

July 13, 2023

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Approval of Amendment #3 extending the duration, increasing funding and updating program language to an Administrative Services Contract with Trillium Community Health Plan, Inc. for behavioral health services. The Amendment value is \$428,000 for 12 months. The Total Agreement value is increased to \$1,372,000 for 4 years. Funding is through Oregon Health Plan. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	Contract reviewed and approved June 11, 2020, Agenda Item 061120-A5; Amendment #01 review and approved January 7, 2021, Agenda Item 010721-A16; Amendment #02 reviewed and approved December 9, 2021, Agenda Item 20211209 III.B.i; Amendment #03 Issues July 11, 2023		
<b>Performance Clackamas</b>	Ensuring safe, healthy, and secure communities through the provision of mental health and substance use services.		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	No
<b>Contact Person</b>	Mary Rumbaugh	<b>Contact Phone</b>	503-742-5305

**EXECUTIVE SUMMARY:** The Behavioral Health Division of the Health, Housing, and Human Services Department requests the approval of Amendment #03 to a revenue contract with Trillium Community Health Plan, Inc. behavioral health services. Trillium is a Coordinated Care Organization contracted with the Oregon Health Authority to arrange for the provision of managed care services under the Oregon Health Plan (OHP) for OHP enrollees. This contract provides funds for Behavioral Health Crisis, Wraparound Care Coordination for at-risk youth and their families who are multi-system involved, Care Coordination, and Peer & Community-based Services.

In the previous contract year, of the individuals served at the Clackamas County Mental Health Urgent Walk-In Clinic, 3.6% were enrolled with Trillium Community Health Plan.

Amendment #03 extends the contract term by twelve months and adds \$428,000.00 to the contract, increasing the contract's maximum value to \$1,372,000.00.

**RECOMMENDATION:** Staff recommends Board approval of this Amendment.

Respectfully submitted,

*Rodney A. Cook*

Rodney A. Cook  
Director of Health, Housing and Human Services

For Filing Use Only

**AMENDMENT NO. 3 TO  
ADMINISTRATIVE SERVICES AGREEMENT**

This Amendment No. 3 to ADMINISTRATIVE SERVICES AGREEMENT (the “**Amendment**”) is made as of this January 1<sup>st</sup>, 2023 (the “**Amendment Effective Date**”) by and between Trillium Community Health Plan, Inc. (“**Trillium**” or “**Health Plan**”) and Clackamas County, Oregon, a municipal corporation (“**County**” or “**Vendor**”), (collectively, the “**Parties**”), with reference to the following facts:

A. The Parties have previously entered into an Administrative Services Agreement with the Effective Date of September 1, 2020 (the “**Agreement**”), which may have been amended in accordance with its terms;

B. The Parties desire to modify certain terms and conditions contained in the Agreement as provided in this Amendment;

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and other undertakings set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Definitions: Defined terms used in this Amendment shall have the same meaning as in the Agreement unless otherwise specifically defined herein.
2. Section 7.1 Term is hereby deleted in its entirety and replaced with the following:

“Section 7.1 Term.

The Term of this Agreement shall commence on the Effective Date and terminate December 31, 2023.

3. Exhibit D “**Oregon Health Plan Product Attachment**” is hereby deleted in its entirety and replaced with the attached Exhibit D, which is incorporated into the Agreement by reference.
4. To the extent that there is a conflict between this Amendment and the Agreement, this Amendment will prevail. Except as amended and modified by this Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. This Amendment may not be modified except in writing signed by both parties hereto. This Amendment, the Agreement and exhibits and schedules thereto constitute the entire agreement of the parties with respect to the subject matter contained therein and supersede any and all prior or contemporaneous agreements between the parties, whether oral or written, concerning the subject matter contained herein.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives executed this Amendment to be effective as of the Amendment Effective Date.

For: Clackamas County, Oregon

For: Trillium Community Health Plan

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

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Name

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Title

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**EXHIBIT D**  
**OREGON HEALTH PLAN PRODUCT ATTACHMENT**

TRILLIUM COMMUNITY HEALTH PLAN, Inc. (“**Contractor**”) has entered into a Health Plan Services Contract, Coordinated Care Organization Contract with the State of Oregon, acting by and through its Oregon Health Authority (“**OHA**”), to provide and pay for Coordinated Care Services (the “**OHP Contract**”). The OHP Contract requires that certain provisions in this Exhibit be included in any subcontracts and contracts with Vendors. This Exhibit is incorporated by reference into and made part of the Administrative Services Agreement (the “**Agreement**”) with respect to goods and services rendered under the Agreement by Vendor (“**Subcontractor**”) to enrollees of Contractor who are enrolled in the Oregon Health Plan managed care program (“**Members**”).

In the event of a conflict or inconsistency with any term or condition in the Agreement relating to goods and services rendered to Members who are enrolled in the Oregon Health Plan managed care program, this Exhibit shall control. Any additional regulatory requirements that may apply with respect to a Member Contract or Members covered by this Exhibit are or will be set forth in the Provider Manual or another Exhibit. To the extent that a Member Contract or a Member is subject to the law cited in the parenthetical at the end of a provision on this Exhibit 1, such provision will apply to the rendering of Covered Services to a Member with such Member Contract, or to such Member, as applicable.

Subcontractor shall comply with the provisions in this Exhibit to the extent that they are applicable to the goods and services provided by Subcontractor under the Agreement; provided, however, that the Agreement shall not terminate or limit Contractor’s legal responsibilities to OHA for the timely and effective performance of Contractor’s duties and responsibilities under the OHP Contract. Capitalized terms used in this Exhibit, but not otherwise defined herein or in the Agreement shall have the same meaning as those terms in the OHP Contract, including definitions incorporated therein by reference. The current version of the OHP Contract, including the definitions, is publicly available at <https://www.oregon.gov/oha/OHPB/Pages/CCO-2-0-Contract-Selection.aspx>, or the OHP Contract definitions may be requested from Contractor.

1. **OHA.** To the extent any provision in the OHP Contract applies to Contractor or Subcontractor, including Participating Providers that meet the definition of a Subcontractor, with respect to the Work that Contractor is providing to OHA or Subcontractor is providing to Contractor through the Agreement and is not set forth in this Exhibit, that provision shall be incorporated by reference into this Exhibit and shall apply equally to Subcontractor. Subcontractor shall perform any services or obligations subcontracted by the Contractor and meet the obligations and terms and conditions of the OHP Contract as if the Subcontractor is the Contractor. Subcontractor acknowledges and agrees that the Agreement: (i) is in writing, (ii) specifies the subcontracted Work and reporting responsibilities, (iii) is in compliance with the requirements described in the OHP Contract, and (iv) hereby incorporates the applicable provisions of the OHP Contract, based on the scope of Work subcontracted such that the provisions of the Agreement are the same as or substantively similar to the applicable provisions of the OHP Contract. To the extent that Contractor is held liable for a breach of the OHP Contract by Subcontractor, Subcontractor will be liable for Contractor to the same extent, including reimbursement of all penalties, fines and sanctions applied to Contractor due to Subcontractor’s breach of the OHP Contract. (*OHP Contract Exhibit B, Part 4, Sections 11, 11.a(1) and 11.a(2)*).

2. **Termination for Cause.** In addition to pursuing any other remedies allowed at law or in equity or by the Agreement, the Agreement may be terminated by Contractor, or Contractor may take remedial actions and impose other sanctions against Subcontractor, if the Subcontractor's performance is inadequate to meet the requirements of the OHP Contract. In addition, Contractor may terminate the Agreement, or require Subcontractor (if it contracts with Participating Providers) to terminate the Subcontractor's agreement with a Participating Provider, immediately upon receipt of Legal Notice from the State that Participating Provider is precluded from being enrolled as a Medicaid Provider. *(OHP Contract Exhibit B, Part 4, Section 4.a(7) and 11.b(1)(a))*

3. **Monitoring.**

3.1 **By Contractor.** Subcontractor acknowledges and agrees Contractor has the right to monitor the Subcontractor's performance on an ongoing basis, including performing an annual formal review of compliance with delegated responsibilities, and Subcontractor's performance, deficiencies, or areas for improvement, in accordance with 42 CFR § 438.230. Upon identification of deficiencies or areas for improvement, Subcontractor shall take the corrective actions identified by Contractor in a Corrective Action Plan. If deficiencies are identified in Subcontractor's performance for any functions outlined in the OHP Contract, whether those are identified by Contractor, by OHA or their respective designees, Subcontractor will respond and remedy those deficiencies within the timeframe determined by OHA. Contractor may revoke the delegation of activities or obligations or pursue other remedies in accordance with the Agreement in instances where OHA or the Contractor determines the Subcontractor has breached the terms of the Agreement. *(OHP Contract Exhibit B, Part 4, Sections 11.a(17) and 11.b(1)(b))*

3.2 **By OHA.** Subcontractor agrees that OHA is authorized to monitor compliance with the requirements in the Statement of Work under the OHP Contract and that methods of monitoring compliance may include review of documents submitted by Subcontractor, OHP Contract performance review, Grievances, on-site review of documentation or any other source of relevant information. *(OHP Contract Exhibit B, Part 9, Section 1.a)*

4. **Required Subcontractor Provisions.**

4.1 Subcontractor will comply with the payment, withholding, incentive and other requirements of 42 CFR §438.6 that are applicable to the Work required under the Agreement. *(OHP Contract Exhibit B, Part 4, Section 11.b(1)(c))*

4.2 Subcontractor will submit to Contractor Valid Claims for services including all the fields and information needed to allow the claim to be processed without further information from the Provider within timeframes for valid, accurate, Encounter Data submission as required under the OHP Contract. Subcontractor will document, maintain and provide to Contractor all Encounter Data records that document Subcontractor's reimbursement to FQHCs, Rural Health Centers and Indian Health Care Providers. Subcontractor will provide all such documents to Contractor upon request of Contractor. *(OHP Contract Exhibit B, Part 4, Sections 11.b(1)(d) and 11.c)*

4.3 Subcontractor agrees to comply with all Applicable Laws, including, without limitation, all Medicaid laws, rules, regulations, as well as all applicable sub-regulatory guidance and contract provisions. *(OHP Contract Exhibit B, Part 4, Section 11.b(1)(e))*

4.4 Subcontractor agrees that OHA, the Oregon Secretary of State, CMS, HHS, the Office of the Inspector General, the Comptroller General of the United States, or their duly authorized representatives and designees, or all of them or any combination of them, have the right to audit, evaluate, and inspect any books, records, contracts, computers or other electronic systems of the Subcontractor, or of the Subcontractor's contractor, that pertain to any aspect of services and activities performed, or determination of amounts payable under the OHP Contract. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(f)*)

4.5 Subcontractor will make available, for purposes of audit, evaluation, or inspection its premises, physical facilities, equipment, books, records, contracts, computer, or other electronic systems relating to its Medicaid Members. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(g)*)

4.6 Subcontractor must respond and comply in a timely manner to any and all requests from OHA or its designee for information or documentation pertaining to Work outlined in the OHP Contract. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(h)*)

4.7 Subcontractor agrees that the right to audit by OHA, CMS, the DHHS Inspector General, the Comptroller General or their designees, will exist for a period of ten (10) years from the Expiration Date of the OHP Contract or from the date of completion of any audit, whichever is later. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(i)*)

4.8 If OHA, CMS, or the DHHS Inspector General determine that there is a reasonable possibility of fraud or similar risk, OHA, CMS, or the DHHS Inspector General may inspect, evaluate, and audit the Subcontractor at any time. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(j)*)

4.9 Pursuant to 42 CFR § 438.608, to the extent Contractor Subcontracts to Subcontractor any responsibility for providing services to Members or processing and paying for claims, Subcontractor will adopt and comply with all of Contractor's Fraud, Waste, and Abuse policies, procedures, reporting obligations, and annual Fraud, Waste, and Abuse Prevention Plan. Subcontractor will comply with and perform all of the same obligations, terms and conditions of Contractor as set forth in Exhibit B, Part 9 of the OHP Contract, including Section 11.b(8) of such Part. Unless expressly provided otherwise in the applicable provision, Subcontractor must report any Provider and Member Fraud, Waste, or Abuse to Contractor, and Contractor will be responsible for reporting to OHA or the applicable agency, division, or entity. Accordingly, the timing for reporting obligations of Subcontractor are shorter than those of Contractor's time for reporting to OHA so that Contractor may timely report such incidents to OHA in accordance with the OHA Contract. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(k)*)

4.10 Subcontractor will allow Contractor to perform Monitoring, audit, and other review processes for the purpose of determining and reporting on compliance with the terms and conditions of the Agreement, including, without limitation, compliance with Medical and other records security and retention policies and procedures. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(l)*)

4.11 Subcontractor will report any Other Primary, third-party Insurance to which a Member may be entitled. Subcontractor must report such information to Contractor within a timeframe that enables Contractor to report such information to OHA within thirty (30) days of the Subcontractor becoming aware that the applicable Member has such coverage, as required under Section 17, Exhibit B, Part 8 of the OHP Contract. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(n)*)

4.12 Subcontractors will provide, in a timely manner upon request, as requested by Contractor in accordance with the request made by OHA, or as may be requested directly by OHA, all Third-Party Liability eligibility information and any other information requested by OHA or Contractor, as applicable, in order to assist in the pursuit of financial recovery. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(o)*)

5. **Hold Harmless.** Subcontractor understands and agrees that neither OHA nor a Member receiving services are liable for any costs or charges related to Contractor-authorized Covered Services rendered to a Member whether in an emergency or otherwise, including Holistic Care. Furthermore, Subcontractor shall not hold a Member liable for any payments for any of the following: (a) Contractor's or Subcontractor's debt due to Contractor's or Subcontractor's insolvency; (b) Covered Services authorized or required to be provided under the OHP Contract to a Member, for which (i) the State does not pay Contractor; or (ii) Contractor does not pay Subcontractor that furnishes the services under a contractual, referral or other arrangement; or (iii) Covered Services furnished pursuant to the Agreement to the extent that those payments are in excess of the amount that the Member would owe if Contractor provided the services directly. Subcontractor may not initiate or maintain a civil action against a Member to collect any amounts owed by the Contractor for which the Member is not liable to the Subcontractor under the Agreement. Nothing in this paragraph 5 shall impair the right of the Subcontractor to charge, collect from, attempt to collect from or maintain a civil action against a Member for any of the following: (a) deductible, copayment, or coinsurance amounts, (b) health services not covered by the Contractor or the OHP Contract, and (c) health services rendered after the termination of the Agreement, unless the health services were rendered during the confinement in an inpatient facility and the confinement began prior to the date of termination of the Agreement or unless the Subcontractor has assumed post-termination treatment obligations under the Agreement. (*OHP Contract Exhibit B Part 8, Section 4.b; Exhibit L, Section 5.a(5)*)

6. **Continuation.** Subcontractor shall continue to provide Covered Services during periods of Contractor insolvency or cessation of operations through the period for which CCO Payments were made to Contractor.

7. **Billing and Payment.**

7.1 **Non-Covered Services.** Subcontractor shall not, and will ensure that its Subcontractors' contracts with any Providers do not, bill Members for services that are not Covered Services under the OHP Contract unless: (a) there is a full written disclosure or waiver on file signed by the Member, in advance of the services being provided, in accordance with OAR 410-141-3565, and (b) the Provider has complied with the requirements set forth in OAR 410-120-1280(3)(h). (*OHP Contract Exhibit B, Part 4, Section 11.a.11; Part 8, Section 4.g*)

7.2 **Claims Submission.** Pursuant to OAR 410-141-3565, Subcontractor must submit all billings for Members to Contractor within 120 days of the Date of Service. However, Subcontractor may, if necessary, submit their claims to Contractor within 365 days from the Date of Service under the following circumstances: (a) billing is delayed due to retroactive deletions or enrollments; (b) pregnancy of the Member; (c) Medicare is the primary payer, unless Contractor is responsible for Medicare reimbursement; (d) cases involving Third-Party Resources; or (e) other cases that delay the initial billing to Contractor, unless the delay was due to the Subcontractor's failure to verify a Member's eligibility. (*OHP Contract Exhibit B, Part 8, Section 5.b*)

7.3 **Provider-Preventable Conditions.** No payment under the Agreement will be made for any Provider-Preventable Conditions or Health Care-Acquired Conditions, as specified in the OHP Contract. Subcontractor will comply with the reporting requirements regarding Provider-Preventable Conditions or Health Care-Acquired Conditions specified by Contractor or OHA as a condition of payment from Contractor. Subcontractor will identify Provider-Preventable Conditions that are associated with claims for CCO Payment or with courses of treatment furnished to Members for which CCO Payment would otherwise be available. *(OHP Contract Exhibit B, Part 8, Section 5.j)*

7.4 **Eligibility Verification for Fully Dual Eligible Members.** Subcontractor will verify current Member eligibility using the Automated Voice Response system, 270/271 Health Care Eligibility Benefit Inquiry and Response transactions, or the MMIS Web Portal. *(OHP Contract Exhibit B, Part 8, Section 7.b)*

7.5 **Payment Eligibility.** Subcontractor understands and agrees that if Contractor is not paid or not eligible for payment by OHA for services provided, neither will Subcontractor be paid or be eligible for payment. *(OHP Contract Exhibit B, Part 4, Section 11.d)*

8. **Record Keeping.** Subcontractor shall provide OHA, its external quality review organization, or any of its other designees, agent or subcontractors (or a combination, or all, of them) with timely access to records and facilities and cooperate with such parties in the collection of information for the purposes of Monitoring compliance with the OHP Contract, including but not limited to verification of services actually provided, and for developing, Monitoring and analyzing performance and outcomes. Collection methods with which Subcontractor must cooperate may include, without limitation: consumer surveys, on-site reviews, medical chart reviews, financial reporting and financial record reviews, interviews with staff, and other means determined by OHA. *(OHP Contract Exhibit B, Part 8, Section 1.b)*

9. **Quality Review.** In conformance with 42 CFR § 438.350 and § 438.358, and 42 CFR §457.1250, Subcontractor shall permit OHA and its designees to have access to, or provide OHA with, Subcontractor's records and facilities, and information requested by OHA and its designees, for the purpose of an annual External Quality Review of compliance with all Applicable Laws and the OHP Contract as well as the quality outcomes and timeliness of, and access to, services provided under the OHP Contract. *(OHP Contract Exhibit B Part 10, Section 8.a)*

10. **Access to Records.** Subcontractor shall maintain all financial records related to the OHP Contract in accordance with best practices or National Association of Insurance Commissioners accounting standards. In addition, Subcontractor shall maintain any other Records in such a manner as to clearly document Subcontractor's performance. Subcontractor shall ensure timely access to its Records to OHA, the Secretary of State's Office, CMS, the Comptroller General of the United States, DHHS; the Office of the Inspector General, the Comptroller General of the United States, the Oregon Department of Justice Oregon Health Plan Fraud Control Unit; and their duly authorized representatives for the purpose of performing examinations and audits and making excerpts and transcripts, evaluating compliance with the OHP Contract, and evaluating the quality, appropriateness and timeliness of services. Subcontractor further acknowledges and agrees that the foregoing entities may, at any time, inspect the premises, physical facilities, computer systems and any other equipment and facilities where Medicaid-related activities or Work is conducted or equipment is used (or both conducted and used).



10.1 The right to audit under this Section exists for 10 years from, as applicable, the Expiration Date or the date of termination, or from the date of completion of any audit, whichever is later.

10.2 Subcontractor shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit. This right also includes timely and reasonable access to Subcontractor's personnel for the purpose of interview and discussion related to such documents.

10.3 Subcontractor shall retain and keep accessible all Records for the longer of ten (10) years: (a) the retention period specified in the OHP Contract for certain kinds of records; (b) the period as may be required by applicable law, including the records retention schedules set forth in OAR Chapters 410 and 166; or (c) until the conclusion of any audit, controversy or litigation arising out of or related to the OHP Contract.

10.4 The rights of access in this paragraph 10 are not limited to the required retention period, but shall last as long as the Records are retained. (*OHP Contract Exhibit D, Section 13*)

11. **Clinical Records and Confidentiality of Member Records.** Subcontractor shall comply with Contractor's policies and procedures that ensure maintenance of a record keeping system that includes maintaining the security of records as required by the Health Insurance Portability and Accountability Act, 42 USC 1320d *et. seq.*, and the federal regulations implementing the Act (collectively, "**HIPAA**"), and complete Clinical Records that document the Covered Services provided to Members. (*OHP Contract Exhibit B Part 8, Section 2.a*)

12. **Reporting of Abuse.** Subcontractor shall comply with all patient abuse reporting requirements and fully cooperate with the State for purposes of ORS 124.050 *et. seq.*, ORS 419B.010 *et. seq.*, ORS 430.735 *et. seq.*, ORS 433.705 *et. seq.*, ORS 441.630 *et. seq.*, and all applicable Administrative Rules. In addition, Subcontractor shall comply with all protective services, investigation and reporting requirements described in (a) OAR 407-045-0000 through 407-045-0370 (abuse investigations by the Office of Investigations and Training); (b) ORS 430.735 through 430.765 (persons with mental illness or developmental disabilities); (c) ORS 124.005 to 124.040 (elderly persons and persons with disabilities abuse); and (d) ORS 441.650 to 441.680 (residents of long term care facilities). (*OHP Contract Exhibit D, Section 32.b*)

13. **Fraud and Abuse.** Subcontractor shall comply with Contractor's fraud and Abuse policies to prevent and detect fraud and Abuse activities as such activities relate to the OHP Contract, and shall promptly refer all suspected cases of fraud and Abuse to the Contractor and the Oregon Department of Justice Medicaid Fraud Control Unit ("**MFCU**"). Subcontractor shall permit the MFCU or OHA or both to inspect, evaluate, or audit books, records, documents, files, accounts, and facilities maintained by or on behalf of Subcontractor, as required to investigate an incident of fraud and Abuse. Subcontractor shall cooperate with the MFCU and OHA investigator during any investigation of fraud and Abuse. Subcontractor shall provide copies of reports or other documentation regarding any suspected fraud at no cost to MFCU or OHA during an investigation. (*OHP Contract Exhibit B Part 9, Sections 17.d and 17.f*)

14. **Certification.** Subcontractor represents and warrants that all claims data, either directly or through a third party submitter, is and will be accurate, truthful and complete in accordance with OARs 410-141-3565, 410-141-3570 and OAR 410-120-1280. (*OHP Contract Exhibit J, Section 1.b*)

15. **Mental Health Services and Substance Use Disorder Services.**

15.1 Community Services. If Subcontractor arranges for the provision of substance use disorder services, Subcontractor shall provide to Members, to the extent of available community resources and as Medically Appropriate, information and Referral to Community services which may include, but are not limited to: child care; elder care; housing; Transportation; employment; vocational training; educational services; mental health services; financial services; and legal services. (*OHP Contract Exhibit M, Section 7.g*)

15.2 Training. Where Subcontractor provides Substance Use Disorder services and evaluates Members for access to and length of stay in Substance Use Disorder programs and services, Subcontractor represents and warrants that it will use the most current American Society of Addiction Medicine (ASAM) Patient Placement Criteria for the Treatment of Substance-Related Disorders for level of care placement decisions, and that Subcontractor has the training and background to evaluate medical necessity for Substance Use Disorder services using the ASAM. (*OHP Contract Exhibit M, Section 22.e*)

16. **Compliance with Applicable Law.**

16.1 Subcontractor shall comply with all State and local laws, rules, regulations, executive orders and ordinances applicable to the OHP Contract or to the performance of Work under the Agreement, as they may be adopted, amended or repealed from time to time, including but not limited to the following: (a) ORS Chapter 659A.142; (b) OHA rules pertaining to the provision of integrated and coordinated care and services, OAR Chapter 410, Division 141; (c) all other OHA Rules in OAR Chapter 410; (d) rules in OAR Chapter 309, Divisions 012, 014, 015, 018, 019, 022, 032 and 040, pertaining to the provisions of Behavioral Health services; (e) rules in OAR Chapter 415 pertaining to the provision of Substance Use Disorders services; (f) state law establishing requirements for Declaration for Mental Health Treatment in ORS 127.700 through 127.737; and (g) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations. These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to the OHP Contract and required by law to be so incorporated. OHA's performance under this Contract is conditioned upon compliance with the provisions of ORS 279B.220, ORS 279B.225, 279B.230, 279B.235 and 279B.270, which are incorporated by reference herein. Subcontractor shall, to the maximum extent economically feasible in its performance related to the OHP Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)). (*OHP Contract Exhibit D, Sections 2.a*)

16.2 Subcontractor shall comply with the federal laws as set forth or incorporated, or both, in the OHP Contract and all other federal laws applicable to Subcontractor's performance in connection with the OHP Contract as they may be adopted, amended or repealed from time to time. (*OHP Contract Exhibit D, Sections 2.c*)

17. **Americans with Disabilities Act.** In compliance with the Americans with Disabilities Act, any written material that is generated and provided by Subcontractor under the OHP Contract to Clients or Members, including Medicaid-Eligible Individuals, shall, at the request of such Clients or Members, be reproduced in alternate formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. Subcontractor shall not be reimbursed for costs incurred in complying with this provision. (*OHP Contract Exhibit D, Sections 2.b*)

18. **Information/Privacy/Security/Access.** If the Work performed in connection with the OHP Contract permits Subcontractor to have access to or otherwise use of any OHA Information Asset or Network and Information System to which security and privacy requirements apply, and Subcontractor is granted access to such OHA Information Assets or Network and Information Systems, Subcontractor shall comply with the terms and conditions applicable to such access or use and all Applicable Laws and State policies governing use and disclosure of Data, including but not limited to Exhibit N of the OHP Contract, and OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this Section, “Data”, “Information Asset” and “Network and Information System” have the meaning set forth in Exhibit N of the OHP Contract. *(OHP Contract Exhibit N)*

19. **Governing Law, Consent to Jurisdiction.** The Agreement and the OHP Contract are 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, the “**Claim**”) between OHA or any other agency or department of the State of Oregon, or both, and Contractor or Subcontractor that arises from or relates to the OHP Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County or of Multnomah County for the State of Oregon; provided, however, (a) if federal jurisdiction exists then OHA may remove the Claim to federal court, and (b) if a Claim must be brought in or is removed to a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. **SUBCONTRACTOR, BY EXECUTION OF THE AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.** *(OHP Contract Exhibit D, Sections 1)*

20. **Independent Contractor.**

20.1. Not an Employee of the State. Subcontractor represents and warrants that it is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise. *(OHP Contract Exhibit D, Sections 3.a)*

20.2. Current Work for State or Federal Government. If Subcontractor is currently performing work for the State of Oregon or the federal government, Subcontractor by signature to the Agreement represents and warrants that Subcontractor’s Work to be performed under the Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Subcontractor currently performs work would prohibit Subcontractor’s work under the Agreement or the OHP Contract. If compensation under the Agreement is to be charged against federal funds, Subcontractor certifies that it is not currently employed by the federal government. *(OHP Contract Exhibit D, Sections 3.b)*

20.3. Taxes. Subcontractor is responsible for all federal and State taxes applicable to compensation paid to Subcontractor under the Agreement, and unless Subcontractor is subject to backup withholding, OHA and Contractor will not withhold from such compensation any amount to cover Subcontractor’s federal or State tax obligations. Subcontractor is not eligible for any social security, unemployment insurance or workers’ compensation benefits from compensation paid to Subcontractor under the Agreement or the OHP Contract, except as a self-employed individual. *(OHP Contract Exhibit D, Sections 3.c)*

20.4. **Control.** Subcontractor shall perform all Work as an independent contractor. Subcontractor agrees that OHA reserves the right (i) to determine and modify the delivery schedule for the Work, and (ii) to evaluate the quality of the Work Product; however, neither OHA nor Contractor will control the means or manner of Subcontractor's performance. Subcontractor is responsible for determining the appropriate means and manner of performing the Work delegated under the Agreement. (*OHP Contract Exhibit D, Sections 3.d*)

21. **Representations and Warranties.** Subcontractor represents and warrants to Contractor and OHA that: (a) Subcontractor has the power and authority to enter into and perform the Agreement; (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Subcontractor enforceable in accordance with its terms, (c) Subcontractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Subcontractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Subcontractor's industry, trade or profession; (d) Subcontractor shall, at all times during the term of the Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and (e) Subcontractor prepared its application related to the Agreement or OHP Contract, if any, independently from all other Contractors and subcontractors, and without collusion, Fraud or other dishonesty. The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided. (*OHP Contract Exhibit D, Section 4*)

22. **Assignment, Successor in Interest.** Subcontractor shall not assign or transfer its interest in the Agreement or the OHP Contract (if any), voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other matter, without prior written consent of Contractor and/or OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as Contractor or OHA may deem necessary, including but not limited to Exhibit B, Part 8, Section 21 of the OHP Contract. No approval by Contractor or OHA of any assignment or transfer of interest shall be deemed to create any obligation of Contractor or OHA in addition to those set forth in the Agreement or the OHP Contract, respectively. The provisions of the Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns. (*OHP Contract Exhibit D, Section 17*)

23. **Subcontracts of Subcontractor.** Where Subcontractor is permitted to Subcontract certain functions of the Agreement, Subcontractor shall notify Contractor, in writing, of any subcontract(s) for any of the Work required under the Agreement and the OHP Contract other than information submitted in Exhibit G of the OHP Contract. In addition, Subcontractor shall ensure that any subcontracts, including any subcontracts with Participating Providers, are in writing and include all the requirements set forth in this Exhibit that are applicable to the service or activity delegated under the subcontract.

23.1 If Subcontractor Subcontracts any of the Work required under the Agreement and the OHP Contract, Subcontractor shall evaluate and document prospective Subcontractors' readiness and ability to perform the scope of Work set forth in the applicable Subcontract prior to the effective date of the Subcontract. Contractor shall have the right to request, and Subcontractor shall provide within five (5) days after request by Contractor, or sooner if requested by OHA, all readiness review evaluations. If Subcontractor has a contract with Contractor to provide services for a Medicare Advantage plan operated by Contractor or its parent company or subsidiary, Subcontractor may satisfy the requirements of this paragraph 23.1 by submission of the results of its Subcontractor readiness review evaluation required by Medicare, but only for Work identical to that to be

Subcontracted under this Agreement and only if the Medicare readiness review has been completed no more than six (6) months prior to the effective date of the prospective Subcontract. (*OHP Contract Exhibit B, Part 4, Sections 11.a.1 and Section 11.a.4*)

23.1 Certified Minority-owned, Woman-owned, or Emerging Small Business (MWESB).

Contractor shall maintain an active identification, verification and recruiting process with the goal of expanding MWESB-certified Subcontractors. Contractor shall provide guidance and direction to Subcontractors seeking certification to include identifying resources needed for such Subcontractors to achieve certification. Contractor shall take reasonable steps, such as through a quote, bid, proposal, or similar process, to ensure that Oregon's MWESB-certified firms are provided an equal opportunity to compete for and participate in the performance of any subcontracts under this Agreement. If there may be opportunities for subcontractors of Subcontractors to work on the Agreement, it is the expectation of Contractor that the Subcontractor will take reasonable steps to ensure inclusion, participation, and selection of MWESB-certified firms. (*OHP Contract Exhibit B, Part 4, Section 12*)

24. **Severability.** If any term or provision of the OHP Contract, the Agreement or this Exhibit is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provision shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the OHP Contract, the Agreement or this Exhibit did not contain the particular term or provision held to be unlawful. (*OHP Contract Exhibit D, Section 23*)

25. **Limitations of Liabilities.** Subcontractor agrees that neither OHA, Contractor nor a Member will be held liable for any of Subcontractor's debts or liabilities in the event of insolvency. (*OHP Contract Exhibit D, Section 8.d; Exhibit L, Section 5.a(5)(a)*)

26. **Compliance with Federal Laws.** Subcontractor shall comply with federal laws as set forth or incorporated, or both, in the OHP Contract and all other federal laws applicable to Subcontractor's performance relating to the OHP Contract or the Agreement. For purposes of the OHP Contract and the Agreement, all references to federal laws are references to federal laws as they may be amended from time to time. In addition, unless exempt under 45 CFR Part 87 for Faith-Based Organizations, or other federal provisions, Subcontractor shall comply with the following federal requirements to the extent that they are applicable to the OHP Contract and the Agreement:

26.1. Federal Provisions. Subcontractor shall comply with all federal laws, regulations, and executive orders applicable to the OHP Contract or to the delivery of Work under the Agreement. Without limiting the generality of the foregoing, Subcontractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the OHP Contract and the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Section 1557 of the Patient Protection and Affordable Care Act (PPACA), (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, as amended, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) the Mental Health Parity and Addiction Equity Act of 2008, as amended; (j) CMS regulations (including 42 CFR Part 438, subpart K) and guidance regarding mental health parity, including 42 CFR 438.900 *et. seq.*; (k) all regulations and administrative rules established pursuant to the foregoing laws, (l) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (m) all federal law governing operation of community mental health programs, including without limitation, all federal

laws requiring reporting of Member abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the OHP Contract and the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402. (*OHP Contract Exhibit E, Section 1*)

26.2. Equal Employment Opportunity. If the Agreement, including amendments, is for more than \$10,000, then Subcontractor 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). (*OHP Contract Exhibit E, Section 2*)

26.3. Clean Air, Clean Water, EPA Regulations. If the Agreement, including amendments, exceeds \$100,000 then Subcontractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 USC 1251 to 1387), specifically including, but not limited to Section 508 (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under nonexempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported in writing to OHA, the U.S. Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Subcontractor shall include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this subparagraph. (*OHP Contract Exhibit E, Section 3*)

26.4. Energy Efficiency. Subcontractor shall 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, 42 USC 6201 et seq. (Pub. L. 94-163). (*OHP Contract Exhibit E, Section 4*)

26.5. Truth in Lobbying. By signing the Agreement, Subcontractor certifies, to the best of the Subcontractor's knowledge and belief each of the following.

a. No federal appropriated funds have been paid or will be paid, by or on behalf of Subcontractor, 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. (*OHP Contract Exhibit E, Section 5.a*)

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 Subcontractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions. (*OHP Contract Exhibit E, Section 5.b*)

c. Subcontractor 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. (*OHP Contract Exhibit E, Section 5.c*)

d. The certification made under this Section is a material representation of fact upon which reliance was placed when the Agreement was made or entered into. (*OHP Contract Exhibit E, Section 5.d*)

e. No part of any federal funds paid to Subcontractor under the Agreement may be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself. (*OHP Contract Exhibit E, Section 5.e*)

f. No part of any federal funds paid to Subcontractor under the Agreement may be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government. (*OHP Contract Exhibit E, Section 5.f*)

g. The prohibitions in Paras. (e) and (f) of this Section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control. (*OHP Contract Exhibit E, Section 5.g*)

h. No part of any federal funds paid to Subcontractor under the Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage. (*OHP Contract Exhibit E, Section 5.h*)

26.6. HIPAA Compliance. Subcontractor acknowledges and agrees that Contractor is a “covered entity” for purpose of the privacy and security provisions of HIPAA. Accordingly, Subcontractor shall comply with HIPAA and the following:

a. Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information (“**IIHI**”) about specific individuals is protected from unauthorized use or disclosure consistent with the requirement of HIPAA. IIHI relating to specific individuals may be exchanged between Subcontractor and Contractor and between Subcontractor and OHA for purposes directly related to the provision of services to Members which are funded in whole or in part under the OHP Contract. However, Subcontractor shall not use or disclose any IIHI about specific individuals in a manner that would violate (i) the HIPAA Privacy Rules in CFR Parts 160 and 164; (ii) the OHA Privacy Rules, OAR 407-014-0000 *et. seq.*, or (iii) the OHA Notice of Privacy Practices, if done by OHA. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA web site at:

<https://sharedsystems.dhsoha.state.or.us/forms/>, Form number ME2090 Notice of Privacy Practices, or may be obtained from OHA. (*OHP Contract Exhibit E, Section 6.a*)

b. HIPAA Information Security. Subcontractor shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rule in 45 CFR Part 164 to ensure that Member Information is used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with Applicable Laws and the terms and conditions of the OHP Contract and the Agreement. Security incidents involving Member Information must be immediately reported to the Contractor's privacy officer and to the Privacy Compliance Officer in OHA's Information Security and Privacy Office (ISPO) at [DHS.PrivacyHelp@dhsoha.state.or.us](mailto:DHS.PrivacyHelp@dhsoha.state.or.us) with a follow-up telephone call to ISPO's Privacy Reporting Line at 503-945-5780. (*OHP Contract Exhibit E, Section 6.b*)

c. Data Transactions Systems. Subcontractor shall comply with the HIPAA standards for electronic transactions published in 45 CFR Part 162 and the OHA Electronic Data Transmission Rules, OAR 943-120-0100 through 943-120-0200. If Contractor intends to exchange electronic data transactions with OHA in connection with Claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions, Subcontractor shall comply with OHA Electronic Data Transmission Rules. (*OHP Contract Exhibit E, Section 6.c*)

d. Consultation and Testing. If Subcontractor reasonably believes that the Contractor's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Subcontractor shall promptly consult Contractor. Subcontractor agrees that Contractor or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and OHA testing schedule. (*OHP Contract Exhibit E, Section 6.d*)

26.7. Resource Conservation and Recovery. 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 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 Part 247. (*OHP Contract Exhibit E, Section 7*)

26.8. Audits. Subcontractor shall comply with the applicable audit requirements and responsibilities set forth in the OHP Contract and Applicable Laws and Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations", as amended and supplemented, including by the December 2013 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. (*OHP Contract Exhibit E, Section 8.a; OAR 410-120-1380*)



26.9. Debarment and Suspension.

a. Subcontractor represents and warrants that it is not excluded by the U.S. Department of Health and Human Services Office of the Inspector General or 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 2 CFR Part 180) If Subcontractor has awards that exceed the simplified acquisition threshold, Subcontractor shall provide the required certification regarding their exclusion status and that of their principals prior to award. (*OHP Contract Exhibit E, Section 9*)

b. Subcontractor acknowledges and agrees and shall ensure that no amounts are paid to a Provider that could be excluded from participation in Medicare or Medicaid for any of the following reasons: (i) the Provider is Controlled by a Sanctioned individual, (ii) the Provider has a contractual relationship that provides for the administration, management or provision of Medical Services, or the establishment of policies, or the provision of operational support for the administration, management or provision of Medical Services, either directly or indirectly, with an individual convicted of certain crimes as described in section 1128(b)(8)(B) of the Social Security Act, (iii) the Provider employs or contracts, directly or indirectly, for the furnishing of health care, Utilization Review, medical social work, or administrative services, with one of the following: (A) any individual or entity excluded from participation in federal health care programs or (B) any entity that would provide those services through an excluded individual or entity. Subcontractor is prohibited from knowingly having a person with ownership of 5% or more of the Subcontractor's equity if such person is (or is affiliated with a person or entity that is) debarred, suspended, or excluded from participation in federal healthcare programs. (*OHP Contract Exhibit E, Section 9*)

c. Subcontractor shall not refer Members to or use Providers who have been terminated from OHA or excluded as Medicare, CHIP, or Medicaid Providers by CMS or who are subject to exclusion for any lawful conviction by a court for which the Provider could be excluded under 42 CFR §1001.101 and 42 CFR §455.3(b), and Subcontractor shall not employ or contract with Providers excluded from participation in Federal health care programs under 42 CFR §438.214(d). (*OHP Contract Exhibit B, Part 4, Section 5.e*)

26.10. Criminal Background Checks. Subcontractor will require its employees to undergo and pass a criminal background check prior to starting any work or services identified in the Agreement; (*OHP Contract Exhibit B, Part 4, Section 11.a(6)*)

26.11. Pro-Children Act. Subcontractor shall comply with the Pro-Children Act of 1994 (codified at 20 USC Section 6081 *et. seq.*) (*OHP Contract Exhibit E, Section 10*)

26.12. Clinical Laboratory Improvements. If Subcontractor is a laboratory, or contracts or uses any laboratories, Subcontractor shall comply and ensure compliance with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438, which require that all laboratory testing sites providing services under the OHP Contract shall have either a Clinical Laboratory Improvement Amendments ("CLIA") certificate of waiver or a certificate of registration along with a CLIA identification number. Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of the waiver. Laboratories with certificates of registration may perform a full range of laboratory tests. (*OHP Contract Exhibit E, Section 13*)

26.13. OASIS. To the extent applicable, Subcontractor shall comply with the Outcome and Assessment Information Set (“**OASIS**”) reporting requirements and notice requirements for skilled services provided by Home Health Agencies, pursuant to the CMS requirements published in 42 CFR 484.20, and such subsequent regulations as CMS may issue in relation to the OASIS program. (*OHP Contract Exhibit E, Section 19*)

26.14. Patient Rights Condition of Participation. To the extent applicable, Subcontractor shall comply with the Patient Rights Condition of Participation that hospitals must meet to continue participation in the Oregon Health Plan program, pursuant to 42 CFR Part 482. For purposes of this Exhibit, hospitals include short-term, psychiatric, rehabilitation, long-term, and children’s hospitals. (*OHP Contract Exhibit E, Section 20*)

26.15. Federal Grant Requirements. To the extent applicable to Subcontractor or to the extent OHA requires Contractor and its Subcontractors to supply information or comply with procedures to permit OHA to satisfy its obligations federal grant obligations or both, Subcontractor must comply with the following parts of 45 CFR: (a) Part 74, including Appendix A (uniform federal grant administration requirements); (b) Part 92 (uniform administrative requirements for grants to state, local and tribal governments); (c) Part 80 (nondiscrimination under Title VI of the Civil Rights Act); (d) Part 84 (nondiscrimination on the basis of handicap); (e) Part 91 (nondiscrimination on the basis of age); and (f) Part 95 ( and CHIP federal grant administration requirements). Subcontractor shall not expend any of the funds paid under the Agreement for roads, bridges, stadiums, or any other item or service not covered under the Oregon Health Plan (“**OHP**”). (*OHP Contract Exhibit E, Section 21*)

26.16. Title II of the Americans with Disabilities Act. Subcontractor shall comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

27. **Marketing**. Subcontractor shall not initiate contact nor Market independently to potential Clients, directly or through any agent or independent contractor, in an attempt to influence an OHP Client’s Enrollment with Contractor, without the express written consent of OHA. Subcontractor shall not conduct, directly, door-to-door, telephonic, mail, electronic, or other Cold Call Marketing practices to entice a Client to enroll with Contractor, or to not enroll with another OHP contractor. Subcontractor shall not seek to influence a Client’s Enrollment with the Contractor in conjunction with the sale of any other insurance. Furthermore, Subcontractor understands that OHA must approve, prior to distribution, any written communication by Subcontractor that (a) is intended solely for Members, and (b) pertains to provider requirements for obtaining coordinated care services, care at service site or benefits. Notwithstanding anything to the contrary in this paragraph 27, Subcontractor may post a sign listing all OHP Coordinated Care Organizations to which Subcontractor belongs and display Coordinated Care Organization-sponsored health promotional materials. (*OHP Contract Exhibit B, Part 3, Section 13.a*)

28. **Workers’ Compensation Coverage**. If Subcontractor employs subject workers, as defined in ORS 656.027, then Subcontractor shall comply with ORS 656.017 and shall provide workers’ compensation insurance coverage for those workers, unless they meet the requirements for an exemption under ORS 656.126. (*OHP Contract Exhibit F, Section 1*)

29. **Third Party Resources.**

29.1. Provision of Covered Services. Subcontractor will ensure that the provision of Covered Services is not refused to a Member because of a potential Third Party Liability for payment for the Covered Services. (*OHP Contract Exhibit B, Part 8, Section 18.o*)

29.2. Reimbursement. Subcontractor agrees that where Medicare and Contractor have paid for services, and the amount available from the Third Party Payer is not sufficient to fully reimburse both programs for their respective claims, the Third Party Payer must first reimburse Medicare the full amount of its negotiated Claim before any other entity, including Subcontractor, may be paid. In addition, if a Third Party Payer has reimbursed Subcontractor, or its Participating Providers, or its Subcontractors, or if a Member, after receiving payment from a Third Party Payer, has reimbursed Subcontractor, then the parties who received such reimbursements must reimburse Medicare up to the full amount received from the Third Party Payer, if Medicare is unable to recover its payment from any remaining amounts payable by the Third Party Payer. (*OHP Contract Exhibit B, Part 8, Sections 18.r, 18.s, and 18.t*)

29.3. Confidentiality in Recovery Actions. When engaging in Personal Injury recovery actions, Subcontractor shall comply with, and require agents to comply with, federal and State confidentiality requirements described in Exhibit E of the OHP Contract, and any other applicable additional confidentiality obligations required under the OHP Contract and State Law. (*OHP Contract Exhibit B, Part 8, Section 18.z*)

29.4. No Compensation. Except as permitted by the OHP Contract including Third Party Resources recovery, Subcontractor will not be compensated for Work performed under the OHP Contract from any other department of the State, nor from any other source including the federal government. (*OHP Contract Exhibit B Part 8, Section 4.c*)

29.5. Third Party Liability. Subcontractor shall maintain records of Subcontractor's actions related to Third Party Liability recovery, and make those records available for Contractor and OHA review.

29.6. Right of Recovery. Subcontractor shall comply with 42 USC 1395y(b) and 42 CFR Part 411, Subparts C-E, which gives Medicare the right to recover its benefits from employers and workers' compensation carriers, liability insurers, automobile or no fault insurers, and employer group health plans before any other entity including Contractor or Subcontractor. (*OHP Contract Exhibit B, Part 8, Section 18.u*)

29.7. Disenrolled Members. If OHA retroactively Disenrolls a Member at the time the Member acquired the Other Primary Insurance, pursuant to OAR 410-141-3080(3)(e)(A) or 410-141-3080(9)(a), Subcontractor may not, and will ensure that any of its subcontractors do not, seek to collect from a Member (or any financially responsible Member Representative) or any Third Party Payer, any amounts paid for any Covered Services provided on or after the date of Disenrollment. (*OHP Contract Exhibit B, Part 8, Section 18.t*)

29.8 Other Insurance. Subcontractor shall: (1) report to both Contractor and OHA any Other Insurance to which a Member may be entitled. Subcontractor must report such information to OHA and Contractor within thirty (30) days of becoming aware Member of such coverage. Reporting must be made online at the following URL: <https://www.oregon.gov/DHS/BUSINESS->

[SERVICES/OPAR/Pages/tpl-hig.aspx](#); and (2) provide, in a timely manner upon request, OHA with all Third Party Liability eligibility information and any other information requested by OHA, in order to assist in the pursuit of financial recovery. (*OHP Contract Exhibit B, Part 8, Section 17.n*)

30. **Preventive Care.** Where Preventive Care Services are provided by or through Subcontractor (including, but not limited to, FQHCs, Rural Health Clinics and County Health Departments), all Preventive Care Services provided to Members will be reported to Contractor and are subject to Contractor's Medical Case Management and Record Keeping responsibilities. (*OHP Contract Exhibit B, Part 2, Section 6.a(3)*)

31. **Accessibility.**

31.1. **Timely Access, Hours.** Subcontractor and any of Subcontractor's contracted Providers shall meet OHP standards for timely access to care and services, taking into account the urgency of the need for services as specified in OAR 410-141-3515 and 410-141-3860. Covered Services will be made available twenty-four (24) hours a day, seven (7) days a week, when medically appropriate. This requirement includes the offering of hours of operation to Members that are not less than the hours of operation offered to non-Members as provided in OAR 410-141-3515 (*OHP Contract Exhibit B, Part 4, Sections 2.a, 2.d and 11.b(1)(m)*)

31.2. **Special Needs.** Subcontractor and Subcontractor's facilities shall meet the special needs of Members who require accommodations because of a disability or limited English proficiency. (*OHP Contract Exhibit B, Part 4, Section 2.j*)

31.3 **Facilities.** Subcontractor and Subcontractor's facilities shall be culturally responsive and linguistically appropriate to satisfy the diverse needs of Members, including, without limitation, adolescents, parents with dependent children, pregnant women, IV drug users and those with medication assisted therapy needs. (*OHP Contract Exhibit B, Part 4, Section 3.a(7)*)

32. **Member Rights.**

32.1. **Treating Members with Respect and Equality.** Subcontractor shall treat each Member with respect and with due consideration for his or her dignity and privacy. In addition, Subcontractor shall treat each Member the same as non-Members or other patients who receive services equivalent to Covered Services. (*OHP Contract Exhibit B, Part 3, Section 2.n*)

32.2. **Information on Treatment Options.** Subcontractor shall ensure that each Member receives information on available treatment options and alternatives in a manner appropriate to the Member's condition and ability to understand. (*OHP Contract Exhibit B, Part 3, Section 2.h*)

32.3. **Participation Decisions.** Subcontractor shall allow each Member to: (a) be actively involved in the development of Treatment Plans if Covered Services are to be provided, (b) participate in decisions regarding Member's own health care, including the right to refuse treatment, (c) have the opportunity to execute a statement of wishes for treatment, including the right to accept or refuse medical, surgical, or Behavioral Health treatment, (d) execute directives and powers of attorney for health care established under ORS 127.505 to 127.660 and the Omnibus Budget Reconciliation Act of 1990 -- Patient Self-Determination Act, and (e) have Family involved in such treatment planning. (*OHP Contract Exhibit B, Part 3, Section 2.i*)

32.4. **Copy of Medical Records.** Subcontractor shall ensure that each Member may request and receive a copy of his or her own Health Record (unless access is restricted in accordance with ORS 179.505 or other applicable law) and to request that the records be amended or corrected as specified in 45 CFR Part 164. (*OHP Contract Exhibit B Part 3, Section 2.j*)

32.5. **Exercise of Rights.** Subcontractor shall ensure that each Member is free to exercise his or her rights, and that the exercise of those rights does not adversely affect the way the Contractor, its staff, Subcontractors, Participating Providers, or OHA treat the Member. Subcontractor shall not discriminate in any way against Members when those Members exercise their rights under the OHP. (*OHP Contract Exhibit B, Part 3, Section 2.o*)

33. **Grievance System.** Subcontractor shall comply with the Grievance and Appeal System requirements set forth in Exhibit I, and any other applicable provisions, of the OHP Contract. Subcontractor shall promptly cooperate with the investigations and resolution of a Grievance by either or both DHS' Client Services Unit and OHA's Ombudsperson as expeditiously as the Member's health condition requires, and within timeframes set forth in or required by the OHP Contract. Subcontractor shall cooperate with DHS's Governor's Advocacy Office, the OHA Ombudsman and hearing representatives in all of the OHA's activities related to Members' grievances, appeals and hearings including providing all requested written materials. (*OHP Contract Exhibit I, Sections 1.b(1), 2.d*)

33.1 Subcontractor shall comply with Contractor's OHA-approved written procedures for Contractor's Grievance and Appeal System. Subcontractor shall provide copies of the same written procedures to every Provider contracted by the Subcontractor. (*OHP Contract Exhibit B, Part 4, Section 11.a.12*)

34. **Authorization of Service.** Subcontractor shall follow Contractor's policies and procedures, including those in its Service Authorization Handbook, in order to obtain initial and continuing Service Authorizations. In addition, Subcontractor must adhere to the policies and procedures set forth in the Service Authorization Handbook. (*OHP Contract Exhibit B Part 2, Section 3.a*)

35. **Non-Discrimination.**

35.1 Subcontractor shall not discriminate between Members and non-OHP persons as it relates to benefits and services to which they are both entitled. (*OHP Contract Exhibit B, Part 4, Section 2.d*)

35.2 Subcontractor 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. (*OHP Contract Exhibit E, Section 18*)

36. **Record Keeping System.** Subcontractor shall develop and maintain a record keeping system that: (a) includes sufficient detail and clarity to permit internal and external review to validate Encounter Data submissions and to assure Members have been, and are being, provided with Medically Appropriate services consistent with the documented needs of the Member; (b) conforms to accepted professional practice and any and all Applicable Laws related thereto; and (c) is supported by written policies and procedures; and (d) allows the Subcontractor to ensure that data submitted to it or Contractor is accurate and complete by: (i) verifying the accuracy and timeliness of

reported data; (ii) screening the data for completeness, logic, and consistency; and (iii) collecting service information in standardized formats. (*OHP Contract Exhibit B Part 8, Section 1.e*)

37. **Enrollment; Unique Provider Identification Number.** Subcontractor shall have, or shall confirm that each Physician or other qualified Provider is enrolled with CMS and OHA and has, a unique Provider identification number that complies with 42 USC 1320d-2(b). (*OHP Contract Exhibit B, Part 4, Section 5.h*)

38. **Accreditation.** If Subcontractor is not, or contracts with a Provider that is not, required to be licensed or certificated by the State of Oregon board or licensing agency, the Subcontractor or Provider, as applicable, must either (a) meet the definitions for Qualified Mental Health Associate (QMHA) or Qualified Mental Health Professional (QMHP) and must not be permitted to provide services without the supervision of a Licensed Medical Practitioner; or (b) if not meeting either the definitions of a QMHP or QMHA have the education, experience and competence necessary to perform the specified assigned duties and provide such information to Contractor, so that Contractor may document and report to OHA in its DSN Provider Report: (i) the education, experience and competence of such Participating Provider, and (ii) that such Participating Provider will not be permitted to perform the specific assigned duties without the supervision of a Licensed Medical Practitioner. If programs or facilities of Subcontractor are not required to be licensed or certified by the State of Oregon board or licensing agency, Subcontractor will provide documentation that demonstrates accreditation by nationally recognized organizations recognized by OHA for the services provided (e.g., Council on Accredited Rehabilitation Facilities, The Joint Commission). (*OHP Contract Exhibit B Part 4, Section 5.c*)

39. **Advocacy.** Except as provided in the OHP Contract, Subcontractor shall not prohibit or otherwise limit or restrict Health Care Professionals or subcontractors acting within the lawful scope of practice, from undertaking any of the following activities set forth in this Section on behalf of a Member: (a) advising or otherwise advocating for the Member's health status, medical care, or treatment options, including any alternative treatment that may be self-administered, that is Medically Appropriate even if such care or treatment is not covered under the OHP Contract or is subject to Copayment; (b) providing any and all information the Member needs in order to decide among relevant treatment options; (c) advising a Member of the risks, benefits, and consequences of treatment or non-treatment; and (d) advising and advocating for the Member's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions. (*OHP Contract Exhibit B Part 2, Section 3.b(16)*)

40. **No Actions.** Subcontractor represents and warrants that neither the state nor federal government has brought any past or pending investigations, legal actions, administrative actions, or matters subject to arbitration involving the Subcontractor, including key management or executive staff, over the past three years on matters relating to payments from governmental entities, both federal and state, for healthcare or prescription drug services.

41. **Notice of Termination.** Subcontractor acknowledges and agrees that, if required under the OHP Contract, Contractor will be the party responsible for providing written notice of the termination of the Agreement to each Member who received primary care from, or was seen on a regular basis by, the Subcontractor. (*OHP Contract Exhibit B, Part 4, Section 11.b(2)*)

42. **Patient-centered Primary Care Homes.** Subcontractor shall ensure communication and coordination of care with the patient-centered primary care homes ("PCPCH") in a timely manner

using electronic health information technology to the maximum extent feasible. (*OHP Contract Exhibit B, Part 4, Section 6.c*)

43. **Care Integration.** If Subcontractor contracts with Participating Providers that are specialty or Hospital Providers, Subcontractor will ensure that its agreement with each such Participating Provider: (i) addresses the coordinating role of patient-centered primary care; (ii) specifies processes for requesting Hospital admission or specialty services; and (iii) establishes performance expectations for communication and medical records sharing for specialty treatments: (x) at the time of Hospital admission or (y) at the time of Hospital discharge for the purpose of facilitating after-Hospital follow up appointments and care. (*OHP Contract Exhibit B, Part 4, Section 8.a(3)*)

44. **Oregon House Bill 2398.** Consistent with 42 CFR § 438.106 and 42 CFR § 438.230, Subcontractor is prohibited, and will prohibit its Providers, from billing Members for Covered Services in any amount greater than would be owed if Contractor provided the services directly. Subcontractors shall comply with OAR 410-120-1280 relating to when a Provider may bill a Medicaid recipient and when a Provider may send a Medicaid recipient to collections for unpaid medical bills. (*OHP Contract Exhibit B, Part 8, Section 4.f*)

45. **Survival.** All rights and obligations cease upon termination or expiration of the Agreement or OHP Contract, except for the rights and obligations, and declarations which expressly or by their nature survive termination of the Agreement or OHP Contract. Without limiting the foregoing or anything else in the OHP Contract, in no event shall contract expiration or termination extinguish or prejudice OHA's or Contractor's right to enforce the OHP Contract or the Agreement with respect to any default by Subcontractor that has not been cured. In addition to any other provisions of the OHP Contract or the Agreement that by their context are meant to survive contract expiration or termination, the special terms and conditions specified in Section 24.g of Exhibit D of the OHP Contract survive OHP Contract expiration or termination for a period of two (2) years unless a longer period is set forth in the OHP Contract. (*OHP Contract Exhibit D Section 24*)

46. **Equal Access.** Subcontractor shall provide equal access to Covered Services is provided for both male and female Members under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270. (*OHP Contract Exhibit D, Section 30*)

47. **Media Disclosure.** Subcontractor shall not provide information to the media regarding a recipient of services under the OHP Contract without first consulting with and receiving approval from the OHA and Contractor. Subcontractor shall make immediate contact with Contractor, and Contractor will manage contacts with the OHA office when media contact occurs. The OHA office will assist the Contractor with an appropriate follow-up response for the media. (*OHP Contract Exhibit D, Section 31*)

48. **Mandatory Reporting of Abuse.** Subcontractor shall immediately report any evidence of child abuse, neglect or threat of harm to DHS Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 to 419B.045). If law enforcement is notified, Subcontractor shall notify the referring caseworker within 24 hours. Subcontractor shall immediately contact the local DHS Child Protective Services office if questions arise whether an incident meets the definition of child abuse or neglect.

48.1 Subcontractor shall comply, and require its Participating Providers to comply, with all protective services, investigation and reporting requirements described in any of the following laws:

- (1) OAR Chapter 407, Divisions 45 to 47 (abuse investigations by the Office of Training, Investigations and Safety [OTIS]);
- (2) ORS 430.735 through 430.765 (abuse reporting for adults with mental illness or developmental disabilities, including adults receiving services for a substance use disorder or a mental illness in a residential facility or a state hospital);
- (3) ORS 124.005 to 124.040 (elderly persons and persons with disabilities abuse);
- (4) ORS 441.650 to 441.680 (residents of long term care facilities); and
- (5) ORS 418.257 to 418.259 (child in care of a Child-Caring Agency, residential facilities for children with intellectual/developmental disabilities and child foster homes)

48.2 Subcontractor shall report suspected Adult Abuse, neglect or financial exploitation as follows:

- (1) Adults with developmental disabilities to the local county developmental disability program;
- (2) Adults with mental illness to the local county mental health program;
- (3) Patients of the Oregon State Hospital or residents of Substance Use Disorder treatment facilities to DHS OTIS;
- (4) Elder Abuse to the local DHS Aging & People with Disabilities office or Area Agency for Aging;
- (5) Nursing facility residents to the DHS Nursing Facility Complaint Unit; or
- (6) Or by calling 1-855-503-SAFE (7233). This toll-free number allows a report of abuse or neglect of any child or adult to be reported to DHS.

*(OHP Contract Exhibit D, Section 32)*

49. **Behavioral Health Screening; Reporting.** Subcontractor will require its Participating Providers to do all of the following: (a) Use a comprehensive Behavioral Health Assessment tool, in accordance with OAR 309-019-0135, to assist in adapting the intensity and frequency of Behavioral Health services to the Behavioral Health needs of the Member (b) screen Members for adequacy of supports for the Family in the home (e.g., housing adequacy, nutrition/food, diaper needs, Transportation needs, safety needs and home visiting); (c) screen Members for, and provide, Medically Appropriate and Evidence-Based treatments for Members who have both mental illness and Substance Use Disorders; (d) assess for opioid use disorders for populations at high risk for severe health outcomes, including overdose and death, including pregnant Members and Members being discharged from residential, acute care, and other institutional settings; and (e) screen Members and provide prevention, early detection, brief intervention and Referral to Behavioral Health services in any of the following circumstances: (i) at an initial contact or during a routine physical exam; (ii) at an initial prenatal exam; (iii) when the Member shows evidence of Substance Use Disorders or abuse; (iv) when the Member over-utilizes Covered Services; and (v) when a Member exhibits a reassessment trigger for Intensive Care Coordination needs. Subcontractor will supply all required information to support the Behavioral Health reporting process described in Exhibit M of the OHP Contract. In developing Individual Service and Support Plans for Members, Subcontractor will assess for Adverse Childhood Experiences (ACE), trauma and resiliency in a Culturally and Linguistically Appropriate manner, using a Trauma Informed framework. *(OHP Contract Exhibit M, Sections 6, 21.g and 22.c)*

50. **Provider Directories.** Subcontractor will adhere to Contractor's established policies for Provider Directories and the applicable timeframes for updating the information therein. *(OHP Contract Exhibit B Part 3, Section 6.i)*



51. **Culturally and Linguistically Appropriate Services (CLAS).** Culturally and Linguistically Appropriate and CLAS each means the provision of effective, equitable, understandable, and respectful quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy, and other communication needs. (*OHP Contract Exhibit A and Exhibit B Part 4, Section 2*)

51.1 Subcontractor will confirm completion by its Providers, Provider Network, and Provider Network staff of ongoing cultural competency training in accordance with the definition of Cultural Competence (OAR 943-090-0010 and 0020) and the requirements of Cultural Responsiveness and Implicit Bias training per OHP Contract Exhibit K, Section 10.d. Subcontractor shall report on its Cultural Responsiveness and Implicit Bias Training activities to Contractor who, in turn, will incorporate it in its Provider Network reporting. (*OHP Contract Exhibit K, Section 10.d*)

51.2 Interpretation services will be provided by certified or qualified linguistically appropriate interpreters and protect the privacy and independence of members with limited English proficiency (OAR 410-141-3515 (12), *OHP Contract Exhibit B, Part 4 Section 2.h*).

51.3 Per Section 1557 of the Patient Protection and Affordable Care Act requirements, all interpretation and translation services will be free of charge to members and made available at all key points of contact with the Member. Subcontractor is responsible for paying for such services unless otherwise agreed to in the Agreement. Subcontractor shall notify its Providers of the availability of no-cost interpreter services and translation services, including the types of interpreter services available at no cost to the Member, information on how to arrange for interpreter services, and limitations on the use of bilingual staff, minors or accompanying adults as interpreters. (*OHP Contract Exhibit B, Part 3 Section 2.e*)

51.4 Subcontractor shall comply with the requirements of Title II of the Americans with Disabilities Act and Title VI of the Civil Rights Act by assuring communication and delivery of Covered Services to members with diverse cultural and ethnic backgrounds. Such communication and delivery of Covered Services in compliance with such Acts may also require, without limitation, Certified or Qualified Health Care Interpreter services for those members who have difficulty communicating due to a medical condition, disability, or limited English proficiency, or where no adult is available to communicate in English, or there is no telephone and providing access to auxiliary aids and services. Subcontractor must maintain written policies, procedures and plans in accordance with the requirements of OAR 410-141-3515 Network Adequacy. (*OHP Contract Exhibits B, Part 4 Section 2.h*)

51.5 Translated Member materials in non-English threshold languages and alternate formats, including mailed materials and materials available electronically, shall be provided and submitted to the health plan for review and approval. Website and content posted to websites shall meet the accessibility guidelines published by the Web Accessibility Initiative and outlined in Section 508 of the Rehabilitation Act of 1973. All Member materials must be submitted to the Health Plan for review and approval. (*OHP Contract Exhibit B, Part 3 Section 4.d*)

51.6 If applicable, in accordance with OAR 410-141-3875 (11), in those physical, behavioral, and oral health offices where Contractor has delegated responsibilities to Subcontractor for grievance involvement, the Subcontractor shall inform Members of right to file grievance and ensure members receive information regarding a Member's right to file a grievance and seek an independent medical review in threshold, concentration standard languages, and in alternative formats and other languages, upon request. (*OHP Contract Exhibits B, Part 4 Section 2.h, Exhibit K Section 10.d.(6)*)