

M. Research, Evaluation and Monitoring

1. In addition to submission of data described in Part II, Section V, Statement of Work, Subsection L, Data Systems, Contractor shall cooperate with OMHAS in collection of information through Consumer surveys, on-site reviews, medical chart reviews, financial reporting and financial record reviews, interviews with staff, and other information for the purposes of monitoring compliance with this Agreement, verification of Services actually provided, and for developing and monitoring performance objectives. Contractor shall assist OMHAS with development and distribution of survey instruments for use in evaluating integration of Covered Services in the OHP Medicaid Demonstration Project and State Children's Health Insurance Program. Contractor and its Subcontractors shall provide access to records and facilities as described in OAR 410-141-0180, Oregon Health Plan Prepaid Health Plan Recordkeeping, Part II, Section V, Statement of Work, Subsection J, Recordkeeping and Section XXX, Agreement Compliance and Quality Assurance Monitoring.
2. Contractor shall assist OMHAS in developing detailed procedures for tracking and evaluating potential adverse selection created by the urban and/or rural environment, as applicable. Contractor shall work with OMHAS to assure that such procedures include collection and evaluation of information that will enable OMHAS to compare the intensity of Covered Services rendered to OHP Members of different Mental Health Organization models.
3. Contractor, or its Subcontractors and Providers shall cooperate with DHS by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, Services provided under this Agreement. If the External Quality Review Organization (EQRO) identifies an adverse clinical situation in which follow-up is needed to determine whether Appropriate care was provided, the EQRO shall report the findings to OMHAS and Contractor. Contractor shall assign a staff person(s) to follow-up with the Subcontractor or Provider, inform Contractor's QI Committee of the finding, and involve the QI Committee in the

development of the resolution. Contractor shall report the resolution to OHMAS and the EQRO. If determined by OMHAS, at the recommendation of the EQRO, Contractor shall develop and comply with a corrective action plan as reviewed and approved by OMHAS.

N. Credentialing Process

1. Contractor shall have policies and procedures for credentialing and recredentialing Providers, which includes collecting evidence of credentials and screening the credentials of Providers, programs and facilities used to deliver Covered Services. These policies and procedures shall be consistent with OAR 410-141-0120, Oregon Health Plan Prepaid Health Plan Provision of Health Care Services and shall include verifying possession of valid licenses or certificates if any are required under any federal, state, or local law, rule, or regulation to deliver Covered Services in the State of Oregon. These policies and procedures shall also include collecting proof of liability insurance and evidence of hospital privileges of physicians rendering Services in an Acute Inpatient Hospital Psychiatric Care setting.
 - a. If Participating Providers are not required to be licensed or certified by a State of Oregon board or licensing agency, then:
 - (1) Participating Providers must meet the definitions for QMHA or QMHP as described in Exhibit K, Definitions and provide Services under the supervision of a Licensed Medical Practitioner (LMP) as defined in Exhibit K, Definitions; or
 - (2) For Participating Providers not meeting either the QMHP or QMHA definition, Contractor shall document and certify that the person's education, experience, competence, and supervision are adequate to permit the person to perform his or her specific assigned duties.

- b. All programs operated directly or by subcontract must be accredited by nationally recognized organizations (e.g., Council on Accredited Rehabilitation Facilities (CARF), Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and/or are certified under OAR 309-012-0130 et. seq. or licensed under ORS Chapter 443 by the State of Oregon to deliver specified Services (e.g. OAR 309-032-0525 through 309-032-0605, Standards for Adult Mental Health Services; OAR 309-032-0950 through 309-032-1080, Standards for Community Treatment Services for Children; and OAR 309-039-0500 through 309-039-0580, Standards for Approval of Providers of Non-Inpatient Mental Health Treatment Services).
 - c. Facilities used to deliver services specified in OAR 309-032-0850 through 309-032-0890, Standards for Regional Acute Care Psychiatric Services for Adults, OAR 309-033-0700 through 309-033-0740, Standards for the Approval of Community Hospital and Non-hospital Facilities to Provide Seclusion and Restraint to Committed Persons in Custody or on Diversion and OAR 309-032-1100 through 309-032-1230 must be certified or licensed by the State of Oregon and be safe and adequately equipped and adequately staffed for Covered Services provided.
 - d. Contractor shall periodically check that Participating Providers, programs and facilities are credentialed as specified above.
2. Contractor Credentialing records shall document academic degrees, licenses, certifications, and/or qualifications of Participating Providers, programs and facilities. If the Covered Service is Acute Inpatient Hospital Psychiatric Care, Contractor need not maintain Credentialing records of hospital staff but shall maintain records documenting that the facility is appropriately licensed.
3. Contractor's Subcontractors and Participating Providers shall work within the scope of registration or licensure and qualifications

specified in Part II, Section V, Statement of Work, Subsection N, Credentialing Process, Items 1.a. through 1.c.

4. Contractor shall have a staff development program for improving knowledge, skills and competency of staff in Psychiatric Rehabilitation principles and delivery of Covered Services.
5. Contractor shall provide written notice of termination of a Participating Provider, within 15 days after receipt or issuance of the termination notice, OMHAS and each OHP Members who received care, or was seen on a regular basis, by the terminated Provider.
6. If Contractor must terminate a Provider or Provider group due to problems that could compromise the OHP Member's care, less than the required notice to OMHAS and the OHP Member may be provided.
7. Facilities used for Acute Inpatient Hospital Psychiatric Care shall have separate units for the Treatment of children and adults (OHP Members ages 18 and older); or Contractor may propose, for OMHAS approval, an alternative to separate units which provides for the safety and protection of all Acute Inpatient Hospital Psychiatric Care patients.
8. Contractor's provider selection policies and procedures shall not discriminate for the participation, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable State law, solely on the basis of that license or certification. This paragraph shall not be construed to prohibit Contractor from including Providers only to the extent necessary to meet the needs of OHP Members or from establishing any measure designed to maintain quality and control costs consistent with Contractor's responsibilities under this Agreement. This paragraph shall not be construed to preclude Contractor from using different reimbursement amounts for different specialties or for different practitioners in the same specialty. If Contractor declines to include individuals or groups of providers in its network, Contractor must give the affected provider(s) written notice of the reason for its decision.

9. Contractor's provider selection policies and procedures must not discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment. If Contractor declines to include individuals or groups of providers in its network, Contractor must give the affected provider(s) written notice of the reason for its decision.

O. Delegation of Activities

Contractor is responsible for the Quality of Care and Services provided under the terms and requirements of this Agreement. Subject to the provisions of this section, Contractor may subcontract any or all of the work to be performed under this Agreement. No subcontract shall terminate or limit Contractor's legal responsibility to DHS for the timely and effective performance of its duties and responsibilities under this Agreement.

1. Before any delegation of activities, Contractor shall evaluate the prospective Subcontractor's ability to perform the activities to be delegated.
2. Contractor shall have a written agreement that specifies the delegated activities and reporting responsibilities of the Subcontractor.
3. The following requirements of this Agreement may not be delegated:
 - a. Oversight and Monitoring of QA/QI Activities;
 - b. Adjudication of Final Appeals in a Member Complaint and Grievance Process; and
4. Contractor's agreement with the Subcontractor shall provide for the revocation of the delegation or imposition of other sanctions if the Subcontractor's performance is inadequate to meet the requirements of this Agreement.
5. Contractor shall monitor the Subcontractor's performance on an ongoing basis and perform a formal review of compliance with

delegated responsibilities at least once a year. Upon identification of areas for improvement or deficiencies, Contractor and Subcontractor must take corrective action.

6. All subcontracts shall meet the requirements described below and shall incorporate portions of this Agreement, as applicable, based on the scope of work to be subcontracted.
 - a. Must be in writing and incorporate each applicable requirement of this Agreement, including the following: Part II, Section V, Statement of Work, Subsection J, Recordkeeping; Section XXIII, Indemnification; Section XXV, Professional Liability Insurance; Section XXVI, Tort Claims; Section XXVIII, Workers' Compensation Coverage; Section XXIX, Additional Federal Requirements; Section XXXI, Amendments and Terminations; and every other provision in this Agreement that sets requirements for any of the activities being subcontracted.
 - b. Clearly identify work to be performed by the Subcontractor and what portion of that work, if any, the Subcontractor may further subcontract.
 - c. Ensure that the requirements of 42 CFR Part 434 that are appropriate to the Services or activity required under the subcontract are fulfilled.
 - d. Contain a provision that the Subcontractor shall not bill, charge, seek compensation, remuneration or reimbursement from, or have recourse against DHS or any OHP Member for Covered Services provided during the period for which Capitation Payments were made by DHS to Contractor with respect to said OHP Member, even if Contractor becomes insolvent.
 - e. Contain a provision that the Subcontractor shall continue to provide Covered Services during periods of Contractor Insolvency or cessation of operations through the period for which Capitation Payments were made to Contractor.

- f. Contain a provision requiring the Subcontractor to follow OAR 410-141-0420, Billing and Payment Under the Oregon Health Plan, when submitting Fee-For-Service claims for Oregon Health Plan Services provided to OHP Members that are not Covered Services.
- g. In cases where the Subcontractor has assumed any risk covered under this Agreement, contain a provision that the Subcontractor must protect itself against loss by either self-insuring or providing proof of Reinsurance and by maintaining a Restricted Reserve Fund as described in Exhibit C, Solvency Plan and Financial Reporting.
- h. If Contractor chooses to delegate the Complaints and Grievance Process, Contractor shall require the Subcontractor to have written policies and procedures for accepting, processing and responding to all Complaints and Grievances from Family Members, Local and/or Regional Allied Agencies, and OHP Members consistent with Exhibit G, Oregon Health Plan Mental Health Services Client Notices, Complaint and Hearings Process.
- i. Contain a provision that data used for analysis of delivery system Capacity, Consumer satisfaction, financial solvency, and Encounter, client process monitoring, and Acute Inpatient Hospital Psychiatric Care admission data submission must be provided to Contractor to meet reporting requirements described in Exhibit A, Mental Health Services Practitioner Report; Exhibit B, Health Plan Complaint Log; Exhibit C, Solvency Plan and Financial Reporting; Exhibit D, Encounter Minimum Data Set Requirements; Exhibit E, Client Process Monitoring System; and Exhibit F, Oregon Patient/Resident Care System.
- j. Contain a provision that requires the Subcontractor to have a planned, systematic and ongoing process for monitoring, evaluating and improving the quality and Appropriateness of Covered Services provided to OHP Members.

- k. Contain a provision that requires the Subcontractor to participate in QA and QI activities of Contractor, or those of OMHAS if requested to do so.
 - l. Contain a provision that requires the Subcontractor to provide access to records and facilities as described in OAR 410-141-0180, Oregon Health Plan Prepaid Health Plan Recordkeeping, Part II, Section V, Statement of Work, Subsection J, Recordkeeping and Section XXX, Agreement Compliance and Quality Assurance Monitoring and to cooperate with OMHAS in medical and financial record reviews, and Agreement compliance and QA monitoring.
 - m. Contain a provision that requires the Subcontractor to cooperate with all processes and procedures of Abuse reporting, investigations, and protective Services as described in ORS 430.735 through 430.765, Abuse Reporting for Mentally Ill and OAR 309-040-0200 through 309-040-0290, Abuse Reporting and Protective Services in Community Programs and Community Facilities.
 - n. If Contractor chooses to delegate Utilization Management activities, Contractor shall assure that compensation to Providers is not structured so as to provide incentives to deny, limit or discontinue Medically Appropriate services to OHP members.
7. On the effective date of this Agreement, Contractor shall notify OMHAS in writing of activities to be delegated and the entities performing such delegated activities. Contractor shall provide a list which shall include the delegated entity's business name, address, phone number, name of executive director and activities to be performed. Contractor shall notify OMHAS in writing of changes to the list within thirty (30) calendar days of such change.

P. Participation of Suspended or Terminated Providers

The Covered Services provided by Contractor under this Agreement may not be rendered by individuals or entities who are currently excluded from Medicaid participation under section 1128 or section 1128A of the Social Security Act. Contractor shall not refer OHP Members to such Providers and shall not accept billings for Services to OHP Members submitted by such Providers.

- Q. Health Insurance Portability and Accountability Act (HIPAA)
1. Contractor is a “covered entity” for the purposes of the provisions of the Health Insurance Portability and Accountability Act (HIPAA), Title II, Subtitle F, Administrative Simplification, or the federal regulations implementing the Act. Contractor shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records consistent with HIPAA and/or other federal, state, and local laws, rules and regulations applicable to the work performed under this Agreement.
 2. Contractor, its agents, employees, Providers and Subcontractors shall ensure that confidential records are secure from unauthorized disclosure. Electronic storage and transmission of confidential OHP Member information and records shall assure accuracy, backup for retention, and safeguards against tampering, back dating, or alteration.
 3. Guidelines to ensure the security of the electronic transmission of OHP Member confidential information shall be developed by DHS. Within the available resources, and consistent with DHS’s testing schedule, Contractor shall initiate a request to DHS for testing and review of security measures.
 4. Contractor shall comply with HIPAA standards for electronic transactions published in 65 Fed. Reg. 50312 (August 17, 2000) and consistent with the Administrative Simplification Compliance Act (extending the deadline for compliance with transaction and code set requirements until October 12, 2003, subject to submission of a compliance plan to DHHS). Contractor shall initiate a request to DHS for the testing of systems and the

implementation of such policies and procedures as may be required to comply with HIPAA standards.

VI. Revision of Covered Services

Consistent with state law, Covered Services may be expanded, limited or otherwise changed by the Health Services Commission (HSC), or by the Legislative Assembly. Contractor shall provide Covered Services consistent with the expansion or limitation, subject to Contractor's right to terminate this Agreement as provided for in Part II, Section XXXI, Amendments and Termination. DHS shall promptly notify Contractor by certified mail of changes to Covered Services.

VII. Consideration

A. Payment Types and Rates

In consideration of all work to be performed by Contractor under this Agreement, DHS shall pay Contractor a monthly Capitation Payment for each OHP Member, for the period beginning on the date of Enrollment and ending on the date of Disenrollment. Contractor shall be paid a Capitation Payment only for those OHP Members who are enrolled with Contractor according to DHS records. Where the date of an OHP Member's Enrollment or Disenrollment is during mid-month, the Capitation Payment for that OHP Member shall be prorated. DHS may withhold payment for new enrollees when, and for so long as, DHS determines that Contractor meets the circumstances cited in 42 CFR 434.67. Contractor shall be responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, DHS will not withhold from such compensation or payments any amounts 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, except as a self-employed individual.

1. For each month during the designated period, for the tables contained in Exhibit L, DHS shall pay Contractor the Capitation amount listed for each OHP Member falling within the designated rate category/county who is enrolled with Contractor for the full

month. For any month when one or more OHP Members are enrolled for only part of the month, the Capitation amount for each OHP Member shall be prorated based upon the number of days such OHP Member is enrolled during the month.

2. DHS has developed actuarially set Adjusted Per Capita Costs necessary to cover the reasonable costs of the services to be provided under this Agreement. A full description of the methodology used to calculate per capita costs may be found in the PriceWaterhouseCoopers (PWC) document *Analysis of Federal Fiscal Years 2004-2005: Average Costs*, dated November 11, 2002. A full description of the methodology used to calculate Capitation Payments may be found in the PWC document *Oregon Health Plan Medicaid Demonstration Capitation Rate Development, Federal Fiscal Year 2005*, dated September 2004.
3. DHS shall provide, upon Contractor request, and when available, documents produced by the actuarial firm which document and describe the Capitation rate development process.

B. Payment In Full

The consideration listed in Exhibit L, plus any reimbursement for pilot programs outlined in this Agreement, is the total consideration payable to Contractor for all work performed under this Agreement.

C. Changes in Payment Rates

The Capitation Payment may be changed by amendment to this Agreement pursuant to Part II, Section XXXI, Amendments and Termination, of this Agreement, except that changes in Covered Services in response to revisions in the Prioritized List of Health Services by the HSC that would have an actuarial impact, as determined by DHS, on Contractor's projected costs greater than 1% or in response to action by the Oregon Legislative Assembly shall be made as follows:

1. DHS shall notify Contractor within thirty (30) calendar days of any action by the HSC under ORS 414.720 or the Legislative Assembly that will necessitate a change in the Capitation Payment.
2. In the event of any action as described in Part II, Section VII, Consideration, Section C, Changes in Payment Rates, Item 1., DHS shall prepare and provide to Contractor an amendment to this Agreement. The new Capitation Payment under such amendment shall take effect no earlier than thirty (30) calendar days from the date the amendment is mailed or delivered to Contractor and, no earlier than sixty (60) calendar days following final legislative action.
3. Contractor shall sign any such amendment within forty-five (45) calendar days of receipt of the amendment, or such later date as DHS may specify. If Contractor fails to sign the amendment within such time period, DHS may, at its sole discretion, terminate this Agreement, effective on the proposed effective date of the amendment or such later date as DHS may specify.
4. No amendment to this Agreement shall be effective and binding until it has been signed by all parties and all necessary State of Oregon approvals have been obtained.

D. Timing of Capitation Payments

The date on which DHS shall process Capitation Payments shall depend on whether the Enrollment occurred on a weekly or monthly basis. For OHP members enrolled with Contractor during a weekly Enrollment cycle, Capitation Payments shall be mailed to Contractor by the first working day following the date of Enrollment. For OHP members enrolled with Contractor during a monthly Enrollment cycle, Capitation Payments shall be made available to Contractor by the 10th day of the month to which such payments are applicable. Both sets of payments shall appear on the monthly remittance advice.

DHS shall also send Contractor an Enrollment listing by the 5th day of each month. If Contractor believes that there are any errors in the remittance advice, Enrollment data files, or Enrollment listing, Contractor shall notify DHS. Except for newborns and notwithstanding

any errors in the remittance advice, Enrollment data files, or Enrollment listing, retroactive Capitation Payments shall not be made to Contractor for OHP members not appearing on Contractor's Enrollment data files or listing.

All Fee-For-Service (FFS) claims must be billed by Contractor, its Subcontractor, or its Participating Providers directly in accordance with OAR 410-141-0420, Billing and Payment Under the Oregon Health Plan. Billing Providers must be enrolled with DHS in order to receive payment. Contractor shall not submit any FFS claims for any Covered Services provided to OHP Members.

E. Settlement of Accounts

If an OHP Member is disenrolled, DHS may Recoup or Contractor shall refund to DHS, Capitation Payments received for the OHP Member for any period after the Disenrollment date.

DHS shall have no obligation to make any payments to Contractor for any period(s) during which Contractor substantially fails to carry out the terms of this Agreement. Any payments received by Contractor from DHS for such periods, and any other payments received by Contractor from DHS to which Contractor is not entitled under the terms of this Agreement, shall be considered an overpayment and shall be recovered from Contractor.

Any Capitation Payments received by Contractor that are considered an overpayment may be offset by any future payments to which Contractor would be entitled under DHS rules for any Covered Services provided by Contractor.

F. Remedies Short of Termination

1. Whenever OMHAS, in its sole judgment, determines that Contractor is out of compliance with this Agreement, OMHAS may, at its discretion, take Remedial Action as outlined in policies adopted by OMHAS. The policies shall be provided to Contractor as adopted by OMHAS. OMHAS shall issue a Notice of Intended Remedial Action which provides, in non-Emergency Situations, at least thirty (30) calendar days' notice prior to the effective date of

the Remedial Action, and in Emergency Situations, at least seven (7) calendar days' notice prior to the effective date of Remedial Action. Contractor may request an administrative review concerning the Notice of Intended Remedial Action and may also request suspension of the Remedial Action until a decision is reached through the administrative review process. To receive a suspension of the intended Remedial Action, Contractor must request an administrative review before the effective date of the intended Remedial Action and include a request to suspend the intended Remedial Action. If the intended Remedial Action is suspended and a decision is reached in favor of OMHAS, OMHAS may impose the Remedial Action retroactively to the effective date stated in the Notice of Intended Remedial Action.

2. Remedial Action provides for a range of options of varying severity depending on the seriousness and nature of the Agreement violation. Options include suspension or freezing of enrollment, financial withholds, or other sanctions designed to remedy Agreement violations. Conditions that may result in Remedial Action include, but are not limited to:
 - a. Failure to substantially provide Medically Appropriate Services that is required to be provided to OHP Members under this Agreement;
 - b. Contractor acts to discriminate among OHP Members on the basis of their mental health status or need for mental health Services;
 - c. Misrepresentation or falsification of information that Contractor provides to an OHP Member or OHP Member Representative, Potential Enrollee, Provider, CMS or DHS;
 - d. Failure to comply with the requirements for physician incentive plans;
 - e. Failure to provide a Provider Panel sufficient to ensure adequate capacity to provide Medically Appropriate Covered Services in accordance with access requirements specified in this Agreement;
 - f. Failure to maintain an internal quality improvement program;
 - g. Failure to comply with the operational and financial reporting requirements specified in this Agreement;

- h. Failure to comply with Fraud and Abuse requirements;
 - i. Failure to make timely claims payments to Providers or provide timely approval of authorizations;
 - j. Failure to comply with Encounter Data submission requirements specified in this Agreement;
 - k. Distribution directly, or indirectly through any agent or independent contractor, marketing materials that have not been approved by OMHAS or that contain false or materially misleading information;
 - l. Violation of any of the other applicable requirements of sections 1903(m) or 1932 of the Social Security Act and any implementing regulations.
 3. OMHAS will provide CMS written notice whenever it imposes or lifts Remedial Action no later than 30 days after the date the Remedial Action is taken or removed. Notification to CMS will include the type of Remedial Action and the reason for the decision to impose or lift a Remedial Action. Payment for the new OHP Member will be denied when, and for so long as, payment to those OHP Members is denied by CMS.

VIII. Marketing

Contractor must have in place a mechanism for OHP Members and Potential Enrollees to receive information to help them understand the requirements and benefits available under this Agreement. Contractor shall have information available for Potential Enrollees to assist them in making an informed decision about enrollment with Contractor. Contractor shall ensure that staff activities and written materials are accurate and do not intentionally mislead confuse, or defraud OHP Members or Potential Enrollees about options available through Contractor. Statements that will be considered inaccurate, false, or misleading include, but are not limited to, any assertion or statement (whether written or oral) that the OHP Member must enroll with Contractor in order to obtain benefits or in order not to lose benefits; or that the Contractor is endorsed by CMS, the federal or state government, or similar entity. Contractor shall cooperate with OMHAS in developing written materials to be included in OHP Medicaid Demonstration Project and State Children's Health Insurance Program application packets.

1. Contractor, and Subcontractors, shall not initiate contact nor market independently to Potential Enrollees in an attempt to influence an individual's enrollment with Contractor, without the express written consent of OMHAS.
2. Contractor and Subcontractors may not conduct, directly or indirectly, door-to-door, telephonic, mail or other cold call marketing practices to entice Potential Enrollees to enroll with Contractor, or to not enroll with another Contractor.
3. Contractor, and Subcontractors, shall not seek to influence an individual's enrollment with the Contractor in conjunction with the sale of any other insurance.
4. Contractor and Subcontractors may engage in activities intended to provide outreach to Contractor's enrolled OHP Members for the purpose of enhancing mental health promotion or education within Contractor's Service Area.
5. Contractor shall submit to OMHAS, for review and approval, all written marketing materials to OHP Members or Potential Enrollees that reference benefits and/or coverage. Marketing material shall be made available to all OHP Members, or Potential Enrollees, within Contractor's Service Area. Marketing materials expressly for the purpose of mental health promotion, education or outreach do not require prior approval.

IX. Identification Cards

DHS hereby waives the requirement that Contractor issue identification cards to OHP Members as specified in OAR 410-141-0300, Oregon Health Plan Prepaid Health Plan Member Education. Contractor may issue identification cards to OHP Members. Such identification cards shall be for Contractor's convenience only and shall confer no rights to Covered Services or other benefits under this Agreement. To be entitled to such Covered Services or benefits, the holder of the card must, in fact, be an OHP Member and be eligible for Covered Services under this Agreement. Each identification card shall indicate that the holder of

the card is not entitled to benefits under this Agreement unless currently and lawfully enrolled as an OHP Member. If Contractor serves non-OHP Members, identification cards of non-OHP Members and OHP Members shall be as similar as possible and shall not distinguish the OHP Member as different in any way.

X. Third Party Resources

A. Notice to Health Insurance Group

Contractor shall notify the Health Insurance Group, Third Party Recovery Unit, Adult and Family Services within thirty (30) calendar days from the time that Contractor learns that an OHP Member might have other health insurance. This notification shall be provided on a Provider Insurance Response Form (AFS 8708) and shall include the OHP Member's name, Social Security number, State Medicaid number, name of the policyholder, the name and address of the insurance company, group and/or policy number, and any other identifying information available to Contractor, such as dates of coverage.

B Secondary Payer Status and Retroactive Disenrollment

Contractor is secondary payer when the OHP Member is covered by another health insurance policy. Contractor shall notify DHS Health Management Unit (HMU) within thirty (30) calendar days from the time that Contractor learns that an OHP Member might have other insurance. If DHS determines that the OHP Member has sufficient Third Party Resources, DHS may disenroll the OHP Member in accordance with OAR 410-141-0080, Oregon Health Plan Disenrollment from Prepaid Health Plans. The effective date of Disenrollment shall be the first of the month after DHS makes such a determination unless DHS specified a retroactive effective date of Disenrollment pursuant to OAR 410-141-0080(3), except that such date shall not exceed 18 months. When an OHP Member is retroactively disenrolled, DHS shall recoup all Capitation Payments from the date of Disenrollment.

C. Collection of Third Party Resources

Contractor is required to make a reasonable effort to secure payment from Third Party Resources (TPR). To the extent permitted by law,

Contractor shall make a reasonable effort to identify and pursue such TPR without regard to any Capitation Payments received by Contractor under this Agreement. Contractor shall have a system for obtaining timely assignment of the rights to recovery or the assignment of lien rights from the OHP Member and /or Provider as necessary to effectively pursue TPR claims. If Contractor is unable to gain cooperation from the OHP Member in pursuing TPR, Contractor shall notify the DHS Third Party Recovery Unit of the OHP Member's refusal to cooperate.

D. Confidentiality

When pursuing TPR, Contractor shall follow federal and state guidelines relating to confidentiality pursuant to Part II, Section XXII, including without limitation, the federal (42 CF Part 2) and state (ORS 426.460 and ORS 179.505) confidentiality laws and regulations governing the identity and medical/client records of OHP Members. DHS considers Contractor's sending of claims and supporting documentation to a third party insurer to facilitate third party recovery a purpose directly connected with the administration of the Medicaid program. To the extent authorized by law, the DHS Third Party Recovery Unit shall share client and claim information received with Contractor to assist Contractor in third party recovery.

E. Claims Processing

Contractor may not refuse payment on Valid Claims based solely on Contractor's belief that there may be potential TPR, absent documentation of potential TPR. If a Provider cannot obtain recovery from the TPR, Contractor shall not delay payment to the Provider.

F. Accounting for Third Party Collections

Contractor shall be responsible for maintaining records in such a manner so as to ensure that all monies collected from TPR on behalf of OHP Members may be identified and reported to OMHAS in accordance with Exhibit C, Solvency Plan and Financial Reporting. Contractor shall also keep records of third party recovery efforts that are not successful. Contractor shall make these records available for audit and review consistent with the provisions of this Agreement.

G. Third Party Recoveries

Contractor shall pursue third party recovery during this Agreement period pursuant to the requirements of this Agreement, federal and state laws, rules and regulations. The Capitation rate(s) in this Agreement are based, in part, on projected third party recoveries. Contractor's failure to submit third party recovery data and/or pursue recoverable third party recovery obligations during this Agreement may create a claim for reimbursement to the extent required by federal law.

H. Dual Coverage

If Contractor also provides commercial insurance, Contractor shall have a systematic process for identifying OHP Members with dual or overlapping coverage with Contractor and shall notify DHS within fifteen (15) working days of the time such an OHP Member is identified. Contractor shall reimburse DHS, within thirty (30) working days of receipt of monthly billing from DHS for Capitation Payments made on behalf of OHP Members with dual coverage. Contractor is not required to notify DHS on the effective date of Medicare HMO coverage for a dual eligible OHP Member.

I. Indian Health Service and Tribal Facilities

Pursuant to 42 CFR 36.61, subpart G, Indian Health Service and Tribal Facilities are the payer of last resort and are not considered an alternative resource or Third Party Resource.

XI. Merger

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by signature of its authorized representative, hereby acknowledges that he or she had read this Agreement, understands it and agrees to be bound by its terms and conditions.

XII. Ownership

Contractor shall notify OMHAS of any changes in the ownership of Contractor and provide OMHAS with full and complete information of each person or corporation with an ownership or contractor interest (which equals or exceeds 5 percent) in the managed care plan, or any Subcontractor in which Contractor has an ownership interest that equals or exceeds 5 percent.

XIII. Funds Available and Authorized

DHS certifies at the time this Agreement is signed that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within DHS current appropriation or limitation. Contractor understands and agrees that DHS payment amounts under this Agreement attributable to work performed after the last day of the current biennium is contingent upon DHS receiving appropriations, limitations, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to continue to make Capitation Payments under this Agreement. In the event the Oregon Legislative Assembly fails to approve sufficient appropriations, limitations, or other expenditure authority for the succeeding biennium, DHS may terminate this Agreement effective upon written notice to Contractor with no further liability to Contractor.

XIV. Dual Payment

Except as specifically permitted by this Agreement, Contractor shall not be compensated for work performed under this Agreement from any other department of the State of Oregon, nor from any other source including the federal government. Contractor shall immediately report any funds received by Contractor through activities arising under this Agreement.

XV. Government Status

Contractor certifies that it is not currently employed by the federal government to provide the work covered by this Agreement. Contractor certifies that Contractor is not an employee of the State of Oregon. Contractor shall be responsible for any federal or state taxes applicable to Capitation Payments made under this Agreement. Contractor shall not be eligible for any benefits from contract payments of federal Social Security, unemployment insurance, or workers' compensation, except as a self-employed individual.

XVI. Successors in Interest

Contractor shall not assign or transfer any of its interest in this Agreement without the prior written consent of OMHAS. Subject to the immediately preceding sentence, 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, if any. In addition to any other assignment or transfer of interest, for purposes of this Agreement, all of the following fundamental changes shall be considered an assignment of an interest in this Agreement subject to OMHAS prior written consent.

- A. A consolidation or merger of Contractor, or of a corporation or other entity or person controlling or controlled by Contractor, with or into a corporation or entity or person, or any other reorganization or transaction or series of related transactions involving the transfer of more than 50% of the equity interest in Contractor or more than 50% of the equity interest in a corporation or other entity or person controlling or controlled by Contractor, or
- B. The sale, conveyance or disposition of all or substantially all of the assets of Contractor, or of a corporation or other entity or person controlling or controlled by Contractor, in a transaction or series of related transactions.

Contractor shall notify OMHAS at least forty-five (45) calendar days prior to any assignment or transfer of an interest in this Agreement and shall reimburse DHS for all legal fees reasonably incurred by DHS in reviewing the proposed assignment or transfer and in negotiating and drafting appropriate documents.

XVII. Force Majeure

Neither Contractor nor DHS shall be held responsible for delay or default caused by fire, riot, war, major disaster, epidemic, or acts of God which is beyond either Contractor's or DHS's reasonable control. Contractor or DHS shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance obligations under this Agreement.

If the rendering of Services or benefits under this Agreement is delayed or made impractical due to a labor dispute involving Contractor, care may be deferred until after resolution of the labor dispute except when care or Service is needed for an emergency or Urgent need or when there is a potential for a serious adverse mental health or medical consequence if Treatment or Diagnosis is delayed more than thirty (30) calendar days.

If a labor dispute disrupts normal execution of Contractor duties under this Agreement, Contractor shall notify OHP Members in writing of the situation and direct OHP Members to bring serious health care needs to Contractor's attention.

XVIII. Headings and Captions

The headings used in this Agreement are for reference and convenience only, and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

XIX. Controlling State Law/Venue

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. Any action or suit involving this Agreement shall be filed and tried in Marion County, Oregon. Provided, however, if the action or suit might be brought in a federal forum, then it shall be brought and conducted solely and exclusively with the United States District Court for the District of Oregon. Nothing herein shall be constituted as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to claims or jurisdictions based thereon. Contractor, by signature below if its authorized representative, hereby consents to the in personam jurisdiction of said court.

XX. Severability

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 or 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.

XXI. Waiver

The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

XXII. Non-Discrimination

Contractor shall comply with all Federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. Contractor shall also comply with all applicable requirements of state civil rights and rehabilitation statutes and rules.

Contractor shall comply with the requirements of Title II of the American with Disabilities Act and Title 6 of the Civil Rights Act by assuring communication and delivery of Covered Services to OHP Members who have difficulty communicating due to a disability, or limited English proficiency or diverse cultural and ethnic backgrounds, and shall maintain written policies, procedures and plans in accordance with the requirements of OAR 410-141-0220.

XXIII. Indemnification

Contractor shall defend, save, hold harmless and indemnify the State of Oregon, DHS and their officers, agents, employees, from and against all claims suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of Contractor or its officers, employees, agents or Subcontractors under this Agreement. If Contractor is a county (as the word “county” is used in Article XI, Section 10 of the Oregon Constitution) and a public body (as “public body” is defined in ORS 30.260(4)), Contractor’s liability under this Agreement is subject to the limitations of the Oregon Tort Claims Act and of Article XI, Section 10 of the Oregon Constitution.

To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, DHS shall indemnify, within the limits

of the Oregon Tort Claims Act, Contractor against liability for damage to life and property arising from DHS activities under this Agreement, provided DHS shall not be required to indemnify Contractor for any such liability arising out of the wrongful acts of Contractor or the employees, agents, or Subcontractors of Contractor.

XXIV. Public Contractor's Liability

If Contractor is a county (as the word "county" is used in Article XI, Section 10 of the Oregon Constitution), notwithstanding any other provisions of this Agreement, including without limitations the following sections of Part II: Section IV, Enrollment and Disenrollment and Section VII, Consideration, Subsection E, Settlement of Accounts and Subsection G, Remedies Short of Termination, of this Agreement, Contractor's liability under this Agreement is subject to the limitations of Article XI, Section 10 of the Oregon Constitution. However, Contractor shall exercise its best efforts in maintaining adequate reserves (including, if necessary, reserves in excess of the amount specified in Exhibit C, Solvency Plan and Financial Reporting), obtaining appropriate loss and liability insurance and seeking any necessary funding or spending authorization so as to prevent its responsibilities under this Agreement from becoming a debt or a pledge of credit in violation of the provisions of Article XI, Section 10 of the Oregon Constitution. In the event that Contractor anticipates or determines that its responsibilities under this Agreement might or will violate Article XI, Section 10 of the Oregon Constitution, Contractor shall immediately notify DHS, and DHS may, in its sole discretion, terminate this Agreement upon notice to Contractor or at some later date specified in the notice.

XXV. Professional Liability Insurance

Contractor shall ensure that all persons and entities performing Services under this Agreement obtain and keep in effect during the term of this Agreement professional liability insurance which provides coverage of direct and vicarious liability relating to any damages caused by an error, omission or any negligent acts. Except to the extent that the Oregon Tort Claims Act, ORS 30.260 or 30.300, is applicable and imposes lesser limitations, Contractor shall ensure professional liability insurance coverage

of not less than the amount of \$1,000,000 per person per incident and not less than \$1,000,000 in the aggregate either through a binder issued by an insurance carrier or by Contractor's self-insurance with proof of same to be provided to OMHAS upon request.

XXVI. Tort Claims

Contractor and its Subcontractors, employees, and agents are performing the work under this Agreement as independent Contractors and not as officers, employees, or agents of the State as those terms are used in ORS 30.265. It is understood, however, that if Contractor subcontracts with an Oregon public entity, officer or employee, that entity, officer or employee will be an independent Contractor but may be subject to the Oregon Tort Claims Act, ORS 30.260 to 30.300.

XXVII. Compliance with State Laws

DHS's performance hereunder is conditioned upon Contractor's compliance with provisions of ORS 279.312, 279.314, 279.316, 279.320. In accordance with ORS 279.555 (1)(e) and (f), Contractor 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)), as well as other recycled plastic resin products (as "recycled product" is defined in ORS 279.545(6)).

XXVIII. Workers' Compensation Coverage

All employers, including Contractor, that employ 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. Contractor shall ensure that each of its Subcontractors complies with these requirements.

XXIX. Additional Federal Requirements

Contractor shall comply with Subsections A-K, and shall include the provisions of Subsections A-D and F-G of this Section in all subcontracts and Subsection E when subcontracting with a clinical laboratory as if Subcontractor is Contractor.

A. Contractor certifies, to the best of Contractor's knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or behalf of Contractor, to any person for influencing or attempting to influence 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 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, Contractor agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. Contractor 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 shall certify and disclose accordingly.
4. Contractor is solely responsible for all liability arising from a failure by Contractor to comply with the terms of this certification. Additionally, Contractor promises to indemnify DHS for any damages suffered by DHS as a result of Contractor's failure to comply with the terms of this certification.
5. 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. 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.

- B. If the sums payable to Contractor under this Agreement exceed \$100,000, Contractor shall comply with all applicable standards, orders or requirements issued under Clean Air Act (codified at 42 USC 7401 et. seq.), Federal Water Pollution Control Act, as amended (codified at 33 USC 1251 et. seq.), Executive Order 11738, and Environmental Protection Agency (EPA) regulations which prohibit the use of facilities included on the EPA List of Violating Facilities. Any violations shall be reported to DHS, the Department of Health and Human Services and to the US EPA Assistant Administrator for Enforcement (EN-329).
- C. Contractor and Subcontractor shall 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 6962). Section 6002 of that Act 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 contained in 40CFR Parts 247-253.
- D. If the sums payable to Contractor exceed \$10,000, Contractor shall 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).
- E. Contractor and any laboratories used by Contractor shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988) which require that:

All laboratory testing sites providing Services under this Agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with CLIA identification number. Those laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

- F. Contractor shall comply with the requirements of 42 CFR Part 489, Subpart I Omnibus Budget Reconciliation Act (OBRA) 1990, Patient Self Determination Act and ORS Chapter 127 as amended by the Oregon Legislative Assembly 1993, pertaining to advance directives.
- G. Contractor shall comply with all other applicable federal law.
- H. If Contractor lets any subcontracts, Contractor shall take affirmative steps to: include qualified small and minority and women's businesses on solicitation lists, assure that small and minority and women's businesses are solicited whenever they are potential sources, divide total requirements into smaller tasks or quantities when economically feasible so as to permit maximum small and minority and women's business participation, establish delivery schedules when requirements permit which will encourage participation by small and minority and women's businesses, and use the Services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.
- I. Contractor shall comply with all requirements of Exhibit I, Practitioner Incentive Plans, to ensure compliance with Sections 4204 (a) and 4731 of the Omnibus Budget Reconciliation Act of 1990 that concern physician incentive plans.
- J. If Contractor is a Risk HMO and is sanctioned by CMS under 42 CFR 434.67, payments provided for under this Agreement will be denied for OHP Members who enroll after the imposition of the sanction, as set forth under 42 CFR 434.42.

K. Prevention/Detection of Fraud and Abuse

Contractor shall have in place internal controls, policies or procedures capable of preventing and detecting fraud and abuse activities as they relate to the Oregon Health Plan as outlined in Exhibit J.

L. Debarment and Suspension

Contractor 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. 12,549 and No. 12,689, "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.

XXX. Agreement Compliance and Quality Assurance Monitoring

- A. OMHAS shall conduct Agreement compliance and QA monitoring related to this Agreement. Contractor and its Subcontractors shall cooperate in such monitoring and Contractor shall notify its Subcontractors and Participating Providers of such monitoring, related instructions and request for information.
- B. OMHAS shall provide Contractor thirty (30) calendar days written notice of any Agreement compliance and QA monitoring activity which requires any action or cooperation of Contractor as specified in D., below, unless one of the following conditions exist or is suspected to exist:
 - 1. Operations of Contractor or its Subcontractors or Participating Providers threaten the health or safety of any OHP Member; or
 - 2. Contractor or its Subcontractors or Participating Providers may act to alter records or make them unavailable for inspection.
- C. Notice of monitoring shall include the date the monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.
- D. Monitoring procedures may include, but are not limited to, the following:
 - 1. Entry and inspection of any facility used in the delivery of Covered Services;

2. A request for submission to OMHAS of copies of documents, or access to such documents during a site visit, as needed to verify compliance with this Agreement or state and federal laws, rules and regulations;
 3. The completion by Contractor of self-assessment checklist or pre-site visit questionnaires recording the degree of compliance or noncompliance with specific Agreement or rule requirements; and
 4. Conduct of interviews with, and administration of questionnaires to Contractor staff, Participating Providers, Health Care Professionals, Local and/or Regional Allied Agencies, and Consumers knowledgeable of Service operations.
- E. Contractor shall cooperate with OMHAS in the development of a corrective action plan to bring Contractor performance in compliance with this Agreement or state and federal laws, rules and regulations.
- F. OMHAS shall make available to Contractor a written report of its findings and conclusions within sixty (60) calendar days of the completion of the monitoring.

XXXI. Amendments and Termination

- A. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, without a duly executed amendment. Any amendments to this Agreement shall be effective only when reduced to writing, signed by both parties, and when signed by the Oregon Department of Justice as approved for legal sufficiency.
- B. This Agreement may be terminated under any of the following conditions:
1. This Agreement may be terminated by mutual consent of both parties or by either party upon thirty (30) calendar days written notice. If termination is initiated by Contractor, DHS has a right to full disclosure of Contractor's records required by this Agreement. Contractor shall promptly provide such disclosure to DHS upon

demand. If termination is initiated by DHS under Part II, Section VII, Consideration, Subsection C, Changes in Payment Rates, the thirty (30) calendar days notice period does not apply and the termination is effective upon written notice to Contractor.

2. DHS may also terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by DHS, as set forth elsewhere in this Agreement, under any of the following conditions:
 - a. If DHS funding from federal, state or other sources is not obtained, or is withdrawn, reduced or limited, or if DHS expenditures are greater than anticipated, such that funds are insufficient to allow for the purchase of Services as required by this Agreement.
 - b. If federal or state regulations or guidelines or CMS waiver terms are modified, changed or interpreted in such a way that the Services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments under this Agreement.
 - c. If any license, registration or certificate required by law or regulation to be held by Contractor or Contractor's Subcontractors or Participating Providers to provide Covered Services is for any reason denied, revoked or not renewed.
 - d. If OMHAS determines that the health or welfare of OHP Members is in jeopardy should this Agreement continue.
 - e. If Contractor fails to provide Services called for by this Agreement, fails to perform any other provisions of this Agreement within the time specified or any extension thereof, or fails to pursue the work of this Agreement in accordance with its terms; and such failure continues for ten (10) calendar days, or such longer period as OMHAS may authorize, after Contractor's receipt of written notice thereof.

- f. If Contractor fails to perform or otherwise comply with any provision contained in Section V, Statement of Work.
 - g. If Contractor is a Fully Capitated Health Plan and no longer provides Services under the OHP Medicaid Demonstration Project in all of the counties listed in Part I, Section III.B., Service Area, pursuant to its FCHP Service agreement with DHS.
 - h. If Contractor is a county government (or a group of counties acting through a lead county under ORS Chapter 190 or an intergovernmental entity created by a group of counties under ORS Chapter 190) and no longer operates or contracts for CMHPs (or in the case of a group of counties acting through a lead county under ORS Chapter 190 or an intergovernmental entity created by a group of counties under ORS Chapter 190, one or more of the said counties no longer operates or contracts for CMHPs) pursuant to ORS 430.620 under an Intergovernmental Agreement with DHS.
- C. Notwithstanding paragraphs A and B of this subsection, if DHS initiates termination of this Agreement, Contractor may request an Agreement pre-termination hearing within ten (10) days of the Notice of Termination as follows:
- 1. An Agreement pre-termination hearing allows an opportunity for the Administrator of DHS, or designee, to reconsider the decision to terminate this Agreement. The request for an Agreement pre-termination hearing may include the provision of new information that may result in DHS changing its decision.
 - 2. A written request for Agreement pre-termination hearing must be received by the Administrator of OMHAS within ten (10) days of the date of the issuance of DHS notice of termination. If a written request for Agreement pre-termination hearing is not received within this ten (10) day period or if Contractor withdraws a hearing request, any right to such hearing shall be considered waived.
 - 3. Contractor must submit any documentation it intends to ask the Administrator of OMHAS to review at the Agreement pre-

termination hearing. In the Administrator's discretion, the Agreement pre-termination hearing can occur based solely on document review. If the Administrator decides that a meeting will assist the decision, the Administrator will notify Contractor requesting the Agreement pre-termination hearing of the date, time and place of the meeting. The meeting will be conducted in the following manner:

- a. It will be conducted by the Administrator of OMHAS, or designee;
 - b. No minutes or transcript of the meeting is required;
 - c. Contractor will be given an opportunity to present information.
 - d. DHS staff will not be available for cross-examination, although staff may assist the Administrator of OMHAS in providing information relevant to the hearing.
 - e. The Administrator of OMHAS may request Contractor to submit documentation of new information that has been presented orally. In such an instance, a specific date for receiving such information will be established.
 - f. The record of the hearing will include the information in DHS's file, and relevant information timely submitted to the Administrator of OMHAS by Contractor.
 - g. The Administrator or designee shall issue an Agreement pre-termination hearing decision within thirty (30) days of the close of record.
4. If Contractor timely requests an Agreement pre-termination hearing, the Administrator of OMHAS shall:
- a. Notify individuals enrolled with Contractor of the hearing request, and

- b. Permit such enrollees to disenroll immediately with Contractor without cause.
 - 5. Where Contractor and DHS mutually agree to termination under subsection B.1., above, or Contractor seeks to terminate this Agreement, Contractor will be deemed to have waived a request for pre-termination hearing.
- D. Any termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination, except that Contractor shall be solely responsible for its obligations or liabilities after the termination date when the obligations or liabilities result from Contractor's failure to provide for termination of, or right to terminate, its commitments concurrently with and consistent with the termination of this Agreement.
- E. In the event of termination of this Agreement, DHS will give OHP Members notice of the termination and information on options for receiving Converged Services following the date of termination.
- 1. Contractor shall ensure the orderly and reasonable transfer of OHP Member care in progress, whether or not those OHP Members are hospitalized.
 - 2. If Contractor chooses to provide Services to a former OHP Member who is no longer an OHP Member or who is enrolled with another contractor at the time Contractor renders the Service, DHS shall have no responsibility to pay for such Services.
 - 3. Upon termination, DHS shall conduct a final accounting of Capitation Payments received for OHP Members enrolled during the month in which termination is effective and shall be accomplished as follows:
 - a. Mid-month Termination: For termination of this Agreement that occurs during mid-month, the Capitation Payments for that month shall be apportioned on a daily basis. Contractor shall be entitled to Capitation Payments for the period of time prior to the date of termination, and DHS shall be entitled to a refund for the balance of the month.

- b. **Responsibility for Claims:** Contractor is responsible for any and all claims from Subcontractors or other Providers, including Emergency Service Providers, for Covered Services provided prior to termination date. Contractor shall promptly notify DHS of any outstanding claims for which DHS may owe, or be liable for, a Fee-For-Service payment, which are known to Contractor at the time of termination or when such new claims incurred prior to termination are received. Contractor shall supply DHS, with all information necessary for reimbursement of such claims.
4. The rights and obligations of the parties arising under the following sections of Part II: Section V, Statement of Work, Subsection J, Recordkeeping, Item 3, Government Access to Records; Section XIX, Controlling State Law/Venue; Section XXV, Professional Liability Insurance; Section XXXI, Amendments and Terminations, Subsection D and Subsection E, shall survive the termination or expiration of this Agreement.

XXXII. Notices

Any notice under this Agreement shall be deemed received the earlier of either the date of actual delivery or two (2) working days after mailing certified and postage prepaid through the U.S. Postal Service addressed as follows:

If to Contractor: To the address listed in Part I, Section V. Contractor Information, of this Agreement

If to an OHP Member: To the latest address provided for the OHP Member on an address list, Enrollment or change of address form actually received by Contractor.

If to DHS: OMHAS Community Services Section Manager, 2575 Bittern Street NE, Post Office Box 14250, Salem, Oregon 97309-0740.

