



Oregon

Theodore R. Kulongoski, Governor

**Department of Human Services
Administrative Services**

Office of Contracts & Procurement

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Agreement Number 110052

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**State of Oregon
Intergovernmental Agreement**

This Agreement is between the State of Oregon, acting by and through its Department of Human Services, hereafter referred to as “Department,” and Multnomah County Health Department, hereafter referred to as “Agency”.

RECITALS

WHEREAS, the purpose of the Hospital and Healthcare System Bioterrorism Preparedness Program (HHSBPP) is to fully integrate emergency procedures among all resources: hospitals, acute care medicine, emergency medical services (EMS), local public health agencies and other health assets into appropriate jurisdictional emergency operations plans; and

WHEREAS, Department requires the services of Agency as Regional Lead Agency to assist in the establishment of the Regional Healthcare Preparedness Board and implementation of the Regional Healthcare Preparedness Plan for Healthcare Preparedness Region # 1, which includes the following Oregon counties: Multnomah County, Clackamas County, Washington County, Columbia County, Clatsop County, and Tillamook County;

NOW THEREFORE, Department and Agency agree as follows.

AGREEMENT

I. EFFECTIVE DATE AND DURATION

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by Department of Justice or on **August 15, 2004**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate on **August 30, 2005**.

Agreement termination or expiration shall not extinguish or prejudice Department's right to enforce this Agreement with respect to any default by Agency that has not been cured.

II. Agreement Documents, Order of Precedence: This Agreement consists of the following documents:

This Agreement without Exhibits

Exhibit A: Statement of Work

Exhibit B: Standard Terms and Conditions

Exhibit C: Insurance

Exhibit D: Required Federal Terms and Conditions

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: (a) this Agreement without Exhibits, (b) Exhibit D (c) Exhibit B, (d) Exhibit A, (e) Exhibit C.

III. CONSIDERATION

A. The maximum not-to-exceed amount payable to Agency under this Agreement, which includes any allowable expenses, is **\$260,000.00**. Department will not pay Agency any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work performed before the date this Agreement becomes effective or after the termination or expiration of this Agreement. If the maximum compensation is increased by amendment of this Agreement, the amendment must be fully effective before Agency performs Work subject to the amendment.

B. Payments shall be subject to ORS 293.462, and shall be made in accordance with the requirements and guidelines set forth in Exhibit A.

- C. Department will pay only for completed Work under this Agreement.

IV. AGENCY DATA AND CERTIFICATION

- A. Agency Tax Identification and Insurance Information. Agency shall provide Agency's federal tax ID number and the additional information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-020-0410(3). Social Security Numbers provided pursuant to this Section will be used for the administration of state, federal and local tax laws.

Please print and/or type the following information:

Name (exactly as filed with the IRS) _____
Address _____
Telephone: () _____ - _____ Facsimile: () _____ - _____

Proof of Insurance:

Professional Liability Insurance Company _____
Policy # _____ Expiration Date: _____
General Liability Insurance Company _____
Policy # _____ Expiration Date: _____
Auto Insurance Company _____
Policy # _____ Expiration Date: _____
Workers' Compensation Insurance Company _____
Policy # _____ Expiration Date: _____

Federal Tax I.D.# _____

The above information must be provided prior to Agreement approval. Agency shall provide proof of Insurance upon request by Department or Department designee. Department may report the information set forth above to the Internal Revenue Service (IRS) under the name and taxpayer identification number provided.

- B. **Certification.** By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that:
1. The undersigned is authorized to act on behalf of Agency and that Agency is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws"

means a state tax imposed by ORS 401.792 to 401.816 (Tax for Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620;

2. The number shown in Section V(A) is Agency's correct taxpayer identification and all other information provided in Section V(A) is true and accurate;
3. Agency is not subject to backup withholding because:
 - i. Agency is exempt from backup withholding;
 - ii. Agency has not been notified by the IRS that Agency is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - iii. The IRS has notified Agency that Agency is no longer subject to backup withholding; and
4. Agency is an independent contractor and is not an officer, employee or agent of the State of Oregon as those terms are used in ORS 30.265.

AGENCY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT AGENCY HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

AGENCY: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS

Approved By Agency

Authorized Signature	Title	Date
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Approved By Department

Authorized Signature	Title	Date
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Local Office:

Signature	Name/Title (printed)	Date
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Approved for Legal Sufficiency:

(Required for Agreements in excess of \$ 75,000, unless exempt)

*Department's contract file contains a copy of
the electronic approval from Jeffrey Wahl.*

8/10/04

Assistant Attorney General	Date
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Reviewed by Department Contract Specialist:

Signature	Name (printed)	Date
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EXHIBIT A
Statement of Work

STATEMENT OF WORK
Re: Establishment of Regional Lead Agency

I. DEFINITIONS:

A. Healthcare Preparedness Region (HPR) refers to one of the seven regions (with the boundaries and composition described in Appendix A to this Statement of Work) formed to enable a coordinated response to potential risks or threats of such bioterrorism and public health emergencies at the local, regional and state levels, and to facilitate preparedness planning and budgeting in support of the federal Health Resources and Services Administration (HRSA) bioterrorism cooperative agreement. Regional boundaries are subject to change on recommendation of the RHPBs and consensus of the Hospital and Health System Preparedness Implementation Committee.

B. Hospital and Healthcare System Bioterrorism Preparedness Program (HHSBPP) is a program to improve the preparedness of hospitals and health systems in the State of Oregon to respond to bioterrorism attacks, outbreaks of infectious disease and other public health emergencies. A key strategy of the program is to develop healthcare regions to provide coordinated response to potential risks or threats of such events, at the local, regional and state levels. The Public Health Preparedness (PHP) Program manages this program, which is part of the Office of the State Public Health Officer in Oregon's Department of Human Services (DHS).

C. Hospital and Health System Preparedness Implementation Committee (HPIC): The state-level subcommittee of the Health Preparedness Advisory Committee (HPAC) consisting of representatives from state and private organizations tasked with oversight of the Centers for Disease Control and Prevention (CDC) and Health Resources and Services Administration (HRSA) Cooperative Agreements.

D. Incident Command System: The standardized incident management system that outlines roles and responsibilities of key organizational participants in incident response. It's use between organizations and across jurisdictions helps facilitate communications and response.

E. Regional Healthcare Preparedness Board (RHPB) is a volunteer organization, consisting of representatives of the healthcare delivery and public health systems in each of the seven Healthcare Preparedness Regions throughout the state. The mission of each board

is to develop an integrated surge capacity response to a bioterrorism event or other public health emergencies.

F. Regional Healthcare Preparedness Plan (RHPP)_is the plan adopted by the Regional Healthcare Preparedness Board consistent with the requirements of section IV.C.7. of this contract.

G. Regional Lead Agency (RLA) is the healthcare organization or entity within an HPR that will perform the services identified in this Statement of Work.

H. Surge capacity event: A bioterrorism or public health emergency that has the potential to overwhelm healthcare delivery system capacity. Health Resources and Services Administration defines a “surge” event as one that has the potential to create 500 additional acutely ill patients per 1 million population or a proportional number of patients based on regional population.

II. PURPOSE

The purpose of the Hospital and Healthcare System Bioterrorism Preparedness Program (HHSBPP) is to fully integrate emergency procedures among healthcare resources: hospitals, acute care medicine, emergency medical services (EMS), local public health agencies and other health assets into appropriate jurisdictional emergency operations plans.

III.PROJECT OVERVIEW:

This contract is for services of Agency as Regional Lead Agency to assist in the establishment of the RHPB and implementation of the Regional Healthcare Preparedness Plan for Region #1. Deliverables under this contract include:

A. The Regional Lead Agency will identify a single accountable manager who is responsible for deliverables under this contract.

B. The Regional Lead Agency will hire/assign appropriate staff with the knowledge, skill and abilities to accomplish the following:

1. Organize a Regional Health Preparedness Board for Region #1 in accordance with the timelines and requirements set forth in Appendix B to this Statement of Work;
2. In conformance with HRSA and HPIC policies and guidelines, prioritize regional bioterrorism and public health emergency and preparedness needs of components of the

healthcare delivery system in Region # 1 including hospitals, health clinic systems, Emergency Medical Services, etc.;

3. Assist the board in developing, exercising and implementing a Regional Healthcare Preparedness Plan that integrates planning and response of healthcare system participants to bioterrorism and public health emergency events. The Regional Healthcare Preparedness Plan will be developed in coordination with local, city and county emergency planners..
4. Develop annual budgets and requests for expenditures of HHSBPP funding based on regional priorities.

IV. REQUIRED ACTIVITIES BY REGIONAL LEAD AGENCY (RLA)

The RLA shall perform the following activities within the timelines set forth in Appendix: B

A. Required Use of Funds Received from DHS: the RLA shall utilize funds from the State of Oregon for hiring, providing office space to, supervision and general oversight to Regional planning staff, including two Regional Coordinators, and other necessary and reasonable startup costs.

B. The Regional Coordinators shall have the following duties and requirements

1. Be a full time employee of the Regional Lead Agency.
2. Have duties devoted exclusively to development, implementation and maintenance of the HRSA Healthcare Preparedness Region planning, exercising and budgeting process;
3. Assist the Regional Lead Agency in identifying and recruiting appropriate membership for the Regional Health Preparedness Board;
4. Serve as the staff to the Regional Health Preparedness Board;
5. Serve as the Regional Health Preparedness Board liaison to the Region's county public health departments, first responder and emergency management agencies to coordinate integration of RHPB plans into the overall community response;
6. Coordinate with healthcare system participants on the purchase and utilization of equipment and services budgeted by the RHPB.
7. Ensure no supplantation of funding from other grants or funding sources occurs for supplies or activities to support this project.

C. Required Activities Regarding Development of RHPB: The RLA shall, with assistance from the Regional Coordinators:

1. Facilitate formation of a Regional Health Preparedness Board (RHPB) according to the schedule and requirements set forth in Appendix B.
2. Serve as the conduit through which the Regional Coordinators and the Regional Health Preparedness Board provides information to Oregon Health Services and Health Resources and Services Administration staff, including budget proposals and recommendations;
3. Ensure RHPB membership includes invitations for participation to:
 - a) Hospitals within the Healthcare Preparedness Region (HPR)
 - b) Local Health Departments
 - c) Representation from each of the following major components of the healthcare delivery system. It is not the intent that, e.g., all EMS agencies or Federally Qualified Health Centers (FQHCs) clinics be a member. Where appropriate, each of the following groups should be invited to participate, listed without preference or priority as follows:
 - 1) EMS;
 - 2) Tribal clinics;
 - 3) Medical societies;
 - 4) Individual Practice Associations (IPAs);
 - 5) “Major/large” medical groups-subject to local interpretation;
 - 6) Safety net clinics, e.g. FQHCs
 - 7) County emergency management
 - 8) Other first response agencies as appropriate, e.g. HAZMAT or fire
4. Coordinate with the RHPB to develop and adopt a charter for the Regional Health Preparedness Board that outlines its mission and governance. A sample charter is attached as Appendix C. The actual charter should reflect, at a minimum the following elements of the sample charter so as to ensure a necessary minimum amount of consistency throughout the state among the various RHPB’s:
 - a) Mission statement;
 - b) Membership and terms of service;
 - c) Governance, including decision making process (consensus and voting process);
 - d) Sub-committee structure as necessary;
 - e) Roles and responsibilities
 - f) Goals and timelines; and
 - g) That the Hospital and Health System Preparedness Implementation Committee (HPIC) and Health Preparedness Advisory Committee (HPAC) have final approval on budget recommendations.

5. Coordinate with the RHPB to assess bioterrorism response capacity for each hospital and other members of the regional healthcare delivery system and prioritize needs based on this assessment.
6. Coordinate with the RHPB to develop budgets in accordance with funding allocated to Region #1 by HPIC based on the needs assessment required in Section IV.C.5 above. Funding allocation documentation will be provided to Agency by DHS. Agency will submit to DHS the RHPB budget for review and approval.
7. Coordinate with the RHPB to develop a Regional Healthcare Preparedness Plan (RHPP) that integrates planning and response of healthcare system participants to bioterrorism and public health emergency events. At a minimum, the RHPP will:
 - a) Include procedures for an integrated and coordinated response by hospitals and major healthcare organizations and adjacent Healthcare Preparedness Regions.
 - b) Be attached to or otherwise integrated with medical annexes in each county emergency plan within the healthcare preparedness region; and
 - c) Describe use of the Incident Command System as it relates to the plan.
 - d) Define both minimum and desirable capabilities for that region that are in conformance with HRSA and HPIC requirements and guidelines and meet the following objectives:
 - 1) Provide medical care for multiple critically ill patients resulting from a surge capacity event.
 - 2) Transfer and refer patients as appropriate according to predefined protocols
 - 3) Sustain local ability to provide emergency health care for up to 72 hours without outside assistance
 - 4) Utilize common emergency medical protocols throughout the region
 - 5) Identify regional sources of equipment, supplies, personnel and other necessary resources in coordination with a statewide resource management plan to be developed
 - 6) In coordination with adjacent and other Healthcare Preparedness Regions, develop plans to provide and receive mutual aid.
 - 7) Exercise regional plans through drills and exercises a regular basis and according to an annual exercise program (See Appendix B, attached);

V. DELIVERABLES FROM REGIONAL LEAD AGENCY (RLA)

A. Within ten (10) business days of the effective date of this contract, the Agency shall provide a proposed RLA Startup Plan for use of the initial \$30,000 to be paid Agency, explaining how such funds will be used for:

1. Hiring two Regional Coordinators;
2. Setting up an office for the Regional Lead Agency; and

3. Related administrative startup costs of the Regional Lead Agency.

B. The Agency shall provide to DHS quarterly reports with the first report due within 90 calendar days of the effective date of this contract to the state's Hospital and Health System Preparedness Implementation Committee on specific progress made in performing the activities described in Section IV.A., IV.B. & IV.C.

VI. PAYMENTS PROVISIONS:

DHS will pay Agency for the work and deliverables described in the Statement of Work as follows:

General: Agency will receive **\$260,000.00** for two Regional Coordinators, which will be allocated as follows:

1. up to **\$30,000.00** shall be available for payment of startup costs relating to performing the work required under this Contract. Prior to receiving such startup funds, Agency shall submit a startup plan for DHS' approval which shall include a budget in dollar amounts that addresses the Agency's planned startup expenses directed to the unique needs of Region #1. The initial sum of **\$30,000.00** will be authorized for an advance payment to the Agency, within 10 business days after execution and all necessary state approvals of the Contract, upon DHS' receipt and approval of a startup plan, (including a proposed budget, timelines for RHPB formation, etcetera) from the Regional Lead Agency for performing the services required by this contract.
2. Thereafter, based on DHS' receipt and approval of report from Agency of work performed during the previous month, DHS will pay Agency on or before the 15th day of such month, amounts up to and including sum of **\$19,166.67 (1/12th of \$230,000.00)**. The report shall summarize Agency's activities and total amounts expended under this contract, including but not limited to travel, board meetings and other planning efforts.
3. Any portion of the \$30,000.00 not used for startup costs shall be available for Agency's costs of employing two Regional Coordinators and related administrative costs.

**Appendix A to Exhibit A (Statement of Work):
Healthcare Preparedness Region (HPR)**

1. The Healthcare Preparedness Region is the basic unit around which surge capacity planning for a bioterrorism or public health emergency takes place and is composed of groupings of contiguous counties.
2. There are seven Healthcare Preparedness Regions in Oregon
3. The following is the list of counties in each region:

Healthcare Preparedness Region (HPR)	Regional Lead Agency	Counties in HPR
1	Multnomah County Health Department	Multnomah Clackamas Washington Columbia Clatsop Tillamook
2	Samaritan Health System	Yamhill Polk Marion Linn Benton Lincoln
3	AHEC Southwest	Lane Douglas Coos Curry
5	Jackson County Health Department	Jackson Josephine
6	Mid Columbia Medical Center	Hood River Wasco Sherman Gilliam
7	AHEC Cascade East (under St Charles Medical	Deschutes Jefferson

Healthcare Preparedness Region (HPR)	Regional Lead Agency	Counties in HPR
	Center)	Wheeler Crook Grant Klamath Lake Harney
9	Union County Health Department	Morrow Umatilla Wallowa Union Baker Malheur

NOTE: Services cannot be paid for before contract is signed

**Appendix B to Exhibit A (Statement of Work):
Selected Schedule of Significant Timelines:¹**

Required Activity:	Projected Due Date:
RLA Startup Plan due to state HRSA staff	10 business days after effective date of contract
Initiate hiring process for RLA Regional Coordinators	14 business days after effective date of contract
State review of startup plan to be completed and, pending discussion and resolution of concerns, authorization to DHS accounts payable for distribution of first \$30,000 to each Regional Lead Agency (see paragraph VI.1. above)	a. Review to be completed by DHS within 5 business days of receipt of Startup Plan b. Authorization to A/P on acceptance of Startup Plan
Formally initiate outreach process for development of Regional Health Preparedness Board	Within 30 days of effective date of contract
Target date for hiring of Regional Coordinators	Within 30 days after effective date of contract
Target date for convening of first RHPB meeting	September 30, 2004
Initiate discussion on and development of draft regional surge response plan	October 15, 2004
Initiate development of process for assessing regional bioterrorism response capacity	October 15, 2004
First quarterly report due	November 15, 2004
Initiate evaluation of findings from regional bioterrorism response capacity evaluation	December 15, 2004
Initiate development of strategy for meeting regional surge capacity needs based on regional evaluations.	January 10, 2004
Initiate development of regional budget for FY 03 funds	January 10, 2004
Orientation discussion on proposed tabletop exercise ²	January 14, 2005

A. _____

¹ Dates listed are estimates subject to revision by DHS. All required activities must be completed no later than August 30, 2005.

² Exercise design and expectations are regional decisions within the requirement that they be focused on bioterrorism.

Required Activity:	Projected Due Date:
Tabletop exercise mobilizing public health and health care surge capacity	January 31, 2005
Submit proposed budget for HRSA FY 2003 funds to DHS	February 10, 2005
Second (quarterly) Report of RHPB due to state	February 15, 2005
Department of Human Services /HPIC to complete review of proposed budget and initiate distribution of funds to Healthcare Preparedness Regions through the OAHHS.	March 15, 2005
Third quarterly report due	May 15, 2005
Functional bioterrorism exercise including at least one hospital	May 31, 2005
Full-scale functional bioterrorism exercise, incorporating surge capacity response and including all hospitals and other key health system elements in the region	Aug 30, 2005
End of year report due	August 30, 2005

Appendix C to Exhibit A (Statement of Work):

Template for Regional Health Preparedness Board Charter (MINIMUM ESSENTIAL ELEMENTS)

<date>

SAMPLE CHARTER TEMPLATE

Regional Healthcare Preparedness Board (Region __)

Mission:

To facilitate development of a regional integrated healthcare system response to bioterrorism and other public health emergencies for surge capacity events. This will be accomplished by:

1. Determine and prioritize the regional bioterrorism and public health emergency and preparedness needs of components of the healthcare delivery system in Region __;
2. Develop budgets for expenditures of HHSBPP funding in accordance with those needs and priorities within Department's Health Resources and Services Administration, Hospital and Health System Preparedness Implementation Committee and Health Preparedness Advisory Committee guidelines; and
3. Develop, exercise and` implement a regional, integrated bioterrorism and public health emergency response plan.
4. Ensure that the RHPB regional plans and budgets are being developed according to HRSA, State of Oregon and regional guidelines.

Overview:

Oregon's preparedness mission can only be accomplished if public safety systems at the local, regional and state levels have fully integrated hospitals, acute care medicine, emergency medical services (EMS), public health and other health assets into appropriate regional emergency operations plans. Funding for this effort is through a U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA) cooperative agreement, which specifies "critical benchmarks" (see Attachment for list of Health Resources and Services Administration FY 2003 critical benchmarks) that provide the basis for meeting regional preparedness goals.

Governance: The Board governance structure and decision making process to be outlined in this paragraph.

Membership:

The board will strive to represent the health care diversity of the region, including representatives from, but not limited to:

- Each critical care and state psychiatric hospital within the Healthcare Preparedness Region (HPR)
- Each Local Health Department
- Representatives from each of the following major components of the healthcare delivery system (It is not the intent that each and every EMS agency or FQHC clinic be a member, rather that they are represented as a group):
 - a. EMS
 - b. Tribal clinics
 - c. Medical societies
 - d. Individual Practice Associations (IPAs)
 - e. “Major/large” medical groups-subject to local interpretation
 - f. Safety net clinics, e.g. Federally Qualified Health Centers (FQHCs)
 - g. Representation from County Emergency Management
 - h. Representation from other first responder agencies as needed, e.g. HAZMAT or fire

Sub-committees: Developed as necessary

Planning:

The RHPB will develop an integrated plan for healthcare delivery during both human-caused and natural disasters, including an active and cooperative relationship between hospitals, local health departments, emergency management, local medical and community health clinic, tribal organizations, etc. The regional plan will:

1. Integrate with local emergency management agencies, adjacent RHPBs, and the State of Oregon Office of Public Health Preparedness to provide and receive coordinated mutual aid.
2. Define both minimum and desirable capabilities for the region and for its health care components
3. Enable care for multiple critically ill patients resulting from a bioterrorism or other public health emergency (according to HRSA standards --500/1,000,000 population) on a proportional basis
4. Have defined protocols for the transfer and referral of patients as appropriate
5. Describe the local ability to provide emergency health care for up to 72 hours without outside assistance
6. Utilize common emergency medical protocols
7. Reflect the realities of patient referral patterns, established relationships in the

healthcare system, and requirements of the HRSA Cooperative Agreement.

8. Identify regional sources of equipment, supplies, personnel and other necessary resources in coordination with a statewide resource management plan
9. Define utilization of volunteer healthcare workers, Disaster Medical Assistance Teams (DMATs), Medical Reserve Corps, etc.
10. Define funding and management strategies that address both short term and multi-year priorities
11. Describe the process for regional exercise design and implementation.

Research:

In order to form the plan, the RHPB, with the help of the RLA, will:

1. Define entities in the regional healthcare system and their relationships;
2. Develop an understanding of the relative strengths and weaknesses and define the minimal capacities of the health care system with respect to its ability to respond to bioterrorism and other weapons of mass destruction; and
3. Develop an understanding of the priorities as outlined by HPIC.

Funding Allocation:

The RPHB will develop proposed budgets based on identification and prioritization of goods and services needed by hospitals and other components of the healthcare delivery system to respond to a bioterrorism or public health emergency.

Exercises:

The RPHB will develop and exercise regional plans, to include orientations, tabletop exercises, functional exercises and full-scale exercises, on a regular basis and according to an annual schedule.

Meetings:

The RPHB shall establish a regular schedule of meetings that enable the attendance of a majority of its members.

Measurement:

Annually, the Regional Health Preparedness Board will show the extent in which the healthcare system has been strengthened in quantifiable ways to effectively respond to bioterrorism attacks or public health emergencies. Measurements will be linked to HRSA, HPIC and RHPB objectives and operational capacity.

EXHIBIT B

STANDARD TERMS & CONDITIONS

- 1. Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Agency or Department at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Department, any notice transmitted by facsimile must be confirmed by telephone notice to Department's Office of Contracts and Procurement (503) 373-7889. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's contact person listed below. Any communication or notice given by personal delivery shall be effective when actually delivered.

Notices to Department:

Allan D. Visnick or delegate
Hospital and Healthcare System
Bioterrorism Preparedness Program (HHSBPP)
800 NE Oregon Street, Suite 360
Phone: 503-731-4660 Ext 698
Fax: 503-731-4078
Email address: Allan.D.Visnick@state.or.us

Notices to Agency:

Lillian Shirley, Public Health Director, or delegate
Multnomah County Health Department
1120 SW Fifth Avenue – 14th Floor
Portland, OR 97204
Phone: (503) 988-3674
Facsimile: (503) 988-4117
Email: lillian.m.shirley@co.multnomah.or.us

2. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
3. **Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
4. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Department (and/or any other agency or department of the State of Oregon) and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court in the State of Oregon of proper jurisdiction. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. **AGENCY, BY EXECUTION OF THES AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**
5. **Compliance with Law.** Agency shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the delivery of services. Without limiting the generality of the foregoing, Agency expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws governing operation of locally administered public health programs, including without limitation, all administrative rules adopted by the Department related to public health programs; (c) all state laws requiring reporting of Agency Client abuse; (d) ORS 30.670 to 30.685, ORS 659.430 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. Department's performance

under this Agreement is conditioned upon Agency's compliance with the provisions of ORS 279.312, 279.314, 279.316 and 279.320 which are incorporated by reference herein. Agency shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279.545(4)), recycled PETE products (as defined in ORS 279.545(5)), and other recycled products (as "recycled product" is defined in ORS 279.545(6)). All employers, including Agency, that employ subject workers who provide services 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.

6. Assignment of Agreement, Successors in Interest.

- a. Agency shall not assign or transfer its interest in this Agreement without prior written approval of Department. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the Department may deem necessary. No approval by the Department of any assignment or transfer of interest shall be deemed to create any obligation of the Department in addition to those set forth in the Agreement.
- b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

7. No Third Party Beneficiaries. Department and Agency are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that Agency's performance under this Agreement is solely for the benefit of Department to assist and enable Department to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

8. Integration and Waiver. This Agreement, including all Exhibits, constitutes 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. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

9. Amendment. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required

the Department of Justice. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

10. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
11. **Construction.** The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.
12. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that Agency is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
13. **Limitation of Liabilities.** Neither party shall be liable to the other for any incidental or consequential damages arising out of or related to this Agreement. Neither party shall be liable for any damages of any sort arising solely from the termination of this Agreement or any part hereof in accordance with its terms.
14. **Ownership of Work Product.**
 - a. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, the Department will not own the right, title and interest in any items or materials created or delivered by or for Agency or a Provider in connection with the Services (“Work Product”). With respect to that portion of the Work Product that Agency owns, Agency grants to the Department a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license to (i) reproduce, prepare derivative works based upon, distribute copies of, perform and display the Work Product, (ii) authorize third parties to exercise the rights set forth in Section 14.a(i) on the Department’s behalf, and (iii) sublicense to third parties the rights set forth in Section 14.a(i). If Agency does not own the Work Product in its entirety, or at all, Agency shall obtain from the owner of the portion of the Work Product that Agency does not own, on the Department’s behalf, and in the name of the Department a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license to exercise all of the rights in the Work Product set forth in Sections 14.a(i), 14.a(ii) and 14.a(iii).
 - b. If state or federal law requires that the Department or Agency grant to the United States a license to any Work Product, or if state or federal law requires that the Department or the United States own the Work Product, then Agency shall execute such further documents and instruments as Department may

reasonably request in order to make any such grant or to assign ownership in the Work Product to the United States or the Department.

- c. Agency shall include in its Provider Contracts terms and conditions necessary (i) to ensure that the Agency may grant to or obtain on the Department's behalf and in the name of the Department the licenses set forth in Section 14(a), and (ii) to ensure that Providers execute such further documents and instruments as Department may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

15. **Force Majeure.** Neither Department nor Agency shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes and war which is beyond respectively, the Department's or Agency's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

16. **Confidentiality**

- a. All information as to personal facts and circumstances obtained by the Agency on any client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her attorney, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form which does not identify particular individuals.
- b. Agency shall maintain the confidentiality of client records in compliance with applicable state and federal law, including, without limitation, any written Department policies made available to Agency by Department, administrative rule adopted by Department implementing the foregoing laws, or any other applicable federal or state law related to the confidentiality of client records. Agency shall maintain written policies and procedures related to the disclosure of client information, and shall make such policies and procedures available to the Department for review and inspection as reasonably requested by Department.
- c. Personally identifiable health information will be subject to the transaction, security, and privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA"). Agency will cooperate with Department in the adoption of policies and procedures for maintaining the privacy and security of records and for conducting transactions pursuant to HIPAA requirements. This Agreement may be amended in writing in the future to incorporate additional requirements related to compliance with HIPAA.

- d. Department and Agency will share information as necessary to effectively serve Department clients.
- e. Agency shall require its contractors and subcontractors to comply with, and to require their compliance with these confidentiality requirements.

17. Representations and Warranties

- a. **Agency's Representations and Warranties.** Agency represents and warrants to Department that (i) Agency has the power and authority to enter into and perform this Agreement, (ii) this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms, (iii) Agency has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Agency will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in Agency's industry, trade or profession, (iv) Agency shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Services, and (v) Agency prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- b. **Warranties cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

18. Funds Available and Authorized; Payments. Agency shall not be compensated for Services performed under this Agreement by any other agency or department of the State of Oregon. Department certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the Department's current biennial appropriation or limitation. Agency understands and agrees that Department's payment of amounts under this Agreement is contingent on Department receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow Department, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

19. Recovery of Overpayments. If billings under this Agreement, or under any other Agreement between Agency and Department, result in payments to Agency to which Agency is not entitled, Department, after giving written notification to Agency, may withhold from payments due to Agency such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

20. Agency Default. Agency shall be in default under this Agreement upon the occurrence of any of the following events:

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

21. Department Default. Department shall be in default under this Agreement upon the occurrence of any of the following events:

- a. Department fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by Department herein is untrue in any material respect when made.

22. Termination.

- a. **Agency Termination.** Agency may terminate this Agreement in whole or in part:
 - (i) For its convenience, upon at least thirty days advance written notice to Department, with the termination effective as of the first day of the month following the notice period;
 - (ii) Upon 45 days advance written notice to Department, if Agency does not obtain funding, appropriations and other expenditure authorizations from Agency's governing body, federal, state or other sources sufficient to permit Agency to satisfy its performance obligations under this Agreement, as determined by Agency in the reasonable exercise of its administrative discretion; or
 - (iii) Upon 30 days advance written notice to Department, if Department is in default under the Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as Agency may specify in the notice.
- b. **Department Termination.** Department may terminate this Agreement in whole or in part:
 - (i) For its convenience, upon at least thirty days advance written notice to Agency, with the termination effective as of the first day of the month following the notice period;
 - (ii) Upon 45 days advance written notice to Agency, if Department does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of Department under this Agreement, as determined by Department in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, the Department may terminate this Agreement in whole or in part, immediately upon written notice to Agency or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces the Department's legislative authorization for expenditure of funds to such a degree that Department will not longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by Department in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
 - (iii) Immediately upon written notice to Agency if state or federal laws, regulations or guidelines are modified, changed or interpreted in such a

way that the Department does not have the authority to provide payment for all or part of the work or no longer has the authority to provide payment from the funding source it had planned to use;

- (iv) Upon 30 days advance written notice to Agency, if Agency is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as Department may specify in the notice;
- (v) Immediately upon written notice to Agency, if any license or certificate required by law or regulation to be held by Agency or a Provider is for any reason denied, revoked, suspended, not renewed or changed in such a way that Agency or a Provider no longer meets requirements to deliver the service. This termination right may only be exercised with respect to the particular part of the work impacted by the loss of necessary licensure or certification; or
- (vi) Immediately upon written notice to Agency, if Department determines that Agency or any of its Providers have endangered or are endangering the health or safety of an Agency Client or others.

23. Effect of Termination

a. Entire Agreement.

- (i) Upon termination of this Agreement in its entirety, Department shall have no further obligation to pay Agency under this Agreement.
- (ii) Upon termination of this Agreement in its entirety, Agency shall have no further obligation to perform work under this Agreement.

b. Termination In Part.

- (i) Upon termination by Department of part of the work, Department shall have no further obligation to pay Agency under this Agreement for that work.
- (ii) Upon termination by Department of part of the work, Agency shall have no further obligation to perform that work.
- (iii) Upon termination by Agency of a part of the work, Department shall have no further obligation to pay Agency under this Agreement for that work.

24. Suspension of the Work

- a. Department has the authority to suspend or all or portions of the Work due to the following causes:
 - (i) Failure of the Agency to correct unsafe conditions;
 - (ii) Failure of the Agency to carry out any provision of the Agreement;
 - (iii) Conditions, in the opinion of Department, which are unsuitable for performing the Work;

- (iv) Time required to make any investigation necessary, in the opinion of the Department;
 - (v) Any reason considered to be in the public interest.
- b. Department shall notify Agency in writing of the effective date and time of the suspension and shall notify Agency in writing to resume Work.
- c. During the period of the suspension, Agency shall cease all work under the Agreement.
- d. When the Work is recommenced, the Agency shall complete the Work as though its prosecution had been continuous and without suspension.
- e. Depending on the reason for suspension of the Work, the Agency or Department may be due compensation by the other party. If the suspension was required due to acts or omissions of Agency, Department may assess the Agency actual costs of the suspension in terms of administration, remedial work by another Agency to correct the problem associated with the suspension, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of Department, the Agency may be due compensation for documented, actual costs for stopping and restarting the Work. If the suspension was required through no fault of the Agency or Department, neither party owes the other for the impact.

25. **Insurance.** AGENCY shall maintain insurance as set forth in Exhibit C, which is attached hereto.

26. **Records Maintenance; Access.** Agency shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Agency shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Agency, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Agency's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Agency whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Agency acknowledges and agrees that Department and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Agency shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following 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. Agency shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

27. **SubAgreements.** Agency shall not enter into any subagreements for any of the Services required by this Agreement without Department's prior written consent. In addition to any other provisions Department may require, Agency shall include in any permitted subagreement under this Agreement provisions to ensure that Department will receive the benefit of subcontractor performance as if the subcontractor were the Agency with respect to Sections 4, 5, 6, 7, 12, 14, 16, 17, 26 and 27 of this Exhibit B. Department's consent to any subagreement shall not relieve Agency of any of its duties or obligations under this Agreement.
28. **Survival.** Sections 4, 7, 13, 14, 17, 18, 19, 22, 25, 26 and 28 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice Department's right to enforce this Agreement with respect to any default by Agency that has not been cured.

EXHIBIT C

INSURANCE REQUIREMENTS

During the term of this Agreement, Agency shall maintain in force at its own expense, each kind of insurance noted below:

1. Required by Department of employers with one or more workers, as defined by ORS 656.027.

Workers' Compensation: All employers, including Agency, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Agency shall require and ensure that each of its subAgencys complies with these requirements.

2. X Not Required by Department:

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each claim, incident or occurrence This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement.

3. X Not Required by Department:

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage. It shall provide that the State of Oregon, Department of Human Service and their divisions, officers and employees are Additional Insureds but only with respect to the Agency's services to be provided under this Agreement;

4. X Required by Department

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than Oregon Financial Responsibility Law (ORS 806.060), each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. It shall provide that the State of Oregon, Department of Human Service and their divisions, officers and employees are Additional Insureds but only with respect to the Agency's services to be provided under this Agreement;

5. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Agency or its insurer(s) to Department of Human Services;

6. Certificates of insurance. As evidence of the insurance coverages required by this Agreement, the Agency shall furnish acceptable insurance certificates to Department of Human Services upon request. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. The Agency shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

EXHIBIT E

REQUIRED FEDERAL TERMS AND CONDITIONS

In addition to the requirements of the Special Provisions Section of Exhibit A, Agency shall comply and, as indicated, require all sub-contractors to comply with the following federal requirements. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. Miscellaneous Federal Provisions

Agency shall comply and require all sub-contractors to comply with all federal laws, regulations, executive orders applicable to the Agreement or to the delivery of Services. Without limiting the generality of the foregoing, Agency expressly agrees to comply and all sub-contractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Services in violation of 42 USC 14402.

2. Equal Employment Opportunity

If this Agreement, including amendments, is for more than \$10,000, then Agency shall comply and require all sub-contractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

3. Clean Air, Clean Water, EPA Regulations

If this Agreement, including amendments, exceeds \$100,000 then Agency shall comply and require all sub-contractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368).

Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to Department, HHS and the appropriate Regional Office of the Environmental Protection Agency. Agency shall include and require all sub-contractors to include in all contracts with sub-contractors receiving more than \$100,000 in Federal Funds, language requiring the sub-contractor to comply with the federal laws identified in this section.

4. Energy Efficiency

Agency shall comply and require all sub-contractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

5. Truth in Lobbying

The Agency certifies, to the best of the Agency's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of Agency, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Agency shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. The Agency shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement 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.

6. HIPAA Compliance

If the Services provided under this Agreement are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Agency agrees to deliver the Services in compliance with HIPAA. Without limiting the generality of the foregoing, Services funded in whole or in part with financial assistance provided under this Agreement are covered by HIPAA. Agency shall comply and require all sub-contractors to comply with the following:

- a. Privacy and Security Of Individually Identifiable Health Information** Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Agency and Department for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Agreement. However, Agency shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate Department Privacy Rules, OAR 410-014-0000 *et. seq.*, or Department Notice of Privacy Practices, if done by the Department. A copy of the most recent Department Notice of Privacy Practices is posted on the Department web site at http://www.dhs.state.or.us/admin/info_security/priv_forms.htm, or may be obtained from the Department.
- b. Data Transactions Systems** If Agency intends to exchange electronic data transactions with the Department in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Agency shall execute an EDI Trading Partner Agreement with the Department and shall comply with the Department EDI Rules.
- c. Consultation and Testing** If Agency reasonably believes that the Agency's or the Department's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Agency shall promptly consult the Department's HIPAA officer. Agency or the Department may initiate a request for testing of HIPAA

transaction requirements, subject to available resources and the Department's testing schedule.

7. Resource Conservation and Recovery

Agency shall comply and require all sub-contractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.

8. Audits

Agency shall comply and, if applicable, require a sub-contractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

9. Debarment and Suspension

Agency shall not permit any person or entity to be a sub-contractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Sub-contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

10. Drug-Free Workplace

Agency shall comply and require all sub-contractors to comply with the following provisions to maintain a drug-free workplace: (i) Agency certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in contractor's workplace or while providing services to the Department Clients. Agency's notice shall specify the actions that will be taken by Agency against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, contractor's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs,

and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this contract a copy of the statement mentioned in paragraph c(i) above; (iv) Notify each employee in the statement required by paragraph c(i) that, as a condition of employment to provide services under this contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify the Department within ten (10) days after receiving notice under subparagraph c(iv) from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs c(i) through c(vi); (viii) Require any sub-contractor to comply with subparagraphs c(i) through c(vii); c(ix) Neither Agency, or any of Agency's employees, officers, agents or sub-contractors may provide any service required under this contract while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Agency or contractor's employee, officer, agent or sub-contractor has used a controlled substance, prescription or non-prescription medication that impairs the Agency or contractor's employee, officer, agent or sub-contractor's performance of essential job function or creates a direct threat to the Department Clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; (x) Violation of any provision of this subsection may result in termination of the contract.