose Member information in compliance with HIPAA standards for privacy, security, and electronic data interchange.
5. Comply with data requests for internal or external audits that each Participating Program undergoes (such as audits required by the Washington State Auditor, the Oregon Secretary of State, the Insurance Commissioner for the State of Oregon or Washington, or the Centers for Medicare & Medicaid Services). Associated fees are listed in Attachment 1 (Administrative Service Fees), Paragraph 2 (Optional Professional Services Administrative Fees).
6. Transmit or retrieve Participating Program data directly to and from external contracted vendors and other Participating Program Business Associates as determined by each Participating Program.

Section 2.09. Prescription Drug Management

Contractor shall provide Participating Program and its Members certain clinical and ancillary services to facilitate Members' appropriate utilization of Covered Products.

1. Preferred Drug List Management
 - a. Contractor shall create and maintain an evidence-based methodology using comparative effectiveness research to manage its PDL and drug coverage and utilization management policies based on patient safety, therapeutic effectiveness, and consideration of the most cost-effective treatment options.
 - b. Contractor shall maintain a multidisciplinary Pharmacy and Therapeutics ("P&T") Committee and when required a Drug Utilization Review (DUR) Board.
 - c. The P&T Committee and DUR Board shall meet periodically to review evidence based on drug and drug class reviews and make recommendations regarding the positioning of those drugs on the PDL and other coverage restrictions. Upon request and prior approval by Contractor's P&T Committee chair, which approval shall not unreasonably be withheld, delegates from Participating Program and Benefiting Agencies may attend and observe Contractor's P&T Committee meetings. Contractor shall give Benefiting Agencies their yearly P&T/DUR schedule.

- d. Contractor shall communicate to Participating Programs any PDL changes that increase Member Cost Share at least 30 days prior to the effective date of the change.
- e. Upon request, Contractor shall provide Participating Programs with Contractor's standard drug monographs for use by Participating Program to make PDL and benefit decisions.
- f. Upon request, Contractor shall provide, at no additional cost, Participating Programs information about new-to-market medications, including new molecular entities, line extensions, and new generic medication on a mutually agreed upon basis.

2. Utilization Management

- a. In concert with any applicable P&T Committee or DUR Board, Contractor shall develop evidence-based utilization and health management programs (e.g., DUR, Prior Authorization, step therapy, quantity limits, disease education) that seeks to decrease inappropriate prescribing and utilization while promoting better compliance with best practice treatment guidelines and improved health care outcomes.
- b. Contractor shall provide Participating Programs access to a utilization management dashboard that displays the overall quarterly performance of the utilization management programs and cost-savings realized from the utilization management programs including Prior Authorization, step therapy, quantity limits, high cost generics, the value tier, and PDL changes.
- c. Contractor shall provide the utilization management (UM) programs listed in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees). Fees for UM programs are listed in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees).
- d. For utilization and health management programs requested by Participating Program and not listed in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees) or Paragraph 2 (Optional Professional Services Administrative Fees), Contractor shall present program specifics to Benefiting Agencies for approval of costs and amendment to Attachment 2 (General Financial Terms), Paragraph 5 (Work Orders and Customized Projects).
- e. Contractor shall perform administrative Prior Authorizations governed by the Prior Authorization protocols and guidelines supplied by Participating Program to Contractor, for the fees listed in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees). Except as required by Participating Program's protocol, administrative Prior Authorizations must not require professional consultation with a physician, nurse, clinical pharmacist, or other Prescribing Provider and must include: vacation overrides, lost/stolen/spilled overrides, refill too soon overrides, emergency Prior Authorizations (as directed by Participating Program staff), and school supply and Facility overrides.

- f. Contractor shall perform clinical Prior Authorizations and non-formulary exception requests if requested by Participating Program. Clinical Prior Authorizations and non-formulary exceptions require review by a physician, nurse, clinical pharmacist, or other Prescribing Provider. Additional costs, if any, for clinical Prior Authorizations and non-formulary exceptions are set forth in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees).
- g. Upon request of the Participating Program, Contractor shall bypass Prior Authorization requirements based on a list of National Provider Identifiers for Prescribing Providers, provided by the Participating Program, for specific medications.
- h. Contractor shall complete Clinical Prior Authorizations and non-formulary exception requests that include all necessary information within an annual average of 72 hours (excluding weekends and holidays) of receipt of necessary documentation to make a decision. Unless otherwise required by Participating Program or federal or State laws and regulations, Contractor shall complete urgent Prior Authorization and urgent non-formulary exception requests that include all necessary information within an annual average of 24 hours (excluding weekends and holidays). An urgent Prior Authorization or non-formulary exception request is defined as a request for Prior Authorization with respect to which the application of the time periods for making non-urgent care determinations: (1) could seriously jeopardize the life or health of the Member or the ability of the Member to regain maximum function; or, (2) in the opinion of a physician with knowledge of the Member's medical condition, would subject the Member to severe pain that cannot be adequately managed without the Prior Authorization that is the subject of the request.

3. Drug Utilization Review

- a. Contractor shall provide Participating Program with a concurrent DUR program that integrates Retail, Specialty, Mail-Order, Facility, home infusion, long-term care, and Indian/Tribal/Urban Pharmacies and includes capabilities that extend to paper claims submissions as applicable.
- b. Contractor shall provide Participating Program, at no additional cost, a concurrent DUR analysis of drug therapies using predetermined standards for each prescription submitted for processing on-line by a Participating Pharmacy that identifies:
 - (1) Ineligible Members;
 - (2) Ineligible drugs
 - (3) Therapeutic duplication;
 - (4) Coverage limited by age/sex;
 - (5) Duplicate Prescription Drug Claim;
 - (6) Refill too soon;
 - (7) Inappropriate days' supply;

- (8) Drug – drug, allergy and disease interactions;
 - (9) Incorrect dose or duration of therapy; and
 - (10) Over and underutilization.
- c. Contractor shall make the concurrent DUR system flexible to allow activation of individual edits. The individual edits may have administrative, custom, or clinical messaging and must be administered as soft messages or hard stops as requested by Participating Program. Cost for custom messaging is outlined in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees).
 - d. Contractor shall provide Participating Program, at no additional cost, a prospective DUR analysis of drug therapies using predetermined standards for each prescription submitted for processing on-line by a Participating Pharmacy including but not limited to:
 - (1) Step Therapy;
 - (2) Prior Authorization;
 - (3) Quantity Level Limits;
 - (4) Point-of Service Opioid Management;
 - (5) Value Tier program;
 - (6) High Cost Generic program;
 - (7) Split Fill program;
 - (8) Strategic Medication Assessment and Review of Therapy (SMART) program;
 - (9) Over-the-counter (OTC) Alternative program; and
 - (10) Compound Management program.
 - e. Contractor shall promptly notify affected Members and Prescribing Providers of Class I and Class II market recalls, and voluntary withdrawals by telephone, mail, e-mail, facsimile, or via a web based connected health platform depending on the nature of the severity and degree of safety risk of the recall or withdrawal.

Section 2.10. Eligibility, Enrollment and Claim Files

- 1. Contractor shall provide Pharmacy Benefit Plans without discrimination to all persons Eligible under Participating Program rules or procedures who wish to enroll in the Pharmacy Benefit Plan and who do so in a timely manner. This Eligibility shall extend to persons participating under all Pharmacy Benefit Plans that are: (i) offered by Participating Programs; and (ii) administered by Contractor.
- 2. Contractor shall establish and maintain claim and eligibility files related to Members and their Covered Drug utilization. Maintenance of eligibility files (additions, terminations and updates) will be performed within two (2) business days of Contractor's receipt of Participating Program's, or designee's, submission of such additions, terminations, and updates to files, provided that the information received

from Participating Program or designee conforms with the specifications for such information reasonably requested by Contractor. Until termination of this Agreement, Participating Program or its designee will remain responsible for providing clean and accurate eligibility files and financially responsible for Clean Claims submitted on behalf of Members.

Section 2.11. Online Member, Provider, And Participating Program Services

1. Contractor shall make online tools available to Participating Programs. The online tools must provide access to:
 - a. Real time information;
 - b. Member summary view;
 - c. Members and claims search;
 - d. Claims view and analysis;
 - e. Prior Authorization maintenance - add, update or terminate Prior Authorizations, "lock-in" Members to certain providers;
 - f. Member benefit view;
 - g. PDL lookup and pricing;
 - h. Participating Pharmacy locator;
 - i. Restriction lookup;
 - j. Eligibility maintenance - add, update, or terminate Member records;
 - k. View Eligibility; and
 - l. Participating Program's Benefit Plan Design.
2. Contractor shall provide a comprehensive Prescribing Provider decision-support solution that combines e-prescribing, electronic Prior Authorization (ePA), and real-time benefit check functionality, that allows Prescribing Providers to access Member-specific prescription cost and coverage details, including lower cost therapeutic alternatives and preferred pharmacies at the Prescribing Provider point of care through their preferred electronic health record (EHR).

Section 2.12. Reporting Requirements

1. Contractor shall provide Participating Program a standard reporting package including the reports listed below. Beginning January 1, 2023, at the request of the Participating Program, standard reports shall be provided at the Pharmacy Benefit Plan level, at no additional cost.
 - a. Performance and Utilization Review – Monthly
 - b. Online Clinical Policies (upon request) – Quarterly
 - c. Prior Authorization Summary Report – Quarterly
 - d. Prior Authorization Drug Level Report - Quarterly
 - e. Cost and Utilization Review – Quarterly, Semi-annually, Annually
 - f. Preferred Drug Management Strategy Report – Quarterly

- g. Rebate Reports – Quarterly
 - h. Medication Use Evaluation Program Results – Annually
 - i. Insulin Product Review (upon request)
 - j. Opioid Utilization Report (upon request)
2. Contractor shall provide monthly reports 25 days after the end of the month; quarterly reports 45 days after the end of the quarter; annual reports 45 days after the end of the year; and ad hoc reports shall be delivered as mutually agreed upon.
 3. Contractor shall provide ad hoc reporting and analytics as follows:
 - a. For Participating Programs with less than 150,000 Members, ad hoc reporting and analytics shall be provided at the fees outlined in Attachment 1 (Administrative Service Fees), Paragraph 2 (Optional Professional Services Administrative Fees).
 4. Contractor shall compile utilization and cost reports to be delivered on an agreed upon schedule that include utilization and cost by type of service (mail, retail, and specialty) and by overall payments, discount rates, brand and generic utilization, and PDL compliance. Contractor shall perform additional analysis to explain trends identified in the executive report such as price inflation, increased utilization, and changes in drug mix.
 5. Contractor shall provide Participating Program, upon request, with quarterly reports detailing customer service call volume, call times, call duration, time to answer, and abandonment rates. The reports shall be submitted to the Participating Program quarterly and are due within 45 days of the end of the quarter reported.
 6. Contractor shall provide designated Participating Program personnel varying levels of access to Contractor's web-enabled online reporting tools. The number of licenses allowed for each Participating Program is based on membership and can be found in Attachment 1 (Administrative Service Fees), Paragraph 3 (Access to Online Systems and Reporting Tools).
 7. Contractor shall provide a quarterly report that demonstrates the "basis of reimbursement" (e.g. AWP discounts, pharmacy's U&C price, MAC, etc.) used to price a Prescription Drug Claim at retail, Mail-Order, and Specialty Pharmacies. The reports are due within 60 days of the end of the quarter reported.
 8. Contractor shall file all required Forms 1099 and other forms and reports required under the Internal Revenue Code and applicable state laws, arising from Services under this Contract.
 9. Contractor shall provide quarterly Rebate reports by manufacturer and product at the NDC level that can be reconciled to each Participating Program's utilization reporting.
 10. Contractor shall provide quarterly and annual reports as outlined in Attachment 5, Paragraph 5 demonstrating the extent to which performance standards in Attachment 5 (Performance Standards, Guarantees, and Incentives) are met.
 11. Contractor shall, at the request of the Participating Program, provide quarterly reports detailing the number and type of electronic prescribing transactions billed to the Participating Program. The reports are due 60 days after the end of the quarter

measured.

12. Participating Programs shall determine the acceptability of all data files and reports submitted based upon timeliness, format, and content. If reports are not deemed to be acceptable or have not been submitted as requested, Contractor will receive written notice to this effect and the applicable liquidated damages, and a performance guarantee penalty will be assessed.
13. Contractor shall at the request of the Participating Program, provide prescriber report cards to evaluate inappropriate use of medications. Fees associated with Prescribing Provider report cards are listed in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees).
14. Upon request Contractor shall provide, at no additional cost, Participating Program a quarterly drug pipeline report.
15. Contractor shall provide quarterly reports recounting audit recoveries attributable to Participating Program and shall provide supporting documentation upon request.
16. [RESERVED]

Section 2.13. Fraud, Waste and Abuse

Contractor maintains a program to prevent, detect, and correct instances of fraud, waste, and abuse. Contractor evaluates Prescription Drug Claims activity and patterns for Prescribing Providers and Participating and Non-Participating Pharmacies for compliance with rules and regulations and adherence to Contractor standards. Where Contractor determines a potential or actual risk of non-compliance or non-adherence to Contractor standards or applicable law, Contractor may terminate Contractor's relationship with such entity, discontinue Prescription Drug Claims processing, or apply other edits to Prescription Drug Claims submitted, ordered, or prescribed by such entity to reduce or eliminate risk.

ARTICLE III PARTICIPATING PROGRAM RESPONSIBILITIES

Section 3.01. Plan and Other Information

Participating Program agrees to provide Contractor all information reasonably required by Contractor to fulfill its duties and obligations under this Agreement. Participating Program agrees to review and analyze information provided by Contractor in a timely fashion and notify Contractor of any errors or omissions. Participating Program shall provide Contractor with true, accurate and complete information, consistent with the Benefit Plan Design (BPD) available to Members. Contractor may rely on all information provided by Participating Program in providing services hereunder.

Section 3.02. Benefit Plan Design

Participating Program shall assure its BPDs are true, accurate, and complete descriptions of the Pharmacy Benefit Plan(s) available to Members. Participating Program acknowledges its status as the plan administrator for purposes of this Agreement. Participating Program shall retain its discretionary authority to manage, control, and interpret its Pharmacy Benefit Plan and may, at any time, alter or amend the Pharmacy Benefit Plan, provided, Participating Program notifies Contractor in writing of all such changes not less than 30 days prior to the effective date of any changes. Contractor shall advise Participating Program of the

anticipated implementation dates of the proposed benefit changes, and the benefits that are implemented shall be deemed incorporated into this Agreement as of the date of implementation. Charges, as agreed upon by Contractor and Participating Program in a Work Order, for programming to implement changes to the Pharmacy Benefit Plan shall be borne by Participating Program unless otherwise agreed by the Parties. If Participating Program modifies its Pharmacy Benefit Plan in a manner that materially affects Contractor's duties, obligations or cost of performance under this Agreement, then at the request of Contractor, the Parties will work toward a mutually acceptable modification of this Agreement, including, but not limited to, adjustments to the administrative charges in Attachment 1 (Administrative Service Fees) of this Agreement. If Participating Program and Contractor are unable to agree upon mutually acceptable modifications of this Agreement, then the Parties shall participate in the dispute resolution process set forth in Article XIII of this Agreement.

Section 3.03. Pharmacy Network Selection

Participating Program shall select a Pharmacy Network option that Contractor shall use to administer Participating Program's Pharmacy Benefit Plan. The Pharmacy Network shall be selected from Pharmacy Network options identified in Attachment 3 (Pharmacy Network Rates and Financial Guarantees), Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Broad Network Pharmacy Network Financial Guarantees).

Section 3.04. Eligibility

Participating Program shall determine each Member's eligibility for benefits by reference to criteria in its Pharmacy Benefit Plan. Participating Program will provide Contractor eligibility information identifying each individual eligible for pharmacy benefits under Participating Program's Pharmacy Benefit Plan. Such information shall include all information identified by Participating Program in its BPD so as to enable Contractor to process Pharmacy Claims in accordance with HIPAA and shall be provided in a mutually acceptable format. Participating Program will provide Contractor regular updates of subsequent changes in enrollment, including, but not limited to, changes in eligibility status, additions and deletions of Members, and termination of benefits, together with the effective date of any such changes if such changes occur after the Effective Date. If Participating Program or designee retroactively changes a Member's status under the BPD, Contractor shall contact terminated Member in writing to notify such Member of their obligation to reimburse the Participating Program for any paid claims that were processed after their effective termination date under the Pharmacy Benefit Plan. If Member fails to reimburse the Participating Program, the Participating Program shall be responsible for payment recovery of all Pharmacy Claims related to such Member that are processed prior to Contractor receiving the notification of the retroactive termination.

Section 3.05. Member Authorizations and Consents

Participating Program shall obtain the Members' consents and authorizations if required for the Services provided in connection with this Agreement and for Protected Health Information to be released to Participating Program if so required.

Section 3.06. Cooperation

Participating Program shall select the Preferred Drug List (PDL) to be used for its BPD and authorize Contractor to communicate with, and make available, PDL-related literature to Participating Pharmacies, Prescribing Providers, and Members. Participating Program

agrees to cooperate with Contractor in the maintenance of the PDL and to facilitate Members' utilization of the PDL. Contractor may modify the PDL from time to time subject to Participating Program's approval, as a result of factors described in Article II (Contractor Responsibilities), Section 2.09, (Preferred Drug List Management), above. Final decisions on the PDL for Participating Program's Pharmacy Benefit Plan shall be made by Participating Program.

Section 3.07. Third Party Administrator

Participating Program shall notify Contractor if it has appointed or appoints a Third Party Administrator to be authorized to act as Participating Program's agent and representative on matters in connection with this Agreement, including, but not limited to (a) additions, deletions, and modifications of eligibility listings provided to Contractor; (b) payment to Contractor of claims, services and fees; (c) Benefit Plan Design and coverage decisions; and (d) the provision and receipt of contractually required or permitted notices.

ARTICLE IV REBATE ADMINISTRATION

Section 4.01. Rebate Program Options

1. Contractor shall provide the rebate options listed below:
 - a. Standard Rebate Management Program administered by Contractor's PBM Subcontractor;
 - b. Wrap around Rebate Management Program administered by Contractor's enhanced rebate Subcontractor(s).
2. For drugs for which Contractor does not have a Rebate contract with a manufacturer and for which Rebates are available, or if third party Services will benefit the Participating Program, Contractor shall, at the request of the Participating Program, use best efforts to subcontract with a Rebate administrator to provide additional Third Party Rebate "Wrap" Services. Third Party Rebate "Wrap" Services may include access to additional Rebate contracts for Specialty Drugs as well as provide Rebates for Specialty Drugs and drugs administered through the medical benefit of Participating Program.
3. Fees for the Rebate Management Program options are listed in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees).

Section 4.02. Rebate Program Terms.

1. Contractor shall negotiate Rebates and discounts with pharmaceutical manufacturers for Eligible Utilization based on each Participating Program's designated PDL and shall arrange for payment of 100% of the Rebates, discounts, incentives, or other credits however characterized to Participating Program, with respect to utilization of any Covered Drugs by Members on which Rebates are or will be paid. Participating Program is entitled to 100% of the Rebates received by Contractor.
2. Unless otherwise required by the Participating Program, applicable Rebate administrative fees in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees) shall be invoiced separately and not

subtracted from the amount of Rebate remitted to the Participating Program.

3. For Rebate agreements based on market share requirements, Contractor shall negotiate Rebates based on the Consortium's book of business market share and not Contractor's book of business market share when requested by Benefiting Agencies.
4. At the request of Participating Program, Contractor shall notify Participating Program within 60 days of receiving notification of any change, expiration, or elimination of Rebate agreements that affects Participating Program's ability to collect Rebates for a drug on the PDL. This requirement is subject to the performance guarantees outlined in Attachment 5 (Performance Standards, Guarantees, and Incentives), Paragraph 7 (Financial Consequences For Performance Standards, Guarantees, and Incentives), Subparagraph 3.D (Rebate Agreement Change Notifications).
5. Contractor shall review Rebate guarantees annually and may request modifications based on the opportunities available in the market. Contractor reserves the right to negotiate new terms as a result of loss of exclusivity (to include both anticipated or forecasted changes), major market disruptions (e.g. introductions of authorized generics, widespread shortages due to supply chain interruption), unforeseen shifts in the marketplace, or Rebate opportunities that are eliminated as a result of health care reform.
6. Contractor shall provide Participating Programs with quarterly Rebate reports detailing the total amount of Rebates submitted on behalf of Participating Programs for each pharmaceutical company. These reports must break down the Rebate submission for Participating Program by pharmaceutical company, drug product by NDC, and Paid Claim count.
7. Contractor shall provide Participating Programs monthly Rebate payments direct from Contractor.
8. Contractor shall allow the Benefiting Agencies, Participating Programs or their delegates to review and audit contracts or relevant portions of contracts with manufacturers and data specific to the administration of Participating Program's Pharmacy Program for compliance with the terms of, as applicable, this Participating Program Agreement.

Section 4.03. Rebate Submissions

Participating Program agrees that, consistent with Privacy and Security Rules, Contractor may submit Members' deidentified Protected Health Information to pharmaceutical manufacturers in exchange for Rebates.

1. Contractor shall not prohibit Participating Programs from accepting grants from pharmaceutical manufacturers for support of administration of Services delivered under this Agreement.
2. Contractor may review the Participating Program's Pharmacy Benefit Plan and BPD before approving it for Rebate guarantee to assure it meets all of the required criteria listed in Attachment 4 (Rebate Guarantees), Paragraph 1 (Rebate Guarantee Provision).

3. Upon review of the Participating Program's Pharmacy Benefit Plan and BPD, Contractor may elect to not extend or to eliminate Rebate guarantees during the course of this Agreement for a Participating Program as a result of changes to Participating Program's existing PDL, Contractor's PDL products, utilization management edits, or coverage criteria that conflict with manufacturer Rebate agreements.

Section 4.05. Rebate Calculations and Payment

1. Upon request Contractor shall administer Rebates negotiated directly between Participating Program and manufacturer. Contractor shall invoice manufacturers, collect Rebate payment from manufacturer and remit to the Participating Program. Contractor shall utilize the manufacturer's dispute resolution process to resolve disputes on invoiced Rebates. Duties beyond invoicing and remitting Rebates may incur additional costs.
2. Contractor shall invoice manufacturers, collect Rebate payment from manufacturer and remit payment to the Participating Program monthly. Rebate payments shall be made on a Pass-Through basis from manufacturer or third party Rebate manager to Contractor and then to the Participating Program. Contractor shall pay Participating Program 100% of its rebates within 30 business days following the end of each calendar month in which such amounts are received, after final audit and validation of accuracy. Participating Program acknowledges and agrees that it will not have a right to interest on any Rebate payments received by Contractor, or to other manufacturer monies received by Contractor and not directly attributable to Covered Product utilization of Members.

ARTICLE V PROGRAM INVOICING AND PAYMENTS

Section 5.01. Consideration

1. In consideration of the Services Contractor performs under this Agreement, Participating Program shall pay Contractor in accordance with Attachment 1 (Administrative Service Fees). Contractor's sole recourse for nonpayment is against the Participating Program from which payment is due. No State agency, department, or instrumentality will compensate Contractor for Services, except that any Participating Program that is a State agency, department, or instrumentality will compensate Contractor to the extent of its obligations as a Participating Program under this Agreement. Contractor shall not be paid for work performed before this Agreement is effective or (except as provided herein) after this Agreement terminates, unless the Benefiting Agencies and Contractor enter into an additional agreement to do so.
2. Contractor shall submit all invoices to Participating Program's financial coordinator in order to be reimbursed for the Services performed under this Agreement. Contractor shall submit all invoices in accordance with the requirements of Section 5.02 (Invoicing) of this Article V (Program Invoicing and Payments). Unless otherwise specified in Section 5.03 (Payment Methodology) below, no advance payment shall be made for Services furnished by Contractor pursuant to this Agreement.

3. Contractor agrees that the administrative fees set forth in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees) and Paragraph 2 (Optional Professional Services Administrative Fees) are subject to the penalties for missing performance guarantees in Attachment 5 (Performance Standards, Guarantees, and Incentives).

Section 5.02. Invoicing

1. Contractor shall Pass Through all invoices for Prescription Drug Claims, including pharmacy discounts, to Participating Program. Contractor shall Pass Through the amount paid by the Participating Program to the Participating Pharmacy.
2. [RESERVED]
3. Contractor shall provide invoices with administrative charges identified separately from Prescription Drug Claims charges with flexibility to customize invoice format and timing for Participating Program, upon agreement of Contractor and the Participating Program.
4. Contractor shall invoice Participating Program for (i) administrative fees resulting from Contractor's processing of Prescription Drug Claims submitted by Participating Pharmacies, the Participating Mail-Order Pharmacy, Participating Specialty Pharmacy and Members; and (ii) all other fees set forth in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees) and Paragraph 2 (Optional Professional Services Administrative Fees).
5. Contractor shall include Participating Program name and Contractor's group number summary itemization sufficient to identify Participating Program and activities being billed on all invoices.
6. Unless requested otherwise by Participating Program or where shorter time periods for payments from Participating Pharmacies are otherwise required by applicable law, Contractor shall invoice Participating Program twice monthly for Covered Drugs dispensed to Members by a Participating Pharmacy, the Participating Mail-Order Pharmacy, or the Participating Specialty Pharmacy and for Member Submitted Prescription Drug Claims, reduced by applicable Member Cost Share. The payment in full by Participating Program to Contractor, shall satisfy the Prescription Drug Claims in full for that billing period as invoiced by Subcontractor that administers the claim.
7. Contractor shall invoice Participating Programs based on Contractor's actual net cost of the specific Covered Drug for each Paid Claim invoiced to the Participating Program. Contractor shall not keep a Spread between what the Participating Program is invoiced and what Contractor paid the Participating Pharmacy or Member for the Covered Drug. This is true on all pharmacy transactions in relation to any Covered Drug dispensed to a Member. Contractor shall provide reports to Participating Programs that demonstrate the ability to audit this requirement.
8. At the request of Participating Program, Contractor shall send invoices to the Participating Program Administrator by mail, electronic mail, or facsimile. If requested, Contractor shall send a courtesy copy of the original invoice by electronic mail or facsimile to the Participating Program Administrator on the same date that Contractor submits the original invoice to the billing contact.

9. Contractor's invoices to Participating Program may be disputed by written notice outlining the details of the dispute. Contractor shall investigate each dispute and run a financial effect report. Contractor shall credit (if applicable) the Participating Program within 45 days of settling the dispute. If there is a dispute as to an invoice for administrative Services and fees, Participating Program shall pay the part that is not in dispute and at its option may withhold the amount in dispute, and shall give Contractor written notice outlining the details of the dispute.
10. Contractor shall charge Participating Program, including Facilities the following administrative fees or rates for Services rendered pursuant to this Agreement:
 - a. Administrative per Paid Claim fee as referenced in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees) to support all administrative Services of this Agreement. Participating Program shall select the Administrative Service Fee option from those listed in Attachment 1 (Administrative Service Fees) under which Contractor services will be performed;
 - b. Optional Professional and Administrative Services fees or rates as set forth in Paragraph 2 (Optional Professional Services Administrative Fees) of Attachment 1 (Administrative Service Fees) if these Services are in the Participating Program's BPD;
11. Contractor shall not be reimbursed for any travel, per diem, or other related expenses under this Agreement, or for any expenses not described in Attachment 1 (Administrative Service Fees).

Section 5.03. Payment Methodology

1. Participating Program agrees to pay Contractor the administrative charges as set forth in Paragraph 1 (Administrative Service Options and Fees) and Paragraph 2 (Optional Professional Services Administrative Fees) of Attachment 1 (Administrative Service Fees) to this Agreement.
2. Participating Program agrees to pay Contractor the actual reimbursement rate (discounts and dispense fees) paid to the Participating Pharmacy from which the Prescription Drug Claim originates, less the Member Cost Share, and all applicable gross receipts, provider, sales, use and similar taxes, if applicable. The contracted discount for each Participating Pharmacy will vary, causing the actual reimbursement paid to each Participating Pharmacy to be greater or less than the guarantees identified in Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Broad Network Pharmacy Network Financial Guarantees), of Attachment 3 (Pharmacy Network Rates and Financial Guarantees). Guarantees represent the average performance of all Participating Pharmacies.
3. Participating Program agrees to pay Contractor for invoice amounts owed within two (2) business days after the date of invoice after the end of each invoice cycle. Alternatively, upon Participating Program's request and Contractor's consent, Participating Program may advance to, and maintain with, Contractor an amount equal to the sum of the bimonthly estimated Covered Drug Paid Claims and bimonthly estimated administrative charges (or such other amount agreed upon by the Parties) not later than 15 days prior to the Service Effective Date. If Participating Program maintains such an amount with Contractor, payment in full will be due 15

- days after the date of invoice, instead of two business days from the date of the invoice as set forth above. Participating Program agrees that Contractor may retain any interest on these advances.
4. Unless otherwise required by Participating Program, Contractor shall accept payment from Participating Program by check, ACH transfer, or pre-authorized debit from Participating Program's designated bank account within two business days from the date it receives Contractor's invoice, unless there are unusual circumstances beyond Participating Program's control. Upon receipt of payment from Participating Program:
 - a. Contractor shall issue payments to Participating Pharmacies, for Paid Claims for Covered Drugs.
 5. In the event that overpayments or erroneous payments have been made to Contractor under this Agreement, Participating Program shall provide written notice to Contractor and Contractor shall refund the full undisputed amount to Participating Program within thirty (30) days of the notice.
 6. Participating Program assumes all financial responsibility for funding the payment of Clean Claims submitted to Contractor with regard to Participating Program's Members. Contractor shall invoice Participating Program for Clean Claims at the amount Contractor pays for those Claims.
 7. Contractor shall issue Prescription Drug Claims payments to the applicable Participating Pharmacy for Covered Drugs dispensed to Members by a Participating Pharmacy, the Participating Mail-Order Pharmacy, or the Participating Specialty Pharmacy, to Members on behalf of the Participating Program administered through this Agreement.

Section 5.04. Failure to Make Funds Available

Notwithstanding anything else in this Agreement to the contrary, if a Participating Program ceases making payments when due hereunder, then Contractor and its Subcontractors may stop providing Services to such Participating Programs until funding is made available for such Services as required hereunder.

ARTICLE VI TERMINATION

Section 6.01. Termination For Cause

1. In the event Contractor violates any material term or condition of this Agreement or any Work Order, or fails to fulfill in a timely manner its material obligations under this Agreement or any Work Order, as applicable, Participating Program has the right to suspend or terminate this Agreement. Prior to doing either of the above, Participating Program shall notify Contractor, in writing, of the need to take corrective action. If corrective action is not taken within fifteen (15) days, or other time period agreed to in writing, the Agreement may be terminated. Participating Program reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by Participating Program to terminate the Agreement.

2. In the event of termination For Cause in Paragraph 1 of this Section 6.01, the Participating Program shall have the right to damages related to the increased cost of a new contractor and for any reasonable cost in procuring and transitioning to a new contractor.
3. Contractor may terminate this Agreement For Cause if Participating Program fails to pay any undisputed invoice within 45 days of the invoice's due date. Before terminating the contract, Contractor must give Participating Program, by written notice as described in Article XX (Notices) of this Agreement, a minimum of 90 days to cure the nonpayment. Contractor may immediately terminate this Agreement, after notice to Participating Program and the applicable Benefiting Agency, for the following: (1) the institution by or against Participating Program of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of Participating Program's debts; (2) Participating Program making an assignment for the benefit of creditors; (3) Participating Program's dissolution or ceasing to operate in the ordinary course of business; or (4) a change in law that makes it impossible for either Party to perform or support the contracted work.
4. If either Party disputes any actions taken under this provision, the Parties must use the dispute resolution process defined in Article XIII (Disputes). If this Agreement is terminated, Contractor shall provide Participating Program, 90 days prior to the termination date, or in the case of immediate termination, as soon as reasonably practicable, all available information reasonably necessary for the reimbursement of any outstanding invoices for Services to Members. Participating Program shall be liable only for properly authorized services rendered and accepted by Participating Program before the effective date of Agreement termination, and for reimbursement of all claims adjudicated before that date.

Section 6.02. Termination Due To Change in Funding, Suspension, or Contract Renegotiation

To the extent Participating Program is funded through state or local budget authority the following will apply if the funds Participating Program relied upon to establish this Agreement are withdrawn, reduced, or limited, or if additional or modified conditions are placed on such funding, after the Effective Date but prior to the normal completion of this Agreement:

1. At Participating Program's discretion, the Agreement may be renegotiated under the revised funding conditions to the extent agreed upon by Contractor.
2. At Participating Program's discretion, Participating Program may give notice to Contractor to suspend performance when Participating Program determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Agreement.
3. During the period of suspension of performance, each Party will inform the other of any conditions to which it becomes aware that may reasonably affect the potential for resumption of performance.
4. When Participating Program determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this

notice, Contractor shall provide written notice, which may include e-mail, to Participating Program informing Participating Program whether it can resume performance and, if so, the date of resumption.

5. If Contractor's proposed resumption date is not acceptable to Participating Program and an acceptable date cannot be negotiated, Participating Program may terminate the Agreement by giving written notice to Contractor. The Parties agree that the Agreement will be terminated retroactive to the date of the notice of suspension. Participating Program shall be liable only for payment in accordance with the terms of this Agreement for Services rendered prior to the retroactive date of termination.
6. Participating Program may immediately terminate its participation in this Agreement by providing written notice to Contractor and the applicable Benefiting Agency. The termination shall be effective on the date specified in the termination notice. Participating Program shall be liable only for payment in accordance with the terms of this Agreement for Services rendered prior to the effective date of termination. No penalty shall accrue to Participating Program in the event the termination option in this Article VI (Termination), Section 6.02 (Termination Due To Change In Funding, Suspension, Or Contract Renegotiation) is exercised.

Section 6.03. Termination for Convenience; Contractor's Remedies

1. This Agreement may be terminated at any time, with ninety (90) days' notice, by mutual written consent of the Parties. Participating Program may, at its sole discretion, terminate this Agreement by providing ninety (90) days' notice.
2. Contractor has no right to terminate this Agreement for convenience. Contractor's remedy in the event of breach or default by Participating Program is a legal claim against Participating Program for actual damages. Contractor shall have no claim against Participating Program for lost or anticipated profits, consequential damages, or any other remedy apart from actual damages. Notwithstanding anything else in this Agreement to the contrary, if Participating Program ceases making payments when due hereunder, then Contractor and its Subcontractors may stop providing Services to such Participating Program until funding is made available for such Services as required hereunder.

Section 6.04. Termination For Withdrawal of Authority

In the event that the authority of Contractor to perform any of its duties is withdrawn, reduced, or limited in any way by a Benefiting Agency after the commencement of this Agreement and prior to normal completion, no penalty will accrue to Contractor in the event this section is exercised. If a Participating Program requests continuation of substantially all of the terms of this Agreement after termination of this Agreement, Contractor may continue to provide Services to Participating Program under the provisions of Section 6.05, Paragraph 6, of this Article VI (Termination).

Section 6.05. Transition Procedures Upon Termination; Run-Out Period

1. If this Agreement terminates pursuant to Section 6.01 (For Cause), Section 6.02 (Termination Due To Change in Funding, Suspension, or Contract Renegotiation), or Section 6.04 (Termination For Withdrawal of Authority) of this Article VI (Termination), or if payments by Participating Programs are otherwise due upon termination, Contractor's sole remedy is payment as described in this Paragraph 1.

Participating Program shall pay to Contractor the agreed upon price, if separately stated, for completed work and Service accepted by Participating Program and the amount agreed upon by Contractor and Participating Program for (i) completed work and Services for which no separate price is stated; (ii) partially completed work and Services; (iii) other property or Services which are accepted by Participating Program; and (iv) the protection and preservation of property, unless the termination is for default, in which case the Participating Program shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of Article XIII (Disputes) of this Agreement. Participating Program may withhold from any amounts due Contractor such sum as Participating Program determines to be necessary to protect Participating Program against potential loss or liability. If amounts paid previously to Contractor exceed the amount due to Contractor under this Paragraph 1, Contractor shall pay the amount in excess to applicable Participating Program upon demand. In no event will Participating Programs be liable to Contractor for any expenses related to termination of this Agreement.

2. Agreement termination does not extinguish or prejudice the right of Participating Program to enforce this Agreement with respect to any breach or default by Contractor that has not been cured. Upon receipt of notice of termination, Contractor shall:
 - a. Stop work under the Agreement on the date, and to the extent specified in the notice, except for activities to perform obligations that survive termination, unless Participating Program Administrator requests otherwise;
 - b. Place no further orders or subcontracts for Materials, Services, or Facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
 - c. Assign to Participating Program, in the manner, at the times, and to the extent directed by Participating Program, all the rights, title, and interest of Contractor under the orders and subcontracts so terminated; in which case Participating Program has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of Participating Program to the extent Participating Program may require, which approval or ratification shall be final for all the purposes of this clause;
 - e. Transfer title to Participating Program and deliver in the manner, at the times, and to the extent directed by Participating Program any property which, if the Agreement has been completed, would have been required to be furnished to Participating Program;
 - f. Complete performance of such part of the work as shall not have been terminated by Participating Program;
 - g. Take such action as may be necessary, or as Participating Program may direct, for the protection and preservation of the property related to this Agreement which is in the possession of Contractor and in which Participating Program have or may acquire an interest; and

- h. At the request of the Participating Program, surrender to anyone Participating Program designates, all documents, research, or objects or other tangible things needed to complete the Services and the Work Products.
- 3. Upon request of Participating Program, Contractor shall:
 - a. Promptly deliver to Participating Program, or upon Participating Program's request to a successor contractor, all of Participating Program's property (including any Services or Work Products for which Contractor has received 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 property is expressed or embodied at that time, and any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

ARTICLE VII PRIVACY AND SECURITY

Section 7.01. HIPAA, HITECH and Federal Privacy and Security Rules Compliance

Contractor certifies that it is, and at all times under this Agreement will be, in full compliance with the applicable privacy and security provisions of HIPAA, HITECH, and Federal Privacy and Security Rules.

Section 7.02. Subcontractors and Consultants

Upon request Contractor shall provide any consultant or contractor of Benefiting Agencies or a Participating Program access to PHI or EPHI if the consultant or contractor executes a Business Associate Agreement with Contractor.

Section 7.03. Business Associate Agreement

Contractor shall be deemed to be a Business Associate of any Participating Program that is a Covered Entity or Business Associate of a Covered Entity. Contractor shall enter into a Business Associate Agreement in the form set forth in Attachment 6 (Business Associate Agreement), if Participating Program informs Contractor it is either a Covered Entity or the Business Associate of a Covered Entity.

Section 7.04. Site Security

While on Benefiting Agency or Participating Program premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. Benefiting Agencies and Participating Programs reserve the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor shall promptly notify Benefiting Agencies and Participating Programs.

Section 7.05. Oregon and Washington Security Standards

Contractor shall at all times under this Agreement meet or exceed the Oregon Enterprise Security Office policies at <https://www.oregon.gov/das/OSCIO/Pages/SecurityGuidance.aspx>.

ARTICLE VIII INDEMNITY, INSURANCE AND WARRANTY

Section 8.01. General Indemnity

Contractor shall defend, save, hold harmless, and indemnify the Participating Program, and their officers, employees, and agents ("Participating Program Indemnitees") from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including the cost of legal defense or settlement and attorney's fees ("Indemnified Claims"), to the extent resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, Subcontractors, or agents under this Agreement.

Section 8.02. Indemnity for Infringement Claims

Without limiting the generality of Section 8.01 of this Article VIII (Indemnity, Insurance and Warranty), Contractor shall defend, indemnify, and hold the Participating Program indemnitees harmless from all indemnified claims arising out of or related to any claims that the Services, the Work Product, or any other tangible or intangible items delivered to Participating Program by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or the use thereof by Participating Program, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party. Participating Program shall provide Contractor with prompt written notice of any claim of infringement.

Section 8.03. Control of Defense and Settlement

Contractor shall have control of the defense and settlement of any claim that is subject to Sections 8.01 (General Indemnity) or 8.02 (Indemnity for Infringement Claims) of this Article VIII (Indemnity, Insurance and Warranty); however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of a State or any agency of a State, nor purport to act as legal representative of a State or any of their agencies, without first receiving from the State attorney general, in a form and manner determined appropriate by the attorney general, authority to act as legal counsel for the applicable State, nor shall Contractor settle any claim on behalf of a State without the approval of the attorney general. A State may, at its election and expense, assume its own defense and settlement in the event that the State determines that Contractor is prohibited from defending a State, or is not adequately defending the State's interests, or that an important governmental principle is at issue and a State desires to assume its own defense. Neither Party shall settle or compromise a claim on behalf of the other Party without that Party's prior written consent which will not be unreasonably withheld.

Section 8.04. No Special Damages

Under no circumstances shall Contractor or Participating Program be liable under this Agreement for any indirect, special, incidental, or consequential damages or for lost profits.

Section 8.05. [RESERVED]

Section 8.06. Limitation of Liability for Covered Products

1. Participating Program agrees and acknowledges that the services provided by Contractor herein are not intended to substitute for or supplement the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other health care

professionals in prescribing, dispensing, or suggesting pharmaceuticals or other products.

2. Contractor shall under no circumstances be liable (regardless of the basis for the action) to Participating Program, any Member, or consumers of pharmaceutical products for any damages, injuries, losses, claims, costs, or lawsuits, including any attorney's fees, arising from any actions, failure to act, or violations of any applicable standard of care or applicable law by pharmacies, pharmaceutical manufacturers, pharmaceutical distributors, or any health care providers arising out of the sale, compounding, dispensing, manufacturing, or use of any prescription product, medical supplies, or services in connection with this Agreement.

Section 8.07. [RESERVED]

ARTICLE IX APPLICABLE LAW

Section 9.01. Governing Law

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.

Section 9.02. Venue; Consent to Jurisdiction

Any claim, action, suit or proceeding (collectively, "Claim") between the Parties 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 9.02 be construed as 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. CONTRACTOR, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Section 9.03. Constitutional Restrictions

Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution, or any other law regulating liabilities or monetary obligations of the State of Oregon.

Section 9.04. [RESERVED]

Section 9.05. Compliance with Applicable Law

1. Contractor shall comply with all applicable federal, state, and local laws, regulations, and ordinances, and all applicable local, state, and federal licensing, accreditation and registration requirements or standards, necessary for the performance of this Agreement. Without limiting the generality of the foregoing, Contractor expressly shall comply with the applicable Oregon, Washington, and federal laws, regulations, and executive orders applicable to this Agreement in the following areas:
 - a. Civil rights and employment laws including Titles VI and VII of the Civil Rights Act of 1964, Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, Executive Order 11246, the Age

Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, and any other law which provides civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

- b. Laws protecting privacy and security, including the Health Insurance Portability and Accountability Act of 1996; the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009 ("ARRA"); the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628, including the notice of breach of security provisions;
 - c. Laws protecting benefits rights of veterans, including the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the Uniformed Services Employment and Reemployment Rights Act of 1994;
 - d. False claims acts;
 - e. Statutes of the State (or in the event Participating Program is a local government, ordinances) applicable to any Participating Program that is a Governmental Program; and
 - f. All regulations and administrative rules established pursuant to the foregoing laws.
2. With regard to workers' compensation insurance, all employers, including Contractor, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126(2). In Washington, Contractor shall comply with the provisions of Title RCW 51, Industrial Insurance.
 3. Applicable laws, regulations, and executive orders are incorporated by reference if required by law to be incorporated. Contractor shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(gg)), recycled PETE products (as defined in ORS 279A.010(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(ii)). Contractor shall require and ensure that each of its Subcontractors complies with these requirements. A reference in this Agreement to a provision of law means the provision in effect or as amended from time to time.

ARTICLE X AUDIT RIGHTS

Section 10.01. General Audit Provisions

1. No more than once annually and upon a mutually agreed schedule, Benefiting Agencies, Participating Programs, or their third party auditors, which may not be a competitor of Contractor or Subcontractors, may audit Contractor's performance and compliance with the terms and conditions of this Agreement.
2. The Participating Program recognizes that the data integrity validation process will require Contractor to provide information that is protected by signed confidentiality agreements with the pharmaceutical manufacturers and other Subcontractors. To the

extent such information is not in the public domain or discovery by lawsuit, Contractor considers such information proprietary property and will be harmed if such Confidential Information is disclosed to the Participating Program. Therefore, Contractor, may require the third party auditor or Participating Program to enter into a confidentiality agreement prior to conducting the audit. All work papers and other Confidential Information may be disclosed by the auditor to the Participating Program. Although some audit findings may be deemed proprietary by Contractor, third party auditor will be able to provide detailed findings to the applicable party if there are inconsistencies with this Agreement between Contractor and the Participating Program.

3. Contractor shall not limit a Participating Program, or its third party auditor's ability to review the full findings of any audit of compliance with the terms of this Agreement, conducted by the Participating Program, through a contract, non-disclosure agreement or audit protocol. Contractor must provide the Benefiting Agencies and Participating Program with a copy of the proposed contract, non-disclosure agreement or audit protocol with the third party auditor, for Benefiting Agency and Participating Program approval prior to execution. The contract, audit protocol, and non-disclosure agreement cannot in any way prevent access to documents necessary to perform the audit, nor circumscribe any work the third party auditor needs to perform the audit, or report the findings of the audit to the Participating Program. The contract, audit protocol, and non-disclosure agreement must allow the third party auditor to review and report to the Participating Program Contractor's actual costs for and payments to Participating Pharmacies and Members.
4. Contractor must allow the Participating Program or third party auditor to review and report to the Participating Program the following:
 - a. Maximum Allowable Cost (MAC) lists;
 - b. Actual acquisition costs for Covered Drugs dispensed through the Participating Specialty Pharmacy;
 - c. Participating Pharmacy contracts;
 - d. Payments to Participating Pharmacies and all retroactive adjustment in payments (e.g. Direct and Indirect Remuneration);
 - e. Payments to Members;
 - f. Invoices to third parties including pharmaceutical manufacturers;
 - g. Financial transactions between Contractor and third parties, including pharmaceutical manufacturers;
 - h. All third party financial benefits Contractor receives, including but not limited to Rebates from pharmaceutical manufacturers;
 - i. Contracts with all other third parties that affect financial performance under this Agreement;
 - j. Performance guarantee records such as telecommunication logs and records, detailed claims adjudication records, complaints and appeals records, Prior-Authorization records, and Participating Pharmacy geo-access reports; and,

- k. Rebate Administration records such as invoices to third parties, financial transactions between Contractor and third parties and third party contracts for compliance with the terms of the Agreement.
- 5. Such audits shall be at the auditing party's sole expense.
- 6. Participating Program shall provide Contractor with 45 days advanced notice, prior to conducting an audit.
- 7. An audit of Contractor records shall be conducted at Contractor's office where such records are located, during normal business hours, without undue interference with business activities, and in accordance with reasonable audit procedures. At the request of Participating Program, Contractor shall support using a video conference or other digital technology for conducting audits. Audits must be conducted consistent with applicable state and federal privacy laws.
- 8. Participating Program will give Contractor the audit sample methodology and the percentage of Prescription Drug Claims to be audited, when applicable. Contractor shall cooperate with requests from the third party auditor for Prescription Drug Claim data and other related requests from the third party auditor.

Section 10.02. Audit Findings, Dispute Resolution, and Reconciliation

- 1. Preliminary results of any independent audit will be provided to Contractor for review, in order to give Contractor the opportunity to address and correct any errors by the auditor in interpreting Contractor's data or systems. If a completed audit reveals a discrepancy in the results and previous calculations of the audited party, then the auditing party shall deliver written notice setting forth in reasonable detail the basis of such discrepancy.
- 2. Contractor and the Participating Program shall use reasonable efforts to resolve the discrepancy within 30 days following delivery of the notice, and such resolution shall be final, binding, and conclusive upon Contractor and the Participating Program. Disputed points not resolved must be noted in the final audit report given to the Benefiting Agency and Participating Program.
- 3. Upon a resolution of disputed results and determination of a final and conclusive discrepancy revealed by an audit procedure:
 - a. Contractor agrees that when the results of the independent audit differs by 5% from Contractor's reported performance, the results of the independent audit will be used as the basis for determining whether Contractor's performance complies with the terms and conditions of this Agreement; and
 - b. The Parties agree that the party that owes money shall pay such sums to the other party, within 30 days of the delivery of the conclusive audit findings.

ARTICLE XI RECORDS; CONFIDENTIALITY

Section 11.01. Records Maintenance.

Contractor shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's

performance. Benefiting Agencies, Participating Program Administrator, or any other agent of Participating Program, the Oregon Secretary of State's Office, the Washington State Auditor's Office, the Washington State Office of Insurance Commissioner, a legislative audit or review committee of either State, and the federal government and their duly authorized representatives may access, examine, audit, and make excerpts and transcripts of such records and other books, documents, papers, plans, and writings of Contractor pertinent to this Agreement at no additional cost, including access to all information that supports the findings, conclusions, and recommendations of Contractor's reports, including computer models and methodology for those models. Contractor shall retain and keep accessible all records, books, documents, papers, plans, and writings for a minimum of seven years, or such longer period as may be required by applicable law, following final payment and 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.

Section 11.02. Access

Contractor shall allow Participating Program to audit Prescription Drug Claims and other records relating to this Agreement at any time, including but not limited to Pharmacy Provider Contracts, amounts paid to network providers, and utilization management criteria. Audits of Pharmacy Provider Contracts may require execution of a non-disclosure agreement by the auditor. Participating Program will have the right to audit any billings and examine any records maintained pursuant to this Agreement both before and after payment. Participating Program may recover any excessive or illegal payment from Contractor regardless of payment of any amount under this Agreement. Participating Program shall allow Contractor to examine any records maintained by Participating Program relating to the Services provided hereunder. In the event such examination reveals that Contractor was underpaid for such Services, Contractor may recover any underpayment from Participating Program.

Section 11.03. Prescription Records

Contractor or Participating Pharmacies will own and maintain all Member and related prescription records generated during the normal course of business pursuant to the terms of this Agreement and as required by law. All information, records, and data pertaining to the processing and payment of Prescription Drug Claims will remain the property of Participating Program, unless Contractor insures Program for such Prescription Drug Claims.

Section 11.04. Confidential Information

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of Confidential Information. Contractor shall hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Agreement, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Participating Program's express written consent or as provided by law. Contractor shall implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information. Contractor shall not disclose any Confidential Information to third parties except as required in the performance and administration of this Agreement or as otherwise authorized by Participating Program, applicable law, order of a court or other dispute resolution forum, or administrative agency

having authority to order disclosure of such Confidential Information. Contractor shall use or disclose the Confidential Information of Participating Program and Members administered through a Participating Program Agreement under this Agreement solely at the request of Participating Program or for the benefit of Participating Program and its Members, subject to the terms and conditions of this Agreement.

Section 11.05. Public Records

Contractor acknowledges the Participating Program may be subject to Public Records Laws and that this Agreement and any Work Orders may be a public record as defined in Public Records Laws. A Benefiting Agency or Participating Program may disclose Confidential Information received from Contractor to the extent disclosure is required by Public Records Laws. Any specific information that is claimed by Contractor to be Confidential Information must be clearly identified as such by Contractor. To the extent consistent with chapter Public Records Laws, Benefiting Agencies shall maintain the confidentiality of all such information marked Confidential Information in their possession. If a public disclosure request is made to view Contractor's Confidential Information, Participating Program will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, Participating Program will release the requested information on the date specified. Contractor is exclusively responsible for defending Contractor's position concerning the confidentiality of the requested information. Benefiting Agencies and Participating Programs are not required to assist Contractor in opposing disclosure of Confidential Information. Benefiting Agencies and Participating Programs are not required to return or destroy Confidential Information if to do so would violate public records retention or archiving requirements.

Section 11.06. Use After Termination

Immediately upon expiration or termination of this Agreement, Contractor shall, at Participating Program's option: (i) certify to Participating Program that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Participating Program; or (iii) take whatever other steps Participating Program requires of Contractor to protect Participating Program's Confidential Information. Notwithstanding the foregoing Contractor may retain copies of Confidential Information for backup, legal, and archival purposes provided such Confidential Information shall remain subject to the terms of this Agreement.

Section 11.07. Rights to Monitor

Participating Program reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Agreement. Violation of this Article XI (Record; Confidentiality) Contractor or its Subcontractors may result in termination of this Agreement and demand for return of all Confidential Information, monetary damages, or penalties.

Section 11.08. Confidentiality Breach – Required Notification

If Contractor becomes aware of a breach or suspected breach of confidentiality, Contractor shall immediately notify the Participating Program and the Benefiting Agency Privacy Officer. For the purposes of this Agreement, "immediately" shall mean within one day of Contractor becoming aware of the breach or suspected breach. Contractor will take steps to mitigate any known harmful effects of such unauthorized access including, but not limited to,

sanctioning employees, notifying subjects, and taking steps necessary to stop further unauthorized access. Contractor agrees to indemnify and hold harmless Participating Program for any damages related to unauthorized use or disclosure of Confidential Information by Contractor, its officers, directors, employees, Subcontractors, or agents. Any breach of this clause may result in termination of the Agreement and the demand for return of all Confidential Information.

ARTICLE XII OWNERSHIP OF WORK PRODUCT

Section 12.01. Rights in data/copyright

Unless otherwise provided, all Materials produced at the request of the Participating Program, exclusively under this Agreement (including derivative works and compilations) shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by Participating Program. Participating Program shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights (whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine) to Participating Program of such Materials provided hereunder for use in connection with Services. This provision does not include any intellectual property, including but not limited to Trademarks, that were owned by Contractor prior to Contractor providing services under this Agreement.

Section 12.02. Pre-existing Materials

For Materials that are delivered under the Agreement, but that incorporate pre-existing Materials not produced under the Agreement, Contractor hereby grants to Participating Programs a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display, and to authorize others to do the same on behalf of Benefiting Agency and Participating Programs, subject to the following sentence. Benefiting Agency and Participating Programs shall not, without consent of Contractor, publicly disclose any Confidential Information that is (a) proprietary, trade secret, or otherwise confidential technical and business information of Contractor, or (b) information marked or designated in writing by Contractor as "confidential" prior to initial disclosure. Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights, and rights of publicity, necessary to grant such a license to Benefiting Agency.

Section 12.03. Third Party Works

If any Work Product is Third Party Intellectual Property and license rights are necessary for Participating Programs to fully enjoy the benefits of this Agreement, Contractor shall secure on behalf of Benefiting Agency and Participating Programs and in their names, a royalty-free license to use the Third Party Intellectual Property, and to authorize others to do the same on behalf of Benefiting Agency and Participating Programs to the extent contemplated by this Agreement.

Section 12.04. Invasions of Privacy

Contractor shall exert all reasonable effort to advise Participating Program, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. Participating Program shall receive prompt written notice of each notice or claim of copyright infringement received by Contractor with respect to any data delivered under this Agreement. Participating Program shall have the right to modify or remove any restrictive markings placed upon the data by Contractor.

ARTICLE XIII DISPUTES

Section 13.01. Resolution of Disputes; Best Efforts

The Parties shall use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Agreement. Both will continue, without delay, to carry out their respective responsibilities under this Agreement while attempting to resolve the dispute under this Article XIII (Disputes).

Section 13.02. Dispute Resolution Process

When a genuine dispute arises between Participating Program and Contractor regarding the terms of this Agreement or the responsibilities imposed herein that cannot be resolved at the project management level, either Participating Program or Contractor may submit a request for a dispute resolution to the respective Benefiting Agency Administrator who shall oversee the following Dispute Resolution Process: Benefiting Agency shall appoint a representative to a dispute panel; Contractor shall appoint a representative to the dispute panel; the director, or their delegate, of the state agency in which the Benefiting Agency resides will chair the dispute panel. The dispute panel shall thereafter decide the dispute with the majority prevailing. Unless Benefiting Agency provides otherwise by rule or order, the dispute panel process shall not be considered a contested case within the meaning of Oregon's Administrative Procedures Act or an adjudicative proceeding within the meaning of Washington's Administrative Procedure Act, chapter 34.05.RCW.

Section 13.03. Notification

A request for a dispute resolution must:

1. Be in writing signed by Contractor or Participating Program;
2. State the disputed issue(s);
3. Identify the pertinent provision(s) of the Participating Program Agreement;
4. State the positions of both Contractor and Participating Program (the "Disputants");
5. State the remedies sought;
6. State Contractor's name, address, state;
7. Identify the person acting for requestor in the matter of the hearing; and
8. Be mailed, in accordance with the notice provisions herein, to Benefiting Agency and Participating Program or Contractor (the "Respondent") as the case may be, within thirty (30) days after the party could reasonably be expected to have knowledge of the issue which it now disputes.

Section 13.04. Responses in Writing

Respondent may reply in writing. The response, if any, must be mailed, in accordance with the notice provisions herein, to Benefiting Agency and the requestor within 20 business days after receipt of the requestor's statement. Benefiting Agency shall review the written statements by and reply in writing to both Disputants within ten (10) business days. Benefiting Agency may extend this period by notifying the Disputants. Neither Disputant is obligated to accept Benefiting Agency's proposed resolution of the dispute.

Section 13.05. Sole Administrative Remedy

Except for events of default so designated in the Participating Program Agreement, Contractor and Participating Program must use this dispute hearing process before bringing any action in a judicial tribunal. This dispute resolution process constitutes the sole administrative remedy available under this Agreement. The Parties agree that this resolution process shall precede any action in a judicial and quasi-judicial tribunal.

Section 13.06. Non-exclusive

The remedies provided in this Agreement shall not be exclusive, but are in addition to all other remedies available under law.

Section 13.07. Litigation

In the event of litigation or other action brought to enforce Agreement terms, each Party agrees to bear its own attorney's fees and costs.

ARTICLE XIV PRESCRIPTION DRUG CLAIMS

Section 14.01. Fiduciary

Contractor shall assume the responsibilities of a Fiduciary regarding Prescription Drug Claims, including appeals, under standards of the Affordable Care Act for benefit adjudication and defense of utilization review decisions, if requested by Participating Program.

Section 14.02. Prescription Drug Claim Records

The Participating Program shall own all Prescription Drug Claim records and Eligibility data, unless Participating Program's Pharmacy Benefit Plan is insured by Contractor. Notwithstanding the ownership of the Prescription Drug Claim records and Eligibility data, Contractor or Benefiting Agency may use such records and data for performing the Services.

Section 14.03. [RESERVED]

ARTICLE XV REPRESENTATIONS AND WARRANTIES

Section 15.01. Contractor Representations

Contractor represents and warrants to Participating Program that:

1. Contractor has the power and authority to enter into and perform this Agreement.

2. This Agreement is, and any amendment to this Agreement when executed and delivered will be, a valid and binding obligation of Contractor enforceable in accordance with its terms.
3. Each person executing this Agreement on behalf of Contractor is, and each person executing any amendment to this Agreement on behalf of Contractor will be, duly authorized to execute this Agreement or amendment and to bind Contractor to each of its terms and conditions.
4. The execution and performance of this Agreement has been, and the execution and performance of any amendment to this Agreement will be, duly authorized by all necessary corporate, trust, or partnership action.
5. Contractor has the requisite experience, expertise, and resources to fully and properly perform all of its duties and obligations, and exercise all of the powers, as set forth in this Agreement.
6. Contractor possesses greater knowledge and skill than the average person and is under a duty to exercise a skill greater than that of an ordinary person. Contractor has the skill and knowledge possessed by well-informed members of its industry and 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.
7. Contractor shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Services in this Agreement.
8. Contractor has completed, obtained, and performed all other registrations, filings, approvals, authorizations, consents, or examinations required by any government or governmental authority for its acts contemplated by this Agreement.
9. Any information Contractor has furnished, or representation Contractor has made for this Agreement, including its attachments and amendments, was true, complete, accurate, and not misleading when made.
10. Contractor has provided and will provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement and has and will have the legal capacity to perform the Services under this Agreement in the State of Oregon.
11. Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any state or federal department or agency from participating in transactions (debarred). Contractor shall include the above requirement in any and all subcontracts into which it enters, and also agrees that it will not employ debarred individuals. Contractor shall immediately notify Benefiting Agencies and Participating Programs if, during the term of this Agreement, Contractor becomes debarred. Benefiting Agencies may immediately terminate this Agreement by providing Contractor written notice, if Contractor becomes debarred during the term hereof.
12. The representations and warranties set forth in this Article XV (Representations and Warranties) are in addition to, and not in lieu of, any other warranties or performance guaranties provided.

13. Contractor shall promptly notify Participating Programs in writing if any of the foregoing representations or warranties ceases to be true, or is expected to cease to be true, at any time during the term of this Agreement.

ARTICLE XVI RELATIONSHIP OF PARTIES

Section 16.01. Administrative Rules

All provisions of this Agreement are governed by Oregon Administrative Rules: 431-121-2000, 431-121-2005, 431-121-2010, 431-121-2020, 431-121-2030, 431-121-2050, and 431-121-2065, in addition to any specific rules cited herein. If this Agreement's provisions conflict with administrative rules of Benefiting Agencies, the rules take precedence over the provisions of this Agreement.

Section 16.02. Appointment as Agent

Participating Program appoints Contractor as Participating Program's agent with respect to the Pharmacy Benefit Plan administered by Contractor, and certifies that Contractor is authorized to act on Participating Program's behalf, for the purpose of negotiating and arranging, either directly or indirectly, pharmacy reimbursement rates, pharmaceutical manufacturer Rebates and other incentives in connection with Prescription Drugs dispensed to Members under the Participating Program Agreement. Contractor shall negotiate on the Participating Program's behalf, passing through the payment for Prescription Drugs from the Participating Program to the pharmacy or Member at the amount paid by the Participating Program. Contractor shall perform its responsibilities pursuant to this Section 16.02 in compliance with all policies, procedures and guidelines established by the applicable Participating Program from time to time.

Section 16.03. Exclusive Provider

Contractor is the sole and exclusive provider of prescription benefit programs, Pharmacy Benefit Administration, and Prescription Drug Claim processing Services to and on behalf of Participating Program and Members with respect to the Pharmacy Benefit Plan of Participating Program administered by Contractor.

Section 16.04. Participating Program Authority

Contractor and Benefiting Agencies shall make no representation or warranty that Participating Program's Benefit Plan Design (BPD) is in compliance with applicable law. Unless Participating Program's Pharmacy Benefit Plan is fully insured by Contractor, Participating Program will retain complete discretionary, binding, and final authority to construe the terms of its Pharmacy Benefit Plan, to interpret ambiguous language, to make factual determinations regarding the payment of Prescription Drug Claims or provisions of benefits, to review denied Prescription Drug Claims, and to resolve Member appeals. Contractor may decline to administer a BPD that is inconsistent with this Agreement. Participating Program will provide Contractor with updates to its PDL, BPD, and other information promptly following each change thereto.

Section 16.05. Brokers and Consultants

In the event that Participating Program may be party to a Broker arrangement in connection with the Services provided hereunder, Participating Program is solely responsible for any and all fees that may be due to such Broker. Further, in conjunction with any such

payments, and pursuant to establishing appropriate non-disclosure, data sharing and Business Associate Agreements, Participating Program acknowledges that Contractor may disclose information, other than Personal Information or Protected Health Information, related to Participating Program's Prescription Drug Claim volume to such Brokers.

Section 16.06. Change in Status

In the event of substantive change in the legal status, organizational structure, or fiscal reporting responsibility of Contractor, Contractor shall notify the Participating Program and Benefiting Agencies of the change. Contractor shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.

ARTICLE XVII CODE OF CONDUCT

The following terms and conditions supplement and do not replace any provisions required by the rules or policies of Benefiting Agencies:

Section 17.01. Prohibited Practices

Except as disclosed in writing to and accepted or authorized in writing by Benefiting Agencies, or as otherwise expressly permitted or required by this Agreement, Contractor shall not, in any way in connection with this Agreement:

1. Take unfair advantage of Benefiting Agencies, Participating Programs, or the Members through lack of Transparency, manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair practice;
2. Mislead Benefiting Agencies or Participating Programs through deceptive acts or practices, false advertising claims, misrepresentations regarding the Pharmacy Benefit Plan of Contractor or any competitor, or other unfair methods of competition; or
3. Engage in any conduct, conspiracy, contract, agreement, arrangement or combination, or adopt or follow any practice, plan, program, scheme, artifice or device similar to, or having a purpose and effect similar to, the conduct prohibited above.

Section 17.02. Pay Equity

1. Contractor represents and warrants that it is, and shall be at all times while this Agreement is in effect, in compliance with Oregon's pay equity law, ORS 652.210 to 652.235, and the administrative rules thereunder, OAR chapter 839 division 8.
2. Contractor may not determine compensation for a position based on current or past compensation of a prospective employee (not including a current employee of the employer during a transfer, move, or hire of the employee to a new position with the same employer);
3. Contractor may not seek the salary history of an applicant or employee from the applicant or employee, or a current or former employer of the applicant or employee before the employer makes an offer of employment to the prospective employee that includes an amount of compensation.

Section 17.03. Disclosure and Transparency

Contractor shall fully, clearly, completely, and adequately disclose to Benefiting Agencies and Participating Programs the Services it provides and all forms of income, compensation, or other remuneration it receives or pays or expects to receive or pay under or otherwise in connection with this Agreement. The manner in which Contractor gets paid will be Transparent and understandable to Benefiting Agencies and Participating Programs.

Section 17.04. Conflicts of Interest

Contractor shall perform under this Agreement so as to allow impartial evaluation of Contractor's Services by the Participating Program, and Contractor shall perform its duties using its best impartial judgment in all matters affecting the Consortium. A conflict of interest occurs when Contractor has a personal interest or is involved in an activity that could interfere with the Consortium's ability to evaluate Contractor's ability to perform its Services, in an objective, impartial, and effective manner. An apparent conflict of interest occurs when personal interests or activities could lead others to doubt the objectivity or impartiality of the Consortium or of Contractor. To maintain independence of judgment and action, Contractor shall avoid conflict of interest or an appearance of conflict that might arise because of economic or personal self-interest, except as disclosed in writing to and consented in writing by the Benefiting Agencies. This Contractor's disclosure to Benefiting Agencies may include suggestions for mitigating or managing a conflict of interest, such as communications barriers with conflicted individuals. While it is impossible to list all situations that could constitute a conflict of interest, the following are some common examples:

1. Using property or non-public information of Benefiting Agencies, Participating Programs, or Members, for personal gain of Contractor or its Affiliate (other than compensation to Contractor expressly provided in this Agreement);
2. Having an ownership or economic interest in a company that does business with a vendor or with Contractor, where the owner or interested person is in a position to influence Contractor's or Benefiting Agencies' relationship with the Participating Program;
3. Having a representative of a Contractor or vendor to the State of Oregon or Washington be a family member of an employee of the State of Oregon or Washington who has authority over the Consortium Contract;
4. Contractor or its Affiliate employing for work relating to this Agreement a former employee of a Benefiting Agency, who within the past two years had authority over this Agreement.

Section 17.05. Government Ethics

Contractor shall take no action that would cause any person bound by the government ethics law of the State of Oregon (ORS Chapter 244) to be found in violation of that law. Benefiting Agency or Participating Program may terminate this Agreement, by written notice to Contractor, if it is found, after due notice and examination, that there is a violation of the government ethics law of the State, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Agreement is so terminated, Benefiting Agency or Participating Program shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of a breach of the contract by Contractor.

Section 17.06. Use of Funds or Assets

To the extent it uses funds and assets of a Participating Program under this Agreement, Contractor shall not, directly or indirectly:

1. Use funds or assets for any purpose which would be in violation of any applicable law or regulation;
2. Use Participating Program's funds or assets to make contributions to any political candidate, party, or campaign either within or outside the United States;
3. Establish or maintain a fund, asset, or account that is not recorded and reflected accurately on the books and records of Contractor or Participating Program;
4. Make false or misleading entries in the books and records of Contractor or Participating Program, or omit to make entries required for these books and records to be accurate and complete; or
5. Effect a transaction or make a payment with the intention or understanding that the transaction or payment is other than as described in the documentation evidencing the transaction or supporting the payment.

Section 17.07. Marketing Practices

Except as provided in Section 17.05 (Government Ethics) of this Article XVII (Code of Conduct) Contractor shall:

1. Ensure that all relationships with its Affiliates, Subcontractors, and business partners relating to this Agreement are conducted at arms-length, using criteria approved by Benefiting Agencies and are based on fairness and the best interests of Benefiting Agencies and Participating Program.
2. In any dealings with a supplier, customer, government official, or other person or entity, Contractor shall not request, accept, or offer to give any payments, gifts, trips, kickbacks, or other significant things of value, the purpose or result of which could be to influence or that may be construed as swaying a decision relating to this Agreement based on anything other than the merits of this Contractor and the Services provided in this Agreement. For this purpose, a "significant thing of value" will mean a thing that a person could not lawfully receive as an employee of the Benefiting Agencies.
3. In any dealings with a supplier, customer, government official, or other person or entity for or on behalf of Benefiting Agencies and its Participating Program, Contractor and its Affiliates shall not exchange business gifts, meals, entertainment, or other business courtesies that are intended to interfere, or are in a magnitude that may have the effect of interfering, with the recipient's duty to act in the best interests of Benefiting Agencies and its Members or to interfere with the recipient's business judgment.

Section 17.08. Permitted Practices

Contractor may engage in marketing practices permitted by law, provided that, if a marketing practice could directly affect Participating Program and could violate (or appear to violate) Section 17.05 (Government Ethics) of this Article XVII (Code of Conduct), Contractor shall

disclose such marketing practices to Participating Program Administrators and Benefiting Agencies through periodic updates.

Section 17.09. Gifts and Other Payments

1. Except with written consent of the relevant Participating Program Administrator or the Benefiting Agency and as permitted by law, in any dealings with a supplier, customer, government official, or other person or entity, Contractor shall not request, accept, or offer to give any payments, gifts, trips, kickbacks, or other significant things of value, the purpose or result of which could be to influence or that may be construed as swaying a decision relating to this Agreement based on anything other than the merits of this Contractor and the Services provided in this Agreement. For this purpose, a "significant thing of value" will mean a thing that a person could not lawfully receive or be to an employee of the Participating Program.
2. Except with written consent of the relevant Participating Program Administrator or the Benefiting Agency and as permitted by law, in any dealings with a supplier, customer, government official, or other person or entity for or on behalf of Benefiting Agencies and its Participating Programs or in connection with a procurement, Contractor and its Affiliates shall not exchange business gifts, meals, entertainment, or other business courtesies that are intended to interfere, or are in a magnitude that may have the effect of interfering, with the recipient's duty to act in the best interests of Participating Program and its Members or to interfere with the recipient's business judgment.

Section 17.10. Compliance with Code of Conduct Provisions

Contractor represents and warrants to Participating Program that Contractor and its Affiliates is in compliance with the Code of Conduct in this Article XVII (Code of Conduct). Contractor shall ensure that its Affiliates comply with this Code of Conduct. The provisions of this Code of Conduct do not alter any stricter or different guidelines or prohibitions of Benefiting Agencies.

Section 17.11. System Security

CONTRACTOR AGREES NOT TO ATTACH ANY CONTRACTOR-SUPPLIED COMPUTERS, PERIPHERALS OR SOFTWARE TO THE BENEFITING AGENCY NETWORK WITHOUT PRIOR WRITTEN AUTHORIZATION FROM BENEFITING AGENCY'S INFORMATION SYSTEMS MANAGER. CONTRACTOR-SUPPLIED COMPUTER EQUIPMENT, INCLUDING BOTH HARDWARE AND SOFTWARE, MUST BE REVIEWED BY THE BENEFITING AGENCY INFORMATION SERVICES PRIOR TO BEING CONNECTED TO ANY BENEFITING AGENCY NETWORK CONNECTION AND THAT IT MUST HAVE UP TO DATE ANTI-VIRUS SOFTWARE AND PERSONAL FIREWALL SOFTWARE INSTALLED AND ACTIVATED ON IT. UNAUTHORIZED NETWORKS AND SYSTEMS ACCESS IS A VIOLATION OF OHA, CITING ACCESS CONTROL POLICY 090-003, AND CONSTITUTES A CLASS A MISDEMEANOR PURSUANT TO ORS 164.377. VIOLATION OF ANY OF THESE LAWS OR POLICIES COULD RESULT IN TERMINATION OF THE AGREEMENT AND OTHER PENALTIES.

ARTICLE XVIII AGENTS, SUBCONTRACTORS AND AFFILIATES

Section 18.01. Contractor Agent

Participating Programs will neither recognize the appointment of any agent, general agent, or Broker by Contractor nor authorize any payment or remuneration of any kind by Contractor to a party not approved in writing by Participating Program.

Section 18.02. Appointment of Subcontractors

Contractor shall not enter into any subcontracts for any of the Services required by this Agreement (including delegation of any Services to Affiliates of Contractor), without prior written consent of Benefiting Agencies. Such consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Agreement. The provisions of this Agreement bind upon and inure to the benefit of the Parties hereto, and their respective Successors and permitted assigns, if any.

Section 18.03. Subcontractor Relationship

In the event any Services are subcontracted, nothing contained in this Agreement or any subcontract creates any contractual relationship between any such Subcontractor and Benefiting Agencies or a Participating Program, and Contractor shall accept full responsibility for the performance of all Services that Contractor subcontracts. Contractor agrees that such Subcontractor shall be held to the same standards and requirements to which Contractor is obligated under this Agreement. More specifically, Subcontractor shall be required to comply with the following: Article VII (Privacy and Security); Article IX (Applicable Law), Article XI (Records; Confidentiality); Article XIII (Disputes); Article XV (Representations and Warranties); Article XVII (Code of Conduct); Article XIX (Survival); Article XXV (Miscellaneous) Section 25.02 (Independent Contractor); Section 25.06 (Assignment) and Section 25.07 (No Third Party Beneficiaries).

Section 18.04. Subcontractor Termination

1. If, at any time during the progress of the work, the Participating Program determines in its sole judgment that any Subcontractor is incompetent or undesirable, the Participating Program shall notify the Benefiting Agency and Contractor, and Contractor shall take immediate steps to resolve the Subcontractor's performance. The rejection or approval by the Participating Program of any Subcontractor or the termination of a Subcontractor shall not relieve Contractor of any of its responsibilities under the Agreement, nor be the basis for additional charges to the Participating Program. The Participating Program has no contractual obligations to any Subcontractor or vendor under contract to Contractor.
2. In the event that Participating Program prefers an alternative vendor to the one that is included as Subcontractor in this Agreement, Contractor shall seek to negotiate in good faith to add that vendor by mutual agreement between Contractor and Participating Program, and shall negotiate any necessary changes to the Participating Program Agreement for use with that vendor.

Section 18.05. Contractor Responsibilities

Contractor shall require that Subcontractors comply with all terms and conditions of this Agreement. The contract between Contractor and each Subcontractor must be in writing. Contractor is responsible for Services performed under this Agreement including Services by Subcontractors, for all payments to Subcontractors and for all payments by Subcontractors to others. Contractor shall fulfill any performance guarantees and subsequent financial liabilities due to performance of Subcontractors.

Section 18.06. Contractor Obligations

Contractor shall assure performance under this Agreement will not be adversely affected by any contractual obligation of any of its Affiliates.

Section 18.07. Subcontractor Business Associate Agreement

Contractor shall have Business Associate Agreements or other nondisclosure agreements in effect with each Subcontractor before disclosing any Protected Health Information or Personal Information about Members to that Subcontractor. Those agreements must comply with all legal requirements in the jurisdictions where the Subcontractor operates. Those agreements shall bind the Subcontractor and its agents and employees to protect the Protected Health Information and Personal Information at least as much as Contractor bound to do under this Agreement.

ARTICLE XIX SURVIVAL

All rights and obligations cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in the following: Article II (Contractor Responsibilities), Section 2.07 (Claims Processing and Benefit Administration); Article V (Program Invoicing and Payments), Section 5.01 (Consideration); Article VI (Termination), Section 6.05 (Transition Procedures Upon Termination); Article VII (Privacy and Security); Article VIII (Indemnity, Insurance and Warranty); Article IX (Applicable Law); Article XI (Records; Confidentiality); Article XII (Ownership of Work Product); Article XV (Representations and Warranties); Article XVII (Code of Conduct); Article XVIII (Agents, Subcontractors and Affiliates); Article XX (Notices); Article XXI (Entire Contract); Article XXV (Miscellaneous), Section 25.06 (Assignment and Section 25.07 (No Third Party Beneficiaries); Attachment 6 (Business Associate Agreement), Paragraph 8 (Term and Termination), Subparagraph c (Effect of Termination); and this Article XIX (Survival), and any other provision of this Agreement that reasonably contemplates performance after the termination date. The terms and conditions contained in this Agreement, which by their sense and context are intended to survive the completion, cancellation, termination, or expiration of the Agreement, shall survive.

ARTICLE XX NOTICES

Except as otherwise expressly provided in this Agreement, any communications required to be delivered or notices to be given under this Agreement shall be given in writing by email, personal delivery, delivery by nationally recognized overnight courier service, facsimile, or mailing the same, postage prepaid. Communications and notices to Contractor, Participating Program, or Benefiting Agencies shall be given at the address, number or email address set forth below, or to such other individuals, addresses or numbers as each Party may indicate, by notice to the other Party and to the Benefiting Agency.

Contractor: <u>Moda Health</u>	With a copy to: <u>Moda Health</u>
Attn: <u>Chandra Wahrgren</u>	Attn: <u>Tom Bikales</u>
Address: <u>601 SW 2nd Ave</u>	Address: <u>601 SW 2nd Ave</u>
<u>Portland, OR 97204</u>	<u>Portland, OR 97204</u>

Phone: 503-265-5607

Email: chandra.wahrgren@modahealth.com

Phone: 503-219-3677

Email: tom.bikales@modahealth.com

Participating Program: Crook County

Attn: Sheriff John Gautney

Address: 308 NE 2nd St. Prineville, OR 97754

Phone: 541-447-6398

Email: john.gautney@crookcountysheriff.org

Benefiting Agency: Oregon Prescription Drug Program (OPDP)

Attn: Trevor Douglass

Address: Oregon Prescription Drug Program (OPDP)

500 Summer St. NE, E-65

Salem, OR 97301

Phone: 971-209-8491

Email: trevor.douglass@state.or.us

Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any notice given by nationally recognized overnight courier service shall be effective when delivered; or one (1) business day after mailing, whichever comes first. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation delivered by or on behalf of the recipient that the notice has been received. The Party giving communication or notice shall deliver a copy of the notice, by the same means of delivery as the notice, to other Parties at the address, number or email address pursuant to this Article XX (Notices).

ARTICLE XXI ENTIRE CONTRACT

Section 21.01. Whole Agreement between the Parties

This Agreement and its attached and listed Attachments and Schedules constitute the entire Agreement between the Parties. No other Materials constitute a part of this Agreement unless part of an Attachment to this Agreement. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

Section 21.02. Authority to Alter

Only the Benefiting Agency authorized representative or his/her designee by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement as documented

in Schedule 1 of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the authorized representative.

ARTICLE XXII AMENDMENTS

Section 22.01. Extent of Amendment; Required Amendments

This Agreement may be amended by Contractor in one of two formats: (1) Contractor may amend this Agreement by written agreement of signing Parties, and (2) Contractor may amend this Agreement by written notification to Participating Program with sixty (60) days' notice, in order to effectuate an amendment to the Consortium Contract or otherwise with consent of the Consortium. If Participating Program objects to the amendment, Participating Program must advise Contractor in writing within the sixty (60) days after receipt of the amendment. If Participating Program fails to respond to the written notification within the sixty (60) day notice period the amendment will be deemed accepted on the sixty-first (61) day after notice was provided. If Participating Program objects to the amendment during the notice period and Contractor accepts Participating Program's rejection of the amendment, the amendment will be withdrawn. If Contractor does not accept Participating Program's rejection of the amendment, Contractor shall notify Participating Program that the amendment has not been withdrawn and the amendment will become effective as written on the sixty-first (61) day after notice was provided. If Participating Program does not withdraw the objection, Participating Program may terminate the agreement as provided in Article VI, (Termination), Section 6.01, (For Cause.)

Section 22.02. Timing of Amendments

The Parties intend to make amendments to this Agreement no more than twice annually, in April and October. The foregoing sentence does not prohibit any amendment on another date the Parties deem necessary.

Section 22.03. Validity and Effectiveness

To be valid, any amendment to this Agreement must refer specifically to this Agreement. No amendment to this Agreement is effective unless it is in writing signed by the Parties, the Participating Program has approved, and all approvals required by applicable law (including where applicable, the Oregon Attorney General and the Washington Attorney General) have been obtained before becoming effective.

ARTICLE XXIII DEFAULT

Section 23.01. Contractor Default

Contractor is in default under this Agreement if:

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;
2. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Agreement, and Contractor has not obtained such

license or certificate within 15 days after a Benefiting Agency's notice or such longer period as the Benefiting Agency may specify in such notice; or

3. Contractor commits any material breach or default of any covenant, warranty, obligation or arrangement under this Agreement, or fails to perform the Services under this Agreement within the time specified under this Agreement or any extension by Benefiting Agencies of such time; and such breach, default, or failure is not cured and Benefiting Agencies have not accepted Contractor's plan for cure of such breach, default, or failure, by 15 days after Benefiting Agency's notice, or such longer period as Benefiting Agency's may specify in such notice.

Section 23.02. Remedies

If Contractor is in default under Section 23.01 (Contractor Default) of this Article XXIII (Default), Participating Program may pursue any or all of the remedies available to it under this Agreement and at law or in equity, including:

1. Termination of the Agreement;
2. Withholding all monies due for Services and Work Products that Contractor has failed to deliver, within any scheduled completion dates, or performed inadequately or defectively, according to the terms of the Agreement or within any scheduled completion dates;
3. Initiation of an action or proceeding for damages, specific performance, or declaratory, injunctive, or other relief; and
4. Exercise of its right of setoff.

Section 23.03. Cumulative Remedies

Remedies in this Section XXIII (Default) are cumulative to the extent the remedies are not inconsistent, and Participating Program may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

ARTICLE XXIV WAIVER

Section 24.01. Waiver of Provisions

No agent has the authority to change this Agreement or waive any of its provisions. No waiver, consent, modification, or change of terms of this Agreement will bind all Parties unless in writing and signed by all 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 a Party to enforce any provision of this Agreement does not constitute a waiver of that or any other provision.

Section 24.02. Waiver of Default or Breach

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing signed by Participating Program and Benefiting Agencies and attached to the original Agreement.

ARTICLE XXV MISCELLANEOUS

Section 25.01. Benefits

Contractor shall not impose restrictions or benefit limitations for pre-existing conditions on any Member under a Pharmacy Benefit Plan, except as Participating Program specifically requests and as allowed by law. Contractor shall furnish Participating Program with all legal documents necessary to implement and maintain the Pharmacy Benefit Plan, including policies, amendments, contracts, required state filings, and development of booklets and certificate formats, as specified in this Agreement.

Section 25.02. Independent Contractor

1. The Parties intend that an independent contractor relationship will be created by this Agreement. Contractor and its employees performing under this Agreement are not employees of Benefiting Agencies or Participating Programs. No officer or employee of Contractor will hold himself/herself out as or claim to be an officer or employee of either Participating Program or of either State by reason hereof, nor will Contractor make any claim of right, privilege, or benefit which would accrue to such employee under law. Although Benefiting Agencies and Participating Programs reserve the rights to determine (and modify) the delivery schedule for the Services and to evaluate the quality of the completed performance, Benefiting Agencies and Participating Programs may not and shall not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services. Conduct and control of the work will be solely with Contractor.
2. If Contractor is currently performing work for the State of Oregon or the State of Washington, Contractor hereby declares and certifies that: Contractor's Services to be performed under this Agreement create no potential or actual conflict of interest as defined by ORS 244.020 or RCW 42.52, and no rules or regulations of Contractor's employing agency would prohibit Contractor's Services under this Agreement.
3. Contractor has no right or authority to incur or create any obligation for, or legally bind, Benefiting Agencies or Participating Programs in any way, except as set forth in Section 16.02 (Appointment as Agent) of Article XVI (Relationship of Parties). Notwithstanding the aforementioned Section 16.02, Contractor is not an "officer", "employee", or "agent" of Benefiting Agencies or Participating Programs, as those terms are used in ORS 30.265 or Title 41 RCW.
4. Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Agreement. Unless Contractor is subject to backup withholding, Benefiting Agencies and Participating Programs will not withhold from such compensation or payments any amount(s) 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 Agreement.

Section 25.03. Force Majeure

No Benefiting Agency, Participating Program, or Contractor is responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or

war where such cause was beyond the reasonable control of the Benefiting Agency, Participating Program, or Contractor, respectively. A cause is not beyond the reasonable control of Contractor where it should have been anticipated and controlled through business continuity planning using commercially reasonable efforts. 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 Agreement.

Section 25.04. Change in Law

In the event of any change in federal, state or local laws, rules or regulations, including any judicial or administrative interpretation thereof, which materially alters the rights, duties, obligations or cost of performance of either Party under this Agreement, the Parties will work in good faith toward mutually acceptable modifications of this Agreement, which may include, but are not limited to, changes in Benefit Plan Design and Prescription Drug coverage. To the extent that these modifications agreed to by the Parties vary the cost of performance, the Parties will negotiate in good faith toward the adjustment of the administrative charges to reflect this variation. If Participating Program and Contractor have worked in good faith, but are unable to agree upon mutually acceptable modifications, then the Parties shall participate in the dispute resolution process as set forth in Article XIII (Disputes) of this Agreement.

Section 25.05. Severability of Provisions

If any provision of this Agreement, or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this Agreement that can be given effect without the invalid provision, and to this end the provisions or application of this Agreement are declared severable. If any provision of this Agreement conflicts with governing law or if any provision is held to be invalid or unenforceable by a court of competent jurisdiction, (i) such provision is deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and (ii) the remaining terms, provisions, covenants, and restrictions of this Agreement remain in full force and effect.

Section 25.06. Assignment

1. The provisions of this Agreement bind upon and inure to the benefit of the Parties, their respective Successors, and permitted assigns, if any. Contractor shall not assign, delegate, or transfer any of its rights or obligations under this Agreement (including an assignment by operation of law) without Benefiting Agencies' prior written consent.
2. With the prior written consent of Benefiting Agency and Participating Program, Contractor may assign this Agreement including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Benefiting Agency or Participating Parties that may arise from any breach of the Attachments to this Agreement, Statements of Work, or warranties made herein including but not limited to, rights of setoff.
3. Benefiting Agency may assign this Agreement or Statements of Work to any public agency, commission, board, or the like, within the political boundaries of the State,

provided that such assignment shall not operate to relieve Benefiting Agency of any of its duties and obligations hereunder.

Section 25.07. No Third Party Beneficiaries

The Benefiting Agencies, the Participating Program and Contractor are the only Parties to this Agreement and are the only persons entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will 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 Agreement. Participating Programs or Members do not have rights under this Agreement but may have rights against Contractor under a Pharmacy Benefit Plan or Participating Program Agreement issued or agreed to by Contractor under this Agreement.

ATTACHMENT 1 - ADMINISTRATIVE SERVICE FEES

Participating Program elects to be provided Services as identified in Table 1 below.

Administrative Services include the following services, which are all set forth more fully in the Agreement.

1. Table 1: Administrative Services and Fees

	Commercial
Administrative Fee:	\$2.24 per Paid Claim / \$2.01 PMPM
Account Management / Member Services	
Account Management team	✓
Claims Adjudication	
Coordination of Benefit claims	✓
Dynamic cost sharing	✓
Electronic claims adjudication	✓
Electronic Prescribing Platform and support	Pass through up to \$0.145 per transaction
Voucher ID Card	
Prescription Voucher ID card generation and delivery	✓ \$1.50 per card for a complete reissue outside of implementation.
Pharmacy Network Management	
Expanded Pharmacy Auditing Services	Work Order
Pharmacy Help Desk	✓
Pharmacy reimbursement	✓
Retail, Mail-Order, Specialty Pharmacy Network Management	✓
Specialty Pharmacy Financial Assistance Program	✓
Standard Pharmacy Audit Services / Recoveries	✓
Utilization Management	

Compound Management Program	✓
Concurrent DUR	✓
Custom DUR messaging	✓
Opioid overutilization custom edits	✓
Over the Counter (OTC) Alternative Program	✓
Quantity Limits	✓
Split Fill Program	✓
Step Therapy	✓
Prior Authorization	
Administrative Prior Authorization	✓
Clinical Prior Authorization	\$50.00 per request
Electronic Prior Authorization	✓
Non-Formulary or Non-Preferred Exception Requests	\$50.00 per request
Preferred Drug List Management	
Custom PDL Management	✓ One time implementation fee and/or ongoing maintenance fee may be required based on complexity of the formulary
PDL Change Notifications created and delivered to Members.	✓
Standard PDL Management (No customization)	✓
Value Tier Program	✓
Reporting and Analytics	
Access to on-line systems and reporting tools	✓ see table below
Standard Reporting Package	✓

Rebate Management	
Standard Rebate Management Program	✓
Wrap Around Rebate Management Program	7.5% of rebate value

2. Optional Professional Services Administrative Fees

Optional Professional Services	Fee
Contractor Audit Service/Support	First 40 hours included in Tier 2 Administrative Fee: \$150 per hour after 40 hours
Data File Integration	<p>Participating Programs with 150,000 Members will receive five (5) data file integrations at no additional cost. Additional data integration files will incur a one-time \$5,000 charge per file.</p> <p>Participating Programs with less than 150,000 Members will incur a onetime \$5,000 charge for each data integration file requested.</p>
Other Printing and Mailing	Work Order
Ad Hoc Reporting and Analytics	Hourly Rate
Actuarial Services: uses statistical techniques and mathematical tools to assess the probability and trends of programs and financial consequences.	\$350
Data Analyst: Interprets data and turns it into information that offers insights into performance or ways to improve operations.	\$200
IT Business Analyst: Assesses business and technology needs. Designs, analyzes, and implements IT systems.	\$125
IT Tech Development: Researches, designs, implements, or manages software programs or hardware systems. Responsible for testing new programs.	\$200
Professional: Marketing, creative or content resource used to deliver creative content in customer engagements.	\$85

3. Access to Online Systems and Reporting Tools

a. Consortium Navigate 3D® Seats

Participating Program Size by Members	Seats Provided in tiered administrative fee	Additional Seats
<10,000	4	Additional Seats cost \$800 per seat per Year
10K - 50K	10	
51K - 100K	15	
101K - 250K	20	
251K - 500K	30	

b. Consortium NCRX® Seats

Participating Program Size by Members	Seats Provided in tiered administrative fee	Additional Seats
<10,000	8	Additional Seats cost \$440 per seat per Year
10K - 50K	16	
51K - 100K	30	
101K - 250K	40	
251K - 500K	60 Maximum	

4. [RESERVED]

ATTACHMENT 2 - GENERAL FINANCIAL TERMS

1. Ingredient Pricing

- a. Contractor shall use the Drug Pricing Reference as the source for the Average Wholesale Price (AWP), National Average Drug Acquisition Cost (NADAC), and Wholesale Acquisition Cost, used as the basis for reimbursement. Unless otherwise required by Participating Program, Contractor shall use AWP as the basis for the financial guarantee. If Contractor determines the need to utilize another Drug Pricing Reference source, or use a benchmark other than AWP, Contractor shall notify the Benefiting Agencies of such determination. Contractor shall make any Pricing Change as mutually agreed and elected by the Benefiting Agencies. In the event Benefiting Agencies desire to consider different Pricing Changes, then Contractor shall perform the calculations in this Paragraph 1 (Ingredient Pricing) separately for each Member State including Participating Programs in that Member State from those available, which may include AWP, as elected by Benefiting Agency.
- b. Contractor shall notify Participating Program thirty (30) days prior to any Pricing Change that Benefiting Agency has elected. Contractor shall provide Participating Program with written analysis of the financial effect of the Pricing Change, including specific drug examples, whether the Pricing Change will be a cost neutral approach, the expected aggregate annual effect on Participating Program, the expected pharmacy disruption analysis if any, and an implementation plan for moving to the new reimbursement methodology.
- c. Contractor shall pass through 100% of any financial effects of the Pricing Change that may be approved by Benefiting Agency to Participating Program.
- d. Benefiting Agency and Contractor will offer any Pricing Change to Participating Program by Amendment under Article XXII (Amendments). The Amendment will restate the pharmacy reimbursement rates in Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Broad Network Pharmacy Network Financial Guarantees), of Attachment 3 (Pharmacy Network Rates and Financial Guarantees), to comply with Member State's chosen Pricing Change. If the Pricing Change continues to be based on AWP pricing, Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Broad Network Pharmacy Network Financial Guarantees), of Attachment 3 (Pharmacy Network Rates and Financial Guarantees) remains in effect until renegotiated.
- e. Contractor shall develop a network communication strategy anytime major Participating Pharmacy changes occur, or new networks are developed.
- f. Contractor shall provide Participating Program notice within five (5) business days of sending or receiving a termination notice to Participating Pharmacies for not accepting rates that support the guaranteed actual drug costs required by Attachment 3 (Pharmacy Network Rates and Financial Guarantees), Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Broad Network Pharmacy Network Financial Guarantees).
- g. Benefiting Agency may approve "shared savings" arrangements for Participating Programs based on utilization management programs' explicit savings versus

estimated savings or cost avoidance. Such arrangements must include a documented method for calculating savings.

- h. Contractor shall give Participating Program its lowest MAC approved by Benefiting Agencies for products eligible for MAC pricing.
 - (1) Contractor shall review MAC list prices no less frequently than monthly.
 - (2) Contractor shall update MAC by analyzing comparative pricing data from knowledgeable industry sources to determine what specific drugs need to be re-priced. Sources include the financial community, generic industry, wholesaler community, health plans, and chain and independent pharmacies, pharmacy directors, and plan administrators.
 - (3) Contractor shall track, report and archive pharmacy reimbursement issues and resolutions.
 - (4) Contractor shall add Prescription Drugs to the MAC list once two or more nationally available manufacturers are producing and distributing A-rated product.

2. Guaranteed Actual Drug Costs

- a. For purposes of this Paragraph 2 (Guaranteed Actual Drug Costs):
 - (1) "Actual AWP" means the sum of each AWP reported by the Drug Pricing Reference for all Paid Claims on the date the Covered Drug was dispensed to the Member for each Participating Program.
 - (2) "Paid Rate for Ingredient Cost" means the paid Ingredient Cost divided by the actual AWP multiplied by 100, for each Participating Program.
 - (3) "Paid Ingredient Cost" means the sum of the Ingredient Cost for each Paid Claim reimbursed to the Participating Pharmacy for each Participating Program.
 - (4) "Invoiced Ingredient Costs" means the sum of the Ingredient Cost for each Paid Claim invoiced to each Participating Program.
 - (5) "Invoiced Rate for Ingredient Costs" means the Invoiced Ingredient Cost divided by the Actual AWP multiplied by one hundred for each Participating Program.
 - (6) "Paid Dispensing Fees" mean the sum of the Dispensing Fees paid to Participating Pharmacies for each Paid Claim for each Participating Program.
 - (7) "Invoiced Dispensing Fees" means the sum of the Dispensing Fees for each Paid Claim invoiced to each Participating Program.
 - (8) "Guaranteed Dispensing Fee" means fee per Paid Claim listed in Attachment 3 (Pharmacy Network Rates and Financial Guarantees), Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Broad Network Pharmacy Network Financial Guarantees), multiplied by the total number of Paid Claims for all Participating Programs.
 - (9) "Guaranteed Rate for Ingredient Costs" means the percentage of AWP in Attachment 3 (Pharmacy Network Rates and Financial Guarantees),

Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Broad Network Pharmacy Network Financial Guarantees), multiplied by the Actual AWP.

- b. This Paragraph 2 (Guaranteed Actual Drug Costs) applies to all lines of Consortium business using the guarantees in Attachment 3 (Pharmacy Network Rates and Financial Guarantees), Paragraph 3 (Core Network Financial Guarantees) and Paragraph 4 (Broad Network Pharmacy Network Financial Guarantees), in the aggregate. Participating Program that requires use of an Alternative Fee Schedule are excluded from this Paragraph 2 (Guaranteed Actual Drug Costs), Subparagraph b.
- c. Contractor shall measure the financial network performance for each Participating Program and the Consortium in aggregate by comparing the sum of the Guaranteed Dispensing Fee and the sum of the Guaranteed Rate for Ingredient Cost to the sum of the Invoiced Dispensing Fee and the Invoiced Ingredient Cost.
- d. Contractor guarantees that the sum of the Guaranteed Dispensing Fee and the sum of the Guaranteed Rate for Ingredient Cost shall not exceed the sum of the Invoiced Dispensing Fee and the Invoiced Ingredient Cost for the Consortium in aggregate.
- e. If the financial guarantee is not met in aggregate, Contractor shall take the calculated difference for the Consortium in aggregate from Subparagraph (d) above and determine the amount to remit to each Participating Program that did not meet its individual measurement, not to exceed 25% of the annual administrative fee. Contractor shall remit to the Participating Program, within 60 days of completing the financial audit described in this Paragraph 2 (Guaranteed Actual Drug Cost), the amount equal to the Participating Program's individual performance measurement relative to the Consortium's aggregate performance measurement.
- f. Contractor shall report quarterly and measure annually an analysis that sets forth the rate guarantee calculations described in this Paragraph 2 (Guaranteed Actual Drug Cost). Such reports will be due within 60 days after the end of the quarter or annual period. Contractor shall make any revisions to the report requested by Benefiting Agencies to comply with the Consortium Contract Document and shall obtain Benefiting Agencies written approval of the report. Contractor shall make any payments described in Subparagraph (e) of this Paragraph 2 (Guaranteed Actual Drug Cost), to the Participating Program within 30 days of the date of approval.
- g. Discount exclusions. The following will be excluded from the calculation of the financial guarantees and associated penalties:
 - (1) Paid Claims priced at 340B and GPO rates;
 - (2) Paid Claims for which Contractor was not the primary payer of the Paid Claim;
 - (3) Paid Claims dispensed from Veterans Administration or federally qualified 340B pharmacies;
 - (4) Member Submitted Prescription Drug Claims;
 - (5) Critical Access Pharmacies;
 - (6) Compound medications;

- (7) Vaccines;
- (8) Non-Drug Item (e.g. Durable Medical Equipment);
- (9) Limited Distribution Drugs;
- (10) Paid Claims priced using an Alternative Fee Schedule;
- (11) Paid Claims reimbursed at U&C; and
- (12) Paid Claims dispensed by a long term care pharmacy.

3. [RESERVED]

4. [RESERVED]

5. Work Orders and Customized Projects

- a. If a Service or Customized Project requested by Participating Program Administrator or Benefiting Agency requires a Work Order whose cost of development Contractor expects to charge back to Participating Program or Benefiting Agency, Contractor shall develop Customized Projects and special program set-up requirements at Contractor's standard hourly rate for such Services. All such requests and their proposed due dates will be submitted to Contractor, who shall confirm the requests in writing prior to beginning the project. No Customized Project fees are ever payable unless the requesting Participating Program Administrator or Benefiting Agency has agreed to them in writing in advance in the specific case. Contractor shall provide an estimate of costs, subject to a firm maximum-cost amount, including but not limited to an estimate of hours required and a description of Services necessary to complete the project. The Participating Program Administrator or Benefiting Agency will assist Contractor to define the scope and to participate in testing and validation of Customized Projects at no charge to Contractor.
- b. Contractor shall provide an estimate of anticipated staff levels and hourly charges for future information System Enhancements specifically required for completing a service or Customized Project when the business requirements of Services or projects are mutually agreed upon.
- c. After the Participating Program Administrator or Benefiting Agency approves in writing the statement of business requirements or scope of work document, Contractor shall provide a final cost estimate (where applicable).
- d. The costs described in this Paragraph 5 (Work Orders and Customized Projects) of this Attachment 2 (General Financial Terms) for Customized Projects, when agreed to by the Participating Program and Contractor, are in addition to the payments described in, Paragraph 1 (Administrative Service Options and Fees) and Paragraph 2 (Optional Professional Services Administrative Fees) of Attachment 1 (Administrative Service Fees). If, due to errors or omissions of Contractor, such Customized Projects fail to operate after Implementation Contractor shall correct any deficiencies at no additional charge to Participating Program or Benefiting Agency.

- e. Participating Program or Benefiting Agency will reimburse Contractor upon timely completion and acceptance of the Customized Project, based on project timelines that were mutually-agreed-upon prior to project start date.

ATTACHMENT 3 - PHARMACY NETWORK RATES AND FINANCIAL GUARANTEES

1. Network Selection

The following Pharmacy Network will be provided to serve the prescription drug need for Participating Program Members.

Broad Network (~66,000 retail pharmacies)

2. Expected Reimbursement Rates for Determining Guaranteed Actual Drug Costs

The following financial guarantees apply on average to the Specialty Pharmacy, Core Network and Broad Network.

- a. The guarantee does not account for market shortages, new market entries, industry required distribution requirements affecting the proportion of limited distribution products, or products that may transition from the medical benefit to the pharmacy benefit. Contractor may review network for variability and may seek to update future year network guarantees in the event of unforeseen material changes in prior year demographics or performance. In the event of a material change, Contractor shall work with the Benefiting Agencies in good faith to reevaluate the market to develop a mutually agreeable guarantee based on the existing program and overall market performance capability.
- b. Mail-Order Services provided by Postal Prescription Services, and Costco when applicable.
- c. Participating Specialty Pharmacy's rates are contingent on adherence to the Consortium Specialty Drug List. In the event of variation from the Consortium Specialty Drug List or change in utilization patterns of Specialty Drugs that materially impact the guaranteed rates, Contractor shall work with the Benefiting Agencies in good faith to reevaluate the market to develop a mutually agreeable guarantee based on the existing program and overall market performance capability.
- d. The Consortium financial guarantees will be calculated in aggregate annually. If the financial guarantee is not met in the aggregate individual Participating Programs may receive compensation. The compensation will be determined based on the Participating Program's performance and its contribution to the aggregate.

3. Core Network Financial Guarantees

	Minimum AWP Discount Guarantee	Average Dispensing Fee
1 – 34 Days Supply		
Brand drugs	AWP – 19.75%	\$0.50
Generic drugs	AWP – 85.50%	\$0.50
Extended Days Supply (35 - 90)		

Brand drugs	AWP – 22.90%	\$0.00
Generic drugs	AWP – 88.50%	\$0.00
Mail-Order		
Brand drugs	AWP – 24.00%	\$0.00
Generic drugs	AWP – 88.50%	\$0.00
Specialty Pharmacy^{1,2,3} (<i>Financial Guarantees apply to Exclusive Specialty Pharmacy from Ardon Health Specialty Pharmacy</i>)		
Innovator Drugs	AWP – 22.00%	\$0.00
Biosimilar Drugs	AWP – 22.00%	\$0.00
Generic Drugs	AWP – 22.00%	\$0.00

¹ Specialty Pharmacy Guarantees are for 1 - 30 day supplies.

² Specialty Pharmacy financial guarantees do not apply to Limited Distribution Drugs. Limited Distribution Drugs will be priced individually and updated quarterly.

³ The Maximum Allowable Cost will not apply to Specialty Drugs, unless dispensed at a Participating Retail Pharmacy.

4. Broad Network Financial Guarantees

	Minimum AWP Discount Guarantee	Average Dispensing Fee
1 – 34 Days Supply		
Brand drugs	AWP – 18.40%	\$0.79
Generic drugs	AWP – 84.00%	\$0.79
Extended Days Supply (35 - 90)		
Brand drugs	AWP – 21.65%	\$0.00
Generic drugs	AWP – 87.50%	\$0.00
Mail-Order		
Brand drugs	AWP – 24.00%	\$0.00
Generic drugs	AWP – 88.50%	\$0.00
Specialty Pharmacy^{1,2,3} (<i>Financial Guarantees apply to Exclusive Specialty Pharmacy from Ardon Health Specialty Pharmacy</i>)		
Innovator Drugs	AWP – 22.00%	\$0.00
Biosimilar Drugs	AWP – 22.00%	\$0.00

Generic Drugs	AWP – 22.00%	\$0.00
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¹ Specialty Pharmacy Guarantees are for 1 - 30 day supplies.

² Specialty Pharmacy financial guarantees do not apply to Limited Distribution Drugs. Limited Distribution Drugs will be priced individually and updated quarterly.

³ The Maximum Allowable Cost will not apply to Specialty Drugs, unless dispensed at a Participating Retail Pharmacy.

ATTACHMENT 4 - REBATE GUARANTEES

1. Rebate Guarantee Provision

Contractor shall guarantee the Rebate amount to the Eligible Participating Programs as set forth in this Attachment 4 (Rebate Guarantees), provided the following criteria are met:

- a. Plan design changes, PDL, changes directed by the Participating Programs do not materially impact the economics of the Rebate agreement between Contractor and the manufacturer or Rebate Subcontractor;
- b. State and federal laws do not materially impact the economics of the rebating process between manufacturers and Contractor;
- c. New to market drugs, including the availability of lower net cost products, do not materially impact the economics of the Rebate agreement between Contractor and the manufacturer;
- d. Changes to the Rebate agreements between Contractor and manufacturer or Rebate Subcontractor do not materially impact the economics of the Rebate agreement;
- e. Changes in Prescription Drug Claims volume for a Participating Program do not materially impact Rebate agreements between Contractor and the manufacturer;
- f. The generic quarterly dispensing rate of Specialty Drugs must not exceed 12% for all Participating Programs, and the generic quarterly dispensing rate for traditional drugs must not exceed 90% for non-Medicaid Participating Programs and 85% for Medicaid Participating Programs;
- g. All Rebate contracts must be held by Contractor directly or through a Subcontractor;
- h. Participating Program must adopt recommended PDL changes that will enhance Rebates; and,
- i. Rebate guarantees will not be extended to Participating Program if it includes a 340B or GPO program.
- j. Rebate guarantees apply if a Participating Program selects one of the two Rebate Management Programs as defined below in Paragraph 3 (Rebate Management Program) of this Attachment 4 (Rebate Guarantees).
- k. If a Participating Program Agreement has a Service Effective Date or renewal date other than January 1, the Rebate guarantee in Paragraph 3 (Rebate Management Program) and reporting package fee outlined in Attachment 1 (Administrative Service Fees), Paragraph 1 (Administrative Service Options and Fees) that are in effect January 1 of that calendar year will apply.

2. Claims Excluded From Rebate Guarantees

- a. Claims that cannot be submitted and collected for Rebates (e.g., 340B, long-term care facilities, hospital-inpatient pharmacies, FSS pharmacies, GPO pricing);
- b. Claims that may qualify for Rebates under a government program. This provision does not exclude eligibility for Medicaid supplemental Rebates for Managed Medicaid claims;

- c. Claims where, after meeting the deductible, the Member's Cost Share under the applicable Pharmacy Benefit Plan requires the Member to pay more than 50% of the Prescription Drug Claim cost;
- d. Vaccines;
- e. Diabetic syringes and lancets;
- f. Medical injectables and devices;
- g. Generically named products;
- h. Compounded prescriptions or the drug components used to compound; and,
- i. Non-legend drugs designated as over-the-counter (OTC), excluding diabetic test strips.

3. Rebate Management Program

- a. The following preferred drug list (PDL) is used to serve the Prescription Drug need for Participating Program Members.

Standard PDL

- b. The following Rebate Management Program will apply to serve the Prescription Drugs utilization of Participating Program Members.

Standard Rebate Management Program

Optional Third Party Rebate Management Program ☐¹

Parties agree the Rebate Guarantees Per Paid Brand Prescription Drug Claim represented in Subparagraph (c) below represent the Rebate Management Program selected by the Participating Program.

- c. Commercial Rebate Guarantees Per Paid Brand Prescription Drug Claim

	2022	2023	2024
Standard PDL – Commercial			
1 – 30 Days Supply	\$147	\$153	\$159
31 – 60 Days Supply	\$578	\$602	\$626
>60 Day Supply	\$503	\$512	\$527
Specialty	\$1,644	\$1,674	\$1,722

4. [RESERVED]

ATTACHMENT 5 – [RESERVED]

ATTACHMENT 6 - BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BA Agreement”) is entered into by and between (i) the Participating Program and the Contractor identified on page 1 of that certain Participating Program Pharmacy Benefit Agreement described in Recital 1.a.

1. RECITALS

- a. Participating Program and Contractor (the “Parties”) have entered into that certain “Participating Program Agreement” of even date herewith (the “Agreement”);
- b. Participating Program and Contractor are committed to compliance with the privacy, transactional, and security standards set forth in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160, 162 and 164, and in the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, including any regulations promulgated thereunder, as they may be amended from time to time (such statutes and regulations of HIPAA and HITECH may be here referred to collectively as the “HIPAA Laws”);
- c. The data to be disclosed to and used by Contractor in connection with this Agreement may include Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) as defined in the HIPAA Laws;
- d. Certain Participating Program is either a covered entity within the meaning of 45 CFR § 160.103 or a business associate of such a covered entity (“Covered Entity”), as such it must obtain satisfactory assurances that its Business Associates, as defined in 45 CFR § 160.103, will comply with the Business Associate requirements set forth in 45 CFR §§ 164.410, 164.502(e), and 164.504(e);
- e. Contractor performs certain functions for, or on behalf of Covered Entity involving the creation, transmission, receipt, maintenance, use or disclosure of PHI and EPHI and desires to be a Business Associate, as defined in 45 CFR § 160.103, of the Covered Entity, and Participating Program desires to engage Contractor as its Business Associate as defined in 45 CFR § 160.103.

NOW, THEREFORE, the Parties agree as follows:

2. BA AGREEMENT

Capitalized terms used, but not otherwise defined in this BA Agreement, shall have the meaning defined in 45 CFR §§160.103, 162.103, 164.103, 164.304, 164.402, and 164.501. For the remainder of this BA Agreement, Contractor is referred to as “Business Associate,” “Covered Entity” refers to the particular Participating Program that is a Covered Entity, or is a Business Associate of a Covered Entity, whose PHI or EPHI is involved in the situation at hand, “PHI” or “EPHI” refer to PHI or EPHI of the Covered Entity or a Member of Covered Entity, and “Participating Program Agreement” refers to the Participating Program Agreement referenced above.

3. USE OF PHI AND EPHI

- a. Business Associate may use and disclose PHI and EPHI in accordance with the terms of this BA Agreement to perform its obligations under the Participating Program Agreement, to the extent not otherwise limited or prohibited by this BA Agreement, the Participating Program Agreement, the HIPAA Laws and other applicable federal or state laws or regulations. All other uses and disclosure of PHI and EPHI are prohibited.
- b. In performance of its obligations described in Subparagraph (a) of this Paragraph 3, (Use of PHI and EPHI), Business Associate may act as the Business Associate (as defined in 45 CFR § 160.103) of Covered Entity.

4. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate shall not use or disclose PHI or EPHI other than as permitted by the Participating Program Agreement, the HIPAA Laws, and this BA Agreement.
- b. Business Associate shall use appropriate safeguards to prevent use or disclosure of the PHI and EPHI other than as provided for by the Participating Program Agreement, the HIPAA Laws and this BA Agreement.
- c. Business Associate shall mitigate, to the extent practicable, any harmful effect of Business Associate's use or disclosure of PHI or EPHI in violation of the requirements of the Participating Program Agreement, the HIPAA Laws or this BA Agreement, of which Business Associate has knowledge, or by exercising reasonable diligence should have knowledge.
- d. Business Associate shall report to Covered Entity, as promptly as possible, any use or disclosure of the PHI or EPHI not provided for by the Participating Program Agreement and permitted by the HIPAA Laws and this BA Agreement, of which Business Associate has knowledge, or by exercising reasonable diligence should have knowledge. This is in addition to the obligations under Subparagraphs (k) and (m) of this Paragraph 4 (Obligations and Activities of Business Associate).
- e. Business Associate may provide to its Subcontractors, PHI or EPHI that Business Associate (1) receives from the Covered Entity or (2) creates, receives, maintains, or transmits on behalf of Covered Entity. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate shall ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate follow the same restrictions and conditions that apply to Business Associate with respect to such information.
- f. Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI and EPHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR§164.524.
- g. Business Associate shall make any amendment(s) to PHI and EPHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR§164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- h. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created, or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of

determining Covered Entity and Business Associate's compliance with this BA Agreement and the HIPAA Laws.

- i. Business Associate shall refer requests for an accounting of disclosures of PHI and EPHI to Covered Entity for response. Business Associate shall document such disclosures to the extent such documentation is required for Covered Entity to respond to an Individual's request for an accounting of PHI and EPHI disclosures in accordance with 45 CFR§164.528, including information regarding disclosures of PHI in violation of the HIPAA Laws. If Covered Entity determines that such an accounting of disclosures is required, Business Associate shall provide the necessary information to Covered Entity in a time and manner that Covered Entity designates.
- j. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and EPHI that the Business Associate receives from the Covered Entity or that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.
- k. In the event of Business Associate's discovery of an event that is a Breach of Unsecured PHI or EPHI, Business Associate shall notify Covered Entity of such Breach, within fifteen (15) days of discovering the incident. Business Associate shall notify Covered Entity of any incident that is indeed a Breach under the HIPAA laws. Notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI or EPHI has been (or is reasonably believed by Business Associate to have been) accessed, acquired, or disclosed during such Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which Business Associate knows of, or by exercising reasonable diligence should have known of, the Breach. Business Associate shall be deemed to have knowledge of a Breach if any non-breaching director, employee, officer, or Subcontractor of Business Associate knows of, or by exercising reasonable diligence should have known of, the Breach.
- l. In the event of a Breach by Business Associate (or any director, employee, officer, or Subcontractor of Business Associate) involving PHI or EPHI that Business Associate receives or uses, Business Associate shall upon request by Covered Entity:
 - (1) Notify each individual whose Unsecured PHI or EPHI (as defined in the HIPAA Laws) has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed as a result of such Breach;
 - (2) Where the Breach involves more than 500 individuals, notify prominent media outlets within the State or as appropriate, local jurisdictions; or
 - (3) Notify the Secretary of DHHS of Unsecured PHI or EPHI that has been acquired or disclosed in a Breach. If the Breach was with respect to 500 or more individuals, such notice to the Secretary must be provided immediately. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log shall be provided to the Secretary annually documenting such Breaches occurring during the year involved.
- m. Except as provided in the HIPAA Laws, Business Associate shall make the Breach notifications required by this subsection without unreasonable delay and in no case

later than provided in Subparagraph (k) of this Paragraph 4 (Obligations and Activities of Business Associate), Business Associate shall provide the notice in the manner required by the Section 13402(e) of HITECH and the HIPAA Laws. The content of any notification required by this section shall be in accordance with Section 13402(f) of HITECH and the HIPAA Laws. Any notification required by this subsection may be delayed by a law enforcement official in accordance with the Section 13402(g) of HITECH and the HIPAA Laws. No such notification will be given unless it has been approved by Covered Entity. Covered Entity has the option to have Business Associate give the notification, or to give the notification itself, or to have Business Associate give some of the notification and to give some of the notification itself. In any event, the cost of the notification shall be paid by Business Associate.

- n. In the event of a Breach by Business Associate (or any director, employee, officer, Subcontractor of Business Associate) involving PHI or EPHI that Business Associate receives or uses, Business Associate shall reimburse Covered Entity, in cash within 30 days of an invoice from Covered Entity, any of Covered Entity's expenses that Covered Entity, in its discretion, determines are necessary in connection with any notification to Individuals required by 45 CFR § 164.404, any notification to the media required by 45 CFR § 164.406, any notification to the Secretary required by 45 CFR § 164.408, or any other action of Covered Entity to remedy the Breach. This reimbursement is separate and distinct from Business Associate's indemnification and notification obligations under this BA Agreement and will not reduce Business Associate's indemnification and notification obligations under this BA Agreement.
- o. Business Associate shall comply with 45 CFR §§ 164.308, 164.310, 164.312, and 164.316 and all requirements of the HIPAA Laws that relate to security and that are applicable to Covered Entity. In addition, Business Associate agrees that it shall comply with the HIPAA Laws and security provisions contained therein with respect to EPHI and shall use all appropriate safeguards to prevent the use or disclosure of PHI other than as provided in this BA Agreement. Upon request of Covered Entity, Business Associate shall promptly provide Covered Entity with information regarding such compliance.
- p. Business Associate shall report to Covered Entity any security incident of which it becomes aware in the following time and manner:
 - (1) Any actual, successful security incident shall be reported to Covered Entity in writing within five (5) business days of the date on which the Business Associate becomes aware of such security incident.
 - (2) Any attempted, unsuccessful security incident of which Business Associate becomes aware shall be reported to Covered Entity in writing, on a reasonable basis, at the written request of Covered Entity.
 - (3) Any report required pursuant to this Subparagraph (p) of this Paragraph 4 (Obligations and Activities of Business Associate) shall: (1) identify the nature of the security incident; (2) identify the PHI subject to the security incident; and (3) identify what Business Associate has done or shall do to mitigate and correct any adverse effect of the security incident.

- q. To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of the HIPAA Laws that apply to Covered Entity in the performance of such obligations.

5. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

a. General Use and Disclosure Provisions:

- (1) Except as otherwise limited or prohibited by this BA Agreement, Business Associate may use or disclose PHI and EPHI only to perform functions, activities, or Services for, or on behalf of, Covered Entity as specified in the Participating Program Agreement; but only if such use or disclosure would not violate (1) the HIPAA Laws if done by Covered Entity or (2) Covered Entity's minimum necessary policies and procedures.
- (2) Covered Entity has determined that disclosures to Business Associate under the Participating Program Agreement are necessary and appropriate for Covered Entity's Treatment, Payment and Health Care Operations under the HIPAA Laws.
- (3) All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this BA Agreement, except to the extent preempted by the HIPAA Laws.

b. Specific Use and Disclosure Provisions:

- Business Associate may disclose PHI and EPHI if the disclosures are Required By Law or to report violations of law to appropriate federal and state authorities.
- c. If the disclosures are not Required By Law, Business Associate shall obtain reasonable assurances from the person to whom the information is disclosed that (1) the information will remain confidential; (2) the information will be used or further disclosed only as Required By Law, to report violations of law, or for the purpose permitted by this BA Agreement for which it was disclosed to the person; and (3) the person will notify the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.
- d. Business Associate may not aggregate or compile PHI or EPHI from one Participating Program with PHI or EPHI from another Participating Program, except to the extent the Participating Program Agreement permits Business Associate to perform Data Aggregation. If the Participating Program Agreement permits Business Associate to perform Data Aggregation, Business Associate may use PHI and EPHI to perform the Data Aggregation the Participating Program requests as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this BA Agreement. Business Associate is not authorized to aggregate Covered Entity's PHI and EPHI with another Covered Entity's PHI or EPHI that the Business Associate possesses through its capacity as a Business Associate to such other Covered Entity, except to the extent the BA Agreements with both Covered Entities permit Business Associate to perform Data Aggregation. Business Associate may not disclose PHI or EPHI to another Covered Entity except for disclosures to Participating Program.

6. OBLIGATIONS OF COVERED ENTITY

- a. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR§164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI and EPHI. Covered Entity may satisfy this obligation by providing Business Associate with Covered Entity's most current Notice of Privacy Practices.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI or EPHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI and EPHI.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI or EPHI that Covered Entity has agreed to in accordance with 45 §CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI or EPHI.
- d. Covered Entity shall not request Business Associate to use or disclose PHI or EPHI in any manner that would not be permissible under the HIPAA Laws.

7. INDEMNIFICATION

BUSINESS ASSOCIATE SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATES OF OREGON AND WASHINGTON, BENEFITING AGENCIES, THE PARTICIPATING PROGRAMS, THE COVERED ENTITIES, AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, BOARDS, AND AGENTS, FROM AND AGAINST ALL CIVIL PENALTIES, CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES OF ANY NATURE WHATSOEVER ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF BUSINESS ASSOCIATE (OR ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS) UNDER THIS BA AGREEMENT.

8. TERM AND TERMINATION

- a. Effective Date; Term. This BA Agreement is effective on the date the Participating Program Agreement is effective. This BA Agreement terminates in its entirety on the earlier of the date that (1) the Participating Program Agreement is terminated or expires, or (2) termination of this BA Agreement is effective under Subparagraph (b) of this Paragraph 8 (Term and Termination), of this BA Agreement.
- b. Termination for Cause. In addition to any other rights or remedies provided to Covered Entity in this BA Agreement or the Participating Program Agreement, upon Covered Entity's knowledge of a material breach by Business Associate of Business Associate's obligations under this BA Agreement:
 - (1) Covered Entity shall notify Business Associate of the breach, specify a reasonable opportunity in the notice for Business Associate to cure the breach or end the violation, if feasible;
 - (2) Covered Entity may terminate this BA Agreement as to Covered Entity, if Business Associate does not cure the breach or end the violation within the time Covered Entity specifies, or if Business Associate has breached a material term of this BA Agreement and cure is not possible in Covered Entity's reasonable judgment; and

- (3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary, U.S. Department of Health & Human Services.

The rights and remedies provided in this BA Agreement are in addition to any rights and remedies provided in the Agreement.

c. Effect of Termination.

- (1) Except as provided in Item (2) of this Subparagraph (c) of this Paragraph 8 (Term and Termination), upon termination of this BA Agreement, in whole or in part, Business Associate shall, at Covered Entity's option, return or destroy all PHI and EPHI that Business Associate (1) receives from Covered Entity or (2) creates, receives, maintains, or transmits on behalf of Covered Entity. This provision applies to PHI and EPHI that is in the possession of Business Associate or its employees or Subcontractors.
- (2) The Parties agree and acknowledge that returning or destroying the PHI or EPHI is not always feasible, because Business Associate needs to retain such information for its own legal, archival, and back up purposes, as well as its own management and administration. Business Associate shall extend the protections of this BA Agreement to such PHI and EPHI and limit further uses and disclosures of such PHI and EPHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI or EPHI.

9. MISCELLANEOUS

- a. Regulatory References. A reference in this BA Agreement to a section in the HIPAA Laws means the section in effect as of the effective date of this BA Agreement or as may be subsequently amended from time to time.
- b. Amendment. The Parties agree to take such action as is necessary to amend this BA Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Laws. Business Associate agrees that it will fully comply with all such rules, regulations, or statutes and that it will amend this BA Agreement to incorporate any material changes required by such rules, statutes, or regulations.
- c. Waiver. No provision hereof shall be deemed waived unless in writing, duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this BA Agreement.
- d. Survival. The respective rights of Covered Entity and Benefiting Agencies and the obligations of Business Associate under Paragraphs 4 (Obligations and Activities of Business Associate), 7 (Indemnification), 8 (Term and Termination), and this Paragraph 9 (Miscellaneous) of this BA Agreement shall survive the termination of this BA Agreement.
- e. Interpretation; Order of Precedence. Any ambiguity in this BA Agreement or the Participating Program Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Laws. The terms of this BA Agreement amend and supplement the terms of the Participating Program Agreement, and whenever possible, all terms and conditions in this BA Agreement, Participating Program Agreement are to be harmonized. In the event of a conflict between the terms of this

BA Agreement and the terms of the Participating Program Agreement, the terms of this BA Agreement shall control. In the event of any conflict between the provisions of the Participating Program Agreement, or this BA Agreement and the HIPAA Laws, the HIPAA Laws shall control.

- f. Third-Party Beneficiaries. The Participating Program and Business Associate are the only Parties to this BA Agreement. The Covered Entity, if different from the Participating Program, is a third-party beneficiary of this BA Agreement. Only a Participating Program, Covered Entity, or the Business Associate is entitled to enforce the terms of this BA Agreement.
- g. Successors and Assigns. The provisions of this BA Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective Successors and permitted assigns, if any.
- h. Previous BA Agreements. This BA Agreement supersedes and replaces any previous BA Agreement between the Parties. Contractor may use PHI and EPHI it acquired under the previous BAA in accordance with the terms of this BA Agreement.

IN WITNESS WHEREOF:**CONTRACTOR**By: _____ Title: Senior Vice President Date: _____

Authorized Signature

PARTICIPATING PROGRAMBy: _____ Title: _____ Date: 8/3/2022

Authorized Signature

ATTACHMENT 7 – [RESERVED]

SCHEDULE 1 - PARTICIPATING PROGRAM-SPECIFIC REQUIREMENTS

The following changes and additional terms are hereby incorporated into the Agreement between Benefiting Agency, Participating Program, and Contractor.

All capitalized terms appearing in this Schedule 1 that are not defined in this Schedule have the meanings ascribed to them in the Agreement.

<Details to be defined on a group by group basis>

[Signatures follow on next page]

AGREED to by the Parties as of the Effective Date of the Participating Program Agreement.

PARTICIPATING PROGRAM:

.

Signature	8/3/2022 Date
-----------	------------------

Name of Person Signing	Title
------------------------	-------

Email address:

CONTRACTOR:

Signature	Date
-----------	------

Chandra Wahrgren	Senior Vice President
Name of Person Signing	Title

chandra.wahrgren@modahealth.com

Email address:

Crook County Counsel's Office

Mailing: 300 NE Third St., Prineville, OR 97754

• Phone: 541-416-3919

Physical: 301 NE 3rd St., Ste 200, Prineville, OR 97754

• Fax: 541-447-6705



MEMO

TO: Crook County Court

FROM: County Counsel

DATE: July 25, 2022

RE: Alternative Daily Cover Purchase for Landfill
Our File No.: Landfill 108

The Landfill needs to purchase a truck load of Alternative Daily Cover material (ADC). There are only two acceptable options in the market: Posi Shell and TopCoat. Quotes were solicited for a truck load of both products from three suppliers. Both Profile Product and Emerald Seed and Supply offer TopCoat; LSC Environmental is the sole distributor of Posi Shell. The mix ratios for the two products are different, so Mr. Merwin created spreadsheets with the estimated cost to fill the County's 1200-gallon hydroseeder tank, to derive a per spray truck load cost. The per-hydroseeder cost breakdown is as follows:

- LSC (Posi Shell) \$207.41
- Emerald S&S \$402.75
- Profile Products \$352.35

In addition to the cost savings, Mr. Merwin's experience with TopCoat products is that it tends to plug up the sprayer, a problem not present with Posi Shell.

This is an intermediate procurement under our purchasing rules, to be awarded to the offer that best serves the interest of the county, taking into account price as well as considerations, including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility. Based on price as well as experience, product functionality, and suitability for a particular purpose, Mr. Merwin recommends awarding the contract to LSC as the offer that best serves the interest of the County. LSC's total price is \$27,211. Let me know if you have any questions.

Please place this memo and the attached document(s) on the Wednesday, August 3rd, 2022 County Court Agenda as a CONSENT ITEM, for approval and signatures.

Approved this 3rd day of August 2022.

CROOK COUNTY COURT

Seth Crawford
County Judge

Jerry Brummer
County Commissioner

Brian Barney
County Commissioner



**ENVIRONMENTAL
PRODUCTS, LLC™**

2183 Pennsylvania Avenue
Apalachin, NY 13732
Phone (607) 625-3050
Fax (607) 625-2689

Quote

Quote # 46628

Date 7/11/2022

Name / Address

CROOK COUNTY LANDFILL
300 NE THIRD STREET
PRINEVILLE, OR 97754

Ship To

CROOK COUNTY LANDFILL
100 SW LANDFILL ROAD
PRINEVILLE, OR 97754

Customer PO		Date	Shipping Terms		Terms
		7/11/2022	FOB Origin		PREPAY
Product ID	Qty	Description	Price	Weight	Total
520005-PS...	780	PSM-200 Setting Agent - 50 lb. Bag	22.25		17,355.00
520003	120	Posi-Pak, Type P-100 - 15lb. Bag	48.00		5,760.00
PALLET SU...	13	Pallet Surcharge	10.00		130.00
520014		PRODUCT SHIPPING CHARGE	3,966.00		3,966.00
<p><i>\$ 29.63 w/ bag & fiber</i> <i>7 bags / load</i></p>					
<p>Your order is accepted subject to the Terms and Conditions of Sale set forth on both sides hereof and on any continuation sheets. Acceptance is expressly conditional on your assent to the Terms and Conditions of Sale. Applicable sales tax will be added to the final invoice.</p>			Subtotal		\$27,211.00
			Sales Tax (0.0%)		\$0.00
			Total		\$27,211.00

Thank you for your interest. If product does not ship in 30 days product pricing is subject to change.
Shipping quotes are estimates only.

Jeff Merwin

From: emeraldss@ykw.net
Sent: Friday, July 15, 2022 12:44 PM
To: Jeff Merwin
Subject: Prineville OR Landfill ADC QUOTE & Technical Information
Attachments: TopCoat Brochure.pdf; TOPCOAT Alternative Daily Landfill Cover-GHSSDS-LIM096.pdf; Certification Letter - TOPCOAT - 07-06-2022.pdf

Hello Jeff,

See attached for TOPCOAT Brochure, Safety Data Sheet and Product Certification Letter

QUOTE

Current TOPCOAT price is \$26.85 per 50# bag
 880 bags (22 tons) per truckload = \$23,628.00

FREIGHT ESTIMATE

VAN shipment - \$7395.00
 IMDL shipment \$4290.00 – Train to Truck delivery, delivery time is significantly longer than VAN shipment

Total \$ 35,313

AVAILABILITY

Product can ship 5-7 days ARO

Please advise if you want to place an order or if you have any questions.

Arman B. Kluehe
 President

Emerald Hydro-Turf, Inc.
 DBA Emerald Equipment & Supply
 DBA Emerald Seed & Supply
 Redmond, OR 97756
 541-504-0307 Office
 emeraldss@ykw.net

From: Jeff Merwin <Jeff.Merwin@co.crook.or.us>
Sent: Wednesday, July 13, 2022 8:53 AM
To: emeraldss@ykw.net
Subject: RE: landfill daily cover

Hi Arman,

We talked a little bit ago about landfill daily cover material and I was wondering if I could get a quote for a truck load of material delivered to Crook County Landfill, 110 SW Landfill Road, Prineville OR 97754?

Thanks,

Jeff Merwin

Landfill Manager

Crook County Landfill | 300 NE 3rd Street | Prineville, Oregon 97754

Office: (541) 447-2398 | Cell: (541) 633-6203 | Fax: (541) 416-1283

Jeff.Merwin@co.crook.or.us

www.co.crook.or.us

From: emeraldss@ykw.net <emeraldss@ykw.net>

Sent: Sunday, June 26, 2022 3:20 PM

To: Jeff Merwin <Jeff.Merwin@co.crook.or.us>

Subject: RE: landfill daily cover

Hello Jeff,

I have sold Crook County Landfill products before and if I remember correctly your first Bowie Hydro-Mulcher.

I suspect you may have purchased the Kincaid unit out of Bend?

I can also help with any parts needed on the Kincaid.

I'll call you Monday the 27th.

Arman Kluehe

541-504-0307

From: Jeff Merwin <Jeff.Merwin@co.crook.or.us>

Sent: Thursday, June 23, 2022 2:36 PM

To: info@EmeraldSeedAndSupply.com

Subject: landfill daily cover

Hi,

This is Jeff Merwin Landfill Manager for Crook County Landfill in Prineville. We recently purchased a used Kincaid hydroseeder for applying daily cover. When researching parts dealers nearby by Emerald Seed and Supply came up. You reference cover material on the website that we may be interested in. Please contact me at your earliest convenience for a discussion on the material you offer. Best to contact is cell number listed below.

Thanks,

Jeff Merwin

Landfill Manager

Crook County Landfill | 300 NE 3rd Street | Prineville, Oregon 97754

Office: (541) 447-2398 | Cell: (541) 633-6203 | Fax: (541) 416-1283

Jeff.Merwin@co.crook.or.us

www.co.crook.or.us

[CAUTION:This email originated from outside of the organization. DO NOT CLICK LINKS or open attachments unless you recognize the sender and know the content is safe]

Jeff Merwin

From: Damon Sump <DSump@profileproducts.com>
Sent: Thursday, July 14, 2022 2:52 PM
To: Jeff Merwin
Subject: TopCoat pricing

Jeff,

TopCoat is priced at \$23.49/ bale FOB Limestone TN. You have two choice for freight – Flatbed or Intermodal. They are priced as follows today (rates vary frequently).

880 bags \$ 20,671.20

Van \$7195.00
 IMDL \$4090.00

Let's talk next week to discuss your thoughts and next steps.

Total 31956.20

Thanks,

Please note – I will be away on vacation from 7/11 through 7/17

Damon Sump CPESC, CESCL



View my profile on [Linked in](#)

www.profileproducts.com

503-537-8462

From: Damon Sump
Sent: Wednesday, July 13, 2022 3:24 PM
To: 'jeff.merwin@co.crook.or.us' <jeff.merwin@co.crook.or.us>
Subject: TopCoat Details

Jeff,

Thanks for the call. See attached for details on TopCoat. I will be in touch with landed costs as soon as we get a quote. Coverage is roughly 1 bale per 1000 ft2.

Thanks,

Damon

Damon Sump CPESC, CESCL
 National Sales Manager - West
 Profile Products, LLC
 503-537-8462



Solutions for your Environment

View my profile on **LinkedIn**

www.profileproducts.com

"Water never lies."

Disclaimer

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Crook County Counsel's Office

Mailing: 300 NE Third St., Prineville, OR 97754

• Phone: 541-416-3919

Physical: 301 NE 3rd St., Ste 200, Prineville, OR 97754

• Fax: 541-447-6705



MEMO

TO: Crook County Court

FROM: Eric Blaine, County Counsel

DATE: July 27, 2022

RE: Subgrant agreement with the City of Prineville
Our File No.: Ct. Contracts # 285(A)

In June, the County executed grant agreement # 8227 for \$1.5 million dollars. The stated purpose of the grant was "to develop the intersection of Peters Road and Main St and purchase public safety vehicles." It is my understanding that the intent was for the County to subcontract with the City for the sum of \$500,000.00, so that the City would undertake the road work at Peters Road and Main Street.

The attached subgrant would formalize that arrangement. Under this provisions, the City would cooperate with the periodic reporting requirements which grant # 8227 requires, and incorporates the requirement that any first tier subcontractors which are not units of government must provide certain insurance protections to the State of Oregon.

The grant requires completion of the work, and all specified reports to be submitted, by July 2024.

Please let me know if you have any questions.

Please place this memo and the attached document(s) on the Wednesday, August 3, 2022 County Court Agenda as a CONSENT ITEM, for approval and signatures.

SUB-GRANT AGREEMENT
for
Coronavirus State Fiscal Recovery Fund
Grant Agreement No. 8227

This Sub-Grant Agreement (hereinafter “Sub-Grant”) is made by and between Crook County, a political subdivision of the State of Oregon (hereinafter “the County,”) and the City of Prineville, an Oregon municipal corporation (hereinafter “the City.”) County and City may be collectively referred to as the Parties, or individually as a Party.

RECITALS

- A. WHEREAS, on or about June 16, 2022, Crook County executed Grant Agreement No. 8227 with the Oregon Department of Administrative Services for Coronavirus State Fiscal Recovery Fund monies; and
- B. WHEREAS, one of the expected use of those funds is to “develop the intersection of Peters Road and Main St” in Prineville, Oregon; and
- C. WHEREAS, the City is interested, willing, and prepared to undertake the work necessary to complete this portion of Grant Agreement No. 8227, in accordance with the terms and requirements thereof.

AGREEMENT

Now, therefore, in consideration of the mutual covenants contained herein, the sufficiency of which is acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The above Recitals are incorporated into and made a part hereof, as terms of contract and not mere recitals.
2. Effective Date: This Sub-Grant becomes effective upon the occurrence of all of the following:
 - a. The execution of Grant Agreement No. 8227 between the County and the Oregon Department of Administrative Services;
 - b. The execution of this Grant Award by the Parties; and
 - c. The payment by the Oregon Department of Administrative Services to the County, in accordance with Section 3(A) of Grant Agreement No. 8227.
3. Duration: Unless terminated sooner according to its terms, this Sub-Grant will continue in full force and effect until JULY 15, 2024.
4. Incorporation of Required Terms: The City agrees to adhere to the requirements of Grant Agreement No. 8227 as if an original party thereof, and to conform to its restrictions and obligations; provided that the City is only required to undertake those

activities connected with the “Use of Funds,” Section 6 below. Without limiting the foregoing, the City agrees to the following:

- a. The City will provide such financial records as the County or the Oregon Department of Administrative Services, or their agents and representatives, may request, including reasonable opportunities to inspect and made copies of such.
- b. The City will return to the Oregon Department of Administrative Services any grant funds not disbursed by the Completion Deadline.
- c. The City will notify the County and Oregon Department of Administrative Services any adverse change in the activities, prospects or condition (financial or otherwise) of the City related to the ability of the City to perform all obligations required by this Sub-Grant.

5. Distribution of Funds: Within ten (10) business days of the County’s receipt of funds from the Oregon Department of Administrative Services, the County will remit to the City up to Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for the services to be performed under this Sub-Grant; provided, however, that if the Oregon Department of Administrative Services does not remit the entire amount due under Grant Agreement No. 8227 in one lump sum, then, within ten (10) business days, the County will instead remit one-third (1/3) of such payment(s) as it may receive to the City of Prineville.

6. Use of Funds:

- a. The City will use such funds as may be provided under this Sub-Grant only in accordance with applicable law, including but not limited to Oregon prevailing wage laws, the American Rescue Plan Act (42 USC § 802 et seq.), the state and federal administrative rules adopted thereunder, and the employee whistleblower protection statute (41 USC § 4712).
- b. The City will use the funds as may be provided under this Sub-Grant for the following activities: “to develop the intersection of Peters Road and Main St” in Prineville, Oregon.
- c. The City will track its administrative costs incurred pursuant to this Sub-Grant and the work thereunder, and will cooperate with the County in compiling such information for transmission to the Oregon Department of Administrative Services not later than July 1, 2024.

7. Cooperation in Reporting Requirements: The Parties will cooperate with each other in the drafting and transmission of a Project Performance Plan, Quarterly Reports, and Annual Reports, in accordance with the requirements of Grant Agreement No. 8227.

8. **Required Insurance and Indemnity:** The City will require all first-tier subcontractors as it may engage to obtain the insurance described in Exhibit B of Grant Agreement No. 8227 and maintain such insurance in full force and effect for the duration of this Sub-Grant. This includes but is not limited to the requirements regarding naming the State of Oregon an additional insured, and waiver of subrogation, as described therein.

9. **Termination:** This Sub-Grant may be terminated by any of the following:

- a. If Grant Agreement No. 8227 is terminated by any party thereto, this Sub-Grant may be immediately terminated upon receipt of a written termination notice to the City. Such notice will specify the reason for the immediate termination. Upon receipt of the written notice, the City will cease all activities to be paid for through use of the funds provided by this Sub-Grant.
- b. **For Cause:** With reasonable cause, either Party may terminate this Sub-Grant after giving the other Party ten (10) days' prior written notice of termination for cause. Reasonable cause shall include material violation of this Sub-Grant or any act exposing the other Party to liability to others.
- c. **Change in Operative Law:** In the event that any applicable law should be changed, whether through legislation, adoption of administrative rules, or judgment of a court of competent jurisdiction, the effect of which change is that the provisions of this Sub-Grant can no longer be applied as the Parties have agreed, then the Parties will meet to discuss, in good faith, whether and how this Sub-Grant may be amended to conform to such changes in the law. If, after reasonable efforts under the circumstances, the Parties are unable to come to terms, either Party may terminate this Sub-Grant after giving the other Party ten (10) days' prior written notice of termination; provided, however, that if applicable law requires it, a shorter period of written notice may be provided instead.
- d. No termination or expiration of this Sub-Grant will prejudice any right which accrued prior to such termination or expiration.

10. **Submittal of W-9 Before Payment:** The City must provide County with a fully completed W-9 form upon execution of the Sub-Grant and prior to beginning services. The City will not be paid until a fully completed W-9 form is submitted.

11. **Entire Agreement:** This Sub-Grant signed by both parties is the final and entire agreement and supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives.

12. **Amendments:** The terms of this Sub-Grant shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of County. No modification of this Sub-Grant shall bind either party unless

reduced to writing and subscribed by both parties, or ordered by a court of competent jurisdiction.

13. Successors in Interest: The provisions of this Sub-Grant shall be binding upon and shall inure to the benefit of the Parties to this Sub-Grant and their respective successors and assigns.

14. No Authority to Bind the Other Party: Neither Party has authority to enter into contracts on behalf of the other Party. This Sub-Grant does not create a partnership between the Parties.

15. Notices: Any notice given in connection with this Agreement must be in writing and be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address as stated below:

For the County:

Crook County
Attn: County Counsel's Office
300 NE 3rd Street
Prineville, OR 97754

For the City:

16. Governing Law and Venue: Any dispute under this Sub-Grant will be governed by Oregon law with venue being located in Crook County, Oregon; provided, however, that if the State of Oregon is or becomes a party to such dispute(s), the venue will be as described in Section 10(b) of Grant Agreement No. 8227.

17. Severability: If any provision of this Sub-Grant is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the Parties shall be construed and enforced as if the Sub-Grant did not contain the particular provision held to be invalid.

18. Attorney Fees: In the event an action, lawsuit, or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Sub-Grant, each Party shall bear its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.

19. Waiver: The failure of either party at any time or from time to time to enforce any of the terms of this Sub-Grant shall not be construed to be a waiver of such term or of such party's right to thereafter enforce each and every provision of the Sub-Grant.

20. Indemnification and Hold-Harmless:

- a. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the City shall defend, save, hold harmless, and indemnify the County and its officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from or

arising out of, or relating to the activities of the City or its officers, employees, contractors, or agents under this Sub-Grant.

- b. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the County shall defend, save, hold harmless, and indemnify the City and its officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from or arising out of, or relating to the activities of the County or its officers, employees, contractors, or agents under this Sub-Grant.
- c. Neither party shall be liable to the other for any incidental or consequential damages arising out of or related to this Sub-Grant. Neither Party shall be liable for any damages of any sort arising solely from the termination of this Sub-Grant or any part hereof in accordance with its terms.

21. Counterparts: This Sub-Grant may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the date first set forth above.

For City of Prineville

*

By: _____
Signature

Printed Name

Title: _____

Date: _____

For Crook County

CROOK COUNTY COURT

Seth Crawford, County Judge
Date: _____

Jerry Brummer, County Commissioner
Date: _____

Brian Barney, County Commissioner
Date: _____