

**STATE OF OREGON  
PROFESSIONAL SERVICES AGREEMENT  
(SPECIAL ASSISTANT ATTORNEYS GENERAL)**

This agreement for legal services ("**Agreement**") is between the State of Oregon ("**State**") acting by and through its Department of Justice ("**DOJ**") and the law firm of Garvey Schubert Barer, P.C., a professional service corporation (the "**Firm**").

**RECITALS**

- A.** Pursuant to Oregon Revised Statutes ("**ORS**") chapter 180, DOJ provides legal services required by the State and its various agencies, departments, boards, bureaus, commissions, and officers;
- B.** DOJ has authority under ORS chapter 180 to contract with counsel outside of DOJ to provide the State with certain legal services ("**Services**") on behalf of DOJ;
- C.** DOJ desires to contract for legal services with outside counsel to provide advice and representation to DOJ;
- D.** The Firm desires to provide the legal services required under this Agreement; and
- E.** The parties desire to set forth the terms and conditions governing their relationship in connection with the Services, consistent with the rules of professional conduct applicable to all attorneys.

The parties agree as follows:

**AGREEMENT**

**Article I  
Effective Date and Duration**

**1.1 Effective Date.** This Agreement is effective on the date it has been fully executed by DOJ or on September 1, 2017, whichever date is earlier ("**Effective Date**"), provided that DOJ has approved this Agreement for legal sufficiency on or before the Effective Date if approval is required. This Agreement continues through February 28, 2018 ("**Term**"), unless this Agreement is earlier terminated according to its terms or the Term is extended by amendment.

**1.2 Special Assistant Attorneys General Appointment.** By signing where specified in **Exhibit A**, the attorneys identified in **Exhibit A** agree to accept appointment as Special Assistant Attorneys General for the purpose of and subject to this Agreement, and to take an Oath of Office or an Affirmation of Office in a form substantially similar to one of the samples set forth in **Exhibit B-1** and **Exhibit B-2**. By signature of either the Attorney General or Deputy Attorney General to this Agreement, the attorneys identified in **Exhibit A** are appointed as Special Assistant Attorneys General (each a "**SAAG**"). Either the Attorney General or Deputy Attorney General may withdraw appointment of a SAAG at any time and for any reason. Immediately following the Effective Date, the Firm shall deliver to the Supervising Attorney (designated in Article XI) a properly dated, executed and notarized Oath of Office or

Affirmation of Office in a form substantially similar to one of the samples set forth in **Exhibit B-1** and **Exhibit B-2**, for each attorney identified in **Exhibit A**.

**Article II  
Statement of Work**

**2.1 Legal Services.**

Upon request by the Supervising Attorney, the Firm shall provide the following Services:

Advise DOJ concerning document preservation obligations related to threatened or anticipated litigation and spoliation issues.

**2.2 Performance and Supervision.** The Firm shall cause all Services performed and work product delivered under this Agreement to be either: (i) performed and delivered by a SAAG or (ii) if performed and delivered by the Firm's other attorneys and staff, then supervised and approved by a SAAG.

**2.3 Quality.** The Firm represents and warrants that the Services will be performed in a skillful and professional manner according to the standards of the legal profession.

**Article III  
Payment**

**3.1 Payment.** DOJ shall pay the Firm according to the rate schedule in section 3.2 for Services rendered, plus expense reimbursement as specified in Article IV, up to **\$50,000** ("**Maximum Compensation**"). DOJ is not authorized to pay the Firm for any Services performed before the Effective Date, after the end of the Term or for additional Services before an amendment to this Agreement is fully executed for the additional Services.

**3.2 Rate Schedule.** The Firm's rates for Services are the lesser of the following rates or the Firm's customary and reasonable rates.

ATTORNEY/LEGAL ASSISTANT	RATE
John Rothermich	\$345 per hour

To reduce legal fees, the Firm agrees to assign tasks among its attorneys commensurate with the level of expertise required and to use paralegals, legal assistants, law clerks and support staff where appropriate. The Firm shall not bill separately for secretarial, clerical or other support staff services.

**3.3 Submission of Invoice.** The Firm shall deliver invoices to the Supervising Attorney on a monthly basis for Services the Firm has performed and DOJ has accepted. The Firm shall include the following information in each invoice:

**3.3.1** A detailed description of all Services performed and work product delivered in detail;

- 3.3.2 Identity of the Firm's personnel who performed the Services and who produced the work product;
- 3.3.3 Itemization and explanation of all expenses for which reimbursement is claimed;
- 3.3.4 Statement of the total amount billed to date prior to the current invoice; and
- 3.3.5 Specific notation of when one-third and two-thirds of the Maximum Compensation have been expended.

#### **Article IV Costs and Expenses**

**4.1 Reimbursement.** DOJ shall reimburse the Firm only as follows for reasonable costs and expenses necessarily incurred as a result of performing Services:

**4.1.1 Photocopying.** For normal photocopying up to a maximum of 10 cents per page. Expedited photocopying or oversized document photocopying may be reimbursed at a higher rate only when the Supervising Attorney provides prior written authorization.

**4.1.2 Postage/courier.** For postage and courier services no greater than the Firm's actual costs.

**4.1.3 Telephone/facsimile.** For long-distance telephone service and long-distance facsimile no greater than the Firm's actual cost.

**4.1.4 Travel.**

(a) **Travel Expenses.** For travel expenses in accordance with the State's travel policy established in the Oregon Accounting Manual, available from the Oregon Department of Administrative Services Statewide Accounting and Reporting Services of the Chief Financial Office at <http://www.oregon.gov/das/Financial/Acctng/Pages/Travel.aspx> (the "**State Travel Policy**"). The Firm must conduct all travel in the most efficient and cost-effective manner resulting in the best value to the State.

(b) **Out of State Travel.** For travel expenses incurred while traveling to and from the State of Oregon ("**Out-of-State Travel**") only when the Supervising Attorney provides prior written authorization. Out-of-State Travel expenses are subject to the restrictions specified in the State Travel Policy and ORS 292.230.

**4.1.5 Parking.** For parking expenses, no greater than the Firm's actual costs.

**4.1.6 Legal Research.** For computerized legal research services only when the Supervising Attorney provides prior written authorization, no greater than the Firm's actual cost.

**4.1.7 Other Costs and Expenses.** For other costs and expenses only when the Supervising Attorney provides prior written authorization, no greater than the Firm's actual costs.

**4.1.8 Litigation Expenses.** For its reasonable out of pocket expenses customarily incurred in litigation, including deposition expenses, court expenses, court reporting fees, witness fees, and filing fees.

**4.2 Expenses Included in Maximum Compensation.** The Maximum Compensation includes the total amount reimbursable for all costs and expenses specified in this Article IV.

## **Article V Conflicts; Procedure for Consent**

### **5.1 Conflicts.**

**5.1.1 Benefiting Agency.** Although the Attorney General provides advice to the State as a whole, for purposes of this Agreement and purposes of the laws or rules of the jurisdiction under which attorneys of the Firm practice law under this Agreement, the parties acknowledge and agree that the Firm represents only the DOJ and no other state agencies or institutions for the purposes of the services provided under this Agreement. Nevertheless, the Firm shall not use information relating to the representation that the Firm acquires under this appointment to the disadvantage of any state officer, agency, board or commission. The SAAG is directed not to share such information with any lawyer in the Firm who does not also agree to comply with this restriction.

**5.1.2** As of the Effective Date, the Firm represents that it has provided adequate information to DOJ related to any conflicts of interest within the meaning of the Oregon Rules of Professional Conduct ("ORPC") for purposes of obtaining the informed consent of DOJ.

**5.2 Request for Consent.** After the Effective Date, if the Firm determines that a conflict of interest exists under the ORPC, between the interests of the State and the interests of another client it represents or proposes to represent, and the State has not consented to the conflict of interest, the Firm shall deliver a written request for consent to the Supervising Attorney, with a copy to the conflict consent coordinator, according to the provisions of section 13.1. The Firm shall send all notices sent by e-mail to the following address: [ConflictCoordinator@doj.state.or.us](mailto:ConflictCoordinator@doj.state.or.us). Consent is not effective until the Deputy Attorney General, the Attorney General, or the Attorney General's designee has delivered written consent to the conflict of interest to the Firm.

**5.3 Additional Restrictions.** Nothing under this Article V waives or diminishes the restrictions on SAAGs set forth in Section 7.2. In addition, nothing in this Agreement limits the Firm's obligations to comply with its ethical obligations in all respects in delivering Services, including the requirements of the ORPC. The Firm shall comply with ORPC 1.7 and must seek the Benefiting Agency's informed consent under Section 5.2 if the Firm's representation of a client adverse to another State entity in a particular matter will be adverse to the Benefiting Agency within the meaning of ORPC 1.7.

## **Article VI Termination**

**6.1 Parties' Right to Terminate for Convenience.** This Agreement may be terminated at any time by mutual written consent of DOJ and the Firm. DOJ may terminate this Agreement for its convenience immediately upon delivery of written notice to the Firm. The Firm may terminate this Agreement effective upon delivery of thirty (30) days written notice to DOJ, provided termination is consistent with the Firm's ethical obligations.

**6.2 DOJ's Right to Terminate for Cause.** DOJ may terminate or modify this Agreement, effective upon delivery of written notice from DOJ to the Firm, or at such later date as DOJ may establish in writing, under any of the following conditions:

**6.2.1** Funding from federal, state, or other sources is not obtained and continued at levels sufficient to pay for the Firm's Services;

**6.2.2** Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the Services are prohibited or DOJ is prohibited from paying for the Services from the planned funding source;

**6.2.3** The Firm or SAAG no longer holds any license or certificate that is required to perform the Services, or the Attorney General or Deputy Attorney General withdraws the SAAG appointment of any of the Firm's attorneys;

**6.2.4** The Firm fails to provide Services called for by this Agreement within the time specified herein or any extension thereof; or

**6.2.5** The Firm fails to discharge any other obligation imposed on it by this Agreement, or so fails to pursue the Services as to endanger the Firm's performance under this Agreement in accordance with its terms and fails to correct such failure within five (5) business days after delivery of written notice from DOJ, or such other period as DOJ may authorize or require.

**6.3 Remedies.** The rights and remedies provided in this Article VI are not exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement. Termination of this Agreement pursuant to Sections 6.1 or 6.2 is without prejudice to any obligations or liabilities of either party already accrued prior to such termination. However, upon receiving a notice of termination under this Article VI, the Firm shall immediately cease all activities under this Agreement, unless DOJ expressly directs otherwise in the notice of termination.

**6.4 Revocation of Appointment.** All SAAG appointments made pursuant to this Agreement are revoked upon Agreement termination. If an individual SAAG is no longer associated with the Firm prior to Agreement termination, then the appointment of that attorney as SAAG is revoked upon the date that the attorney is no longer associated with the Firm.

**6.5 Immediate Surrender of Work Product.** Upon Agreement termination, the Firm shall immediately surrender to DOJ all items listed in Section 8.3.

## Article VII Compliance with Applicable Law

**7.1 Compliance.** The Firm shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement.

**7.2 Prohibited Acts.** The individual attorneys identified in **Exhibit A** are appointed as SAAGs under this Agreement. A SAAG is a state officer for the purpose of, and shall not act in contravention of, Article XV, § 7 of the Oregon Constitution.

**7.3 HIPAA Requirements.** DOJ may be subject to the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act portion of the American Recovery and Reinvestment Act of 2009, and its implementing regulations, including the Privacy and Security Rules found at 45 CFR Parts 160 and 164 (collectively, "HIPAA") as a business associate of a covered entity (i.e., if DOJ provides services that include a health care component), or as a business associate of a business associate of a covered entity (i.e., if DOJ is acting as a business associate of an entity that provides services that include a health care component).

If DOJ determines that the Firm is a "Business Associate" (as that term is defined at 45 CFR § 160.103) for the Services purchased under this Agreement, DOJ will notify the Firm of this determination. If so notified, the Firm agrees to comply with the Business Associate Agreement provisions attached as **Exhibit D**. The Firm shall comply with HIPAA to the extent that Services or obligations arising under this Agreement are covered by HIPAA, including as specified in **Exhibit D**, Business Associate Agreement.

## Article VIII Work Product

**8.1 Ownership of Work Product.** The Firm's work product that results from this Agreement is the property of DOJ, although the Firm may retain copies of such work product and to use the same consistent with its ethical obligations.

**8.2 Delivery.** The Firm shall cause all work product it produces under this Agreement to be delivered to the Supervising Attorney as it is produced, consistent with the applicable delivery schedule.

**8.3 Surrender of Work Product.** Upon request by the Supervising Attorney, the Firm shall surrender to DOJ or to anyone the Supervising Attorney designates, all copies of final versions of any written work product, documents, research or objects or other tangible things needed to complete the Services and any work product requested hereunder.

**8.4 Reports.** Upon request by the Supervising Attorney, the Firm shall provide reports summarizing significant Services performed under this Agreement and developments in any deliverables, proceedings or negotiations.

## **Article IX Indemnity**

THE FIRM SHALL INDEMNIFY THE STATE OF OREGON AND DOJ (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES AND LIABILITIES RESULTING FROM, ARISING OUT OF OR RELATING TO THE NEGLIGENT OR WILLFUL ERRORS, ACTS, OMISSIONS, OR ANY BREACH OF THIS AGREEMENT BY THE FIRM OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS AS APPLICABLE UNDER THIS AGREEMENT; PROVIDED, THAT, THE FIRM SHALL INDEMNIFY THE INDEMNIFIED PARTIES FOR ONLY THAT PORTION OF ANY LIABILITY OF THE FIRM WITH REGARD TO THE LEGAL WORK IT HAS DONE FOR THE INDEMNIFIED PARTIES, AS SUCH LIABILITY IS FINALLY DETERMINED AFTER TRIAL AND ANY APPEAL THEREOF.

**9.1 Shared or Joint Liability; Comparative Fault.** IF THE FIRM IS ALLEGED TO HAVE ANY LIABILITY FOR A SHARED OR JOINT NEGLIGENT OR WILLFUL ERROR, ACT, OMISSION OR BREACH BY THE FIRM AND THE INDEMNIFIED PARTIES, THE FIRM'S INDEMNIFICATION OBLIGATION TO THE INDEMNIFIED PARTIES SHALL BE APPORTIONED ON A COMPARATIVE FAULT BASIS, AND THE FIRM SHALL NOT BE REQUIRED TO INDEMNIFY THE INDEMNIFIED PARTIES FOR ANY AMOUNT IN EXCESS OF THE FIRM'S OWN COMPARATIVE FAULT AS FINALLY DETERMINED AFTER TRIAL AND ANY APPEAL THEREOF. THE INDEMNIFIED PARTIES SHALL NOT HAVE COMPARATIVE FAULT FOR SELECTION, ADMINISTRATION, MONITORING, OR CONTROLLING THE FIRM, OR IN APPROVING OR ACCEPTING THE FIRM'S WORK.

**9.2 Scope of Indemnification.** THIS ARTICLE DOES NOT NULLIFY, EXTEND OR EXPAND ANY STATUTE OF LIMITATIONS THAT IS OTHERWISE APPLICABLE TO ANY NEGLIGENCE OR OTHER CLAIM AGAINST THE FIRM. THIS INDEMNIFICATION IS NOT INTENDED TO, AND DOES NOT, ALTER OR INTERFERE WITH ANY DUTIES THAT THE FIRM MAY HAVE UNDER ITS INSURANCE AGREEMENTS, SUCH AS THE DUTY TO COOPERATE FULLY WITH THE INSURER IN DEFENDING ANY CLAIMS, THE DUTY TO OBTAIN THE CONSENT OF THE INSURER TO PAY OR COMPROMISE ANY CLAIM, OR THE DUTY TO REFRAIN FROM PREJUDICING THE INSURER'S SUBROGATION RIGHTS. THIS INDEMNIFICATION IS SOLELY FOR THE BENEFIT OF THE INDEMNIFIED PARTIES AND NO THIRD PARTY BENEFICIARY OR OTHER RIGHTS SHALL BE CREATED UNDER THIS PROVISION. IF AND WHEN A CLAIM OR LAWSUIT IS BROUGHT AGAINST THE INDEMNIFIED PARTIES, AND IF THE INDEMNIFIED PARTIES REQUEST THE FIRM TO DEFEND THE INDEMNIFIED PARTIES IN REGARD TO THE LAWSUIT, THE FIRM AGREES TO CONSIDER IN GOOD FAITH SUCH A REQUEST. IF THE FIRM DOES NOT AGREE TO DEFEND THE INDEMNIFIED PARTIES IN THE LAWSUIT BUT THE FIRM IS ULTIMATELY FOUND LIABLE IN A LAWSUIT FOR ANY NEGLIGENT OR WILLFUL ERROR, ACT, OMISSION OR BREACH BY THE FIRM WITH REGARD TO THE LEGAL WORK THE FIRM HAS PERFORMED FOR THE INDEMNIFIED PARTIES, THEN THE FIRM SHALL REIMBURSE

THE INDEMNIFIED PARTIES FOR THE PORTION OF THE INDEMNIFIED PARTIES' DEFENSE COSTS WHICH ARE ATTRIBUTABLE TO THE NEGLIGENT OR WILLFUL ERROR, ACT, OMISSION OR BREACH BY THE FIRM.

**9.3 Selection and Acceptance of Counsel to Defend; Notification and Defense of Claim.** THE INDEMNIFIED PARTIES SHALL REASONABLY COOPERATE IN GOOD FAITH, AT THE FIRM'S REASONABLE EXPENSE, IN THE DEFENSE OF A COVERED CLAIM AND THE FIRM SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO DEFEND SUCH CLAIM AND ALL COSTS OF SUCH COUNSEL SHALL BE BORNE BY THE FIRM. THE OREGON ATTORNEY GENERAL'S ACCEPTANCE OF SUCH COUNSEL SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE SUCH COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, THE STATE OF OREGON, DOJ, THEIR OFFICERS, EMPLOYEES OR AGENTS. DOJ AGREES TO PROMPTLY PROVIDE THE FIRM WITH NOTICE OF ANY CLAIM THAT MAY RESULT IN AN INDEMNIFICATION OBLIGATION HEREUNDER. SUBJECT TO THE LIMITATIONS NOTED ABOVE, THE FIRM MAY DEFEND SUCH CLAIM WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIM SHALL OCCUR WITHOUT THE CONSENT OF DOJ, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

## **Article X Insurance**

**10.1 Professional Liability.** The Firm shall maintain professional liability insurance in a form and in an amount not less than is required by the Oregon State Bar for active members engaged in the private practice of law with principal offices in Oregon

**10.2 Workers' Compensation.** All employers, including the Firm, that employ subject workers who perform 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. The Firm shall ensure that each of its subcontractors complies with these requirements.

**10.3 Automobile Liability.** For all vehicles used in connection with the Services performed under this Agreement, the Firm shall maintain automobile liability insurance with limits of not less than those required by the Oregon Financial Responsibility Law.

## **Article XI Supervising Attorney**

**11.1 Supervising Attorney.** The supervising attorney for this Agreement is Lisa Udland, Chief Counsel, Civil Enforcement Division ("**Supervising Attorney**"). The Acting Chief Counsel of the Civil Enforcement Division may designate a successor Supervising Attorney upon written notice to the Firm.



Only the Supervising Attorney or another person designated by the Acting Chief Counsel of the Civil Enforcement Division, upon notice to the Firm is authorized to act on behalf of DOJ under this Agreement. The Supervising Attorney's authority may be temporarily delegated to another attorney at DOJ by notice to the Firm from either the Supervising Attorney or the Acting Chief Counsel of the Civil Enforcement Division.

**11.2 Direction.** The Firm shall obtain the Supervising Attorney's direction and written authorization prior to performing Services under this Agreement. The Firm shall submit all interpretations of Oregon law to the Supervising Attorney for review prior to the issuance of advice based on such interpretation. The Firm shall obtain the Supervising Attorney's approval prior to the initiation of any court, administrative or settlement actions.

**11.3 SAAG Judgment.** The Firm shall exercise independent judgment and control with respect to the means and manner of performance under this Agreement.

## **Article XII Firm Status; Taxes; Certificates**

**12.1 Firm Status.** The Firm is an independent contractor under this Agreement. The Firm represents and warrants that the Firm and each SAAG (i) are not employees of the State of Oregon, (ii) are not employees of the federal government, and (iii) notwithstanding their standing as state officers pursuant to the Oregon Constitution as set forth in Section 7.2 above, are not officers, employees, or agents of the State, as those terms are used or defined in ORS 30.260 and 30.265.

**12.2 Taxes.** The Firm is responsible for all federal and state taxes applicable to any compensation or payments paid to the Firm under this Agreement. If the Firm is subject to withholding, DOJ may withhold from such compensation or payments any amount(s) to cover the Firm's federal or state tax obligations.

**12.3 No Benefits.** Neither the Firm nor any SAAG is eligible for any federal social security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to the Firm under this Agreement, except as a self-employed individual.

**12.4 Certificates.** Upon execution of this Agreement, the Firm shall deliver to DOJ a completed SAAG Certificate attached as **Exhibit C**.

## **Article XIII Miscellaneous**

**13.1 Notices.** Except as otherwise provided in this Agreement, all notices, requests, demands or other communications (including invoices) required by or otherwise concerning this Agreement must be in writing and are effective when delivered personally (by courier service or otherwise), when delivered by facsimile and confirmed by the recipient by telephone, when delivered by e-mail and confirmed by the recipient by telephone or responding e-mail, whichever occurs first, or seven days after the date mailed by first-class mail, postage prepaid and return receipt requested in each case to the applicable addresses set forth below.

IF TO DOJ:	IF TO FIRM:
Supervising Attorney Lisa Udland Department of Justice Civil Enforcement Division 1162 Court Street NE Salem, OR 97301-4096  (503) 934-4400 (voice) Lisa.Udland@doj.state.or.us	John Rothermich Garvey Schubert Barer, P.C. Bank of America Financial Center 121 SW Morrison St., 11 <sup>th</sup> Floor Portland, OR 97204-3141  (503) 553-3129 (voice) jrothermich@gsblaw.com

**13.2 Exhibits and Schedules.** Exhibit A, Exhibit B-1, Exhibit B-2, Exhibit C and Exhibit D are attached to this Agreement and incorporated by this reference.

**13.3 Subcontracts and Assignment; Successors in Interest.** The Firm shall not enter into any subcontracts for any of the Services, or assign or transfer any of its interest in this Agreement, without DOJ's prior written consent. DOJ may, as a condition to giving its prior written consent, require that any subcontract contain such provisions as DOJ deems reasonably appropriate. Consent to any subcontract does not relieve the Firm of any of its duties and obligations under this Agreement. Nor does it relieve the Firm, a SAAG and supervised attorneys of their respective ethical obligations and professional liabilities. The provisions of this Agreement are binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

**13.4 Third Party Beneficiaries; Amendments.**

**13.4.1. Third Party Beneficiaries.** DOJ and the Firm are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or is intended to give any benefit or right, whether directly, indirectly or otherwise, to third persons or entities unless such third persons or entities are individually identified by name and are expressly described as intended beneficiaries of the terms of this Agreement.

**13.4.2. Amendments.** This Agreement may be amended only by a written amendment signed by DOJ and Firm.

**13.5 Funds Available and Authorized.** DOJ represents to the Firm that it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within its biennial appropriation or limitation. The payment of amounts by DOJ under this Agreement attributable to Services performed after the last day of the current biennium is contingent upon the DOJ receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow DOJ, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. If the Oregon Legislative Assembly fails to approve sufficient appropriations, limitations or other expenditure authority to DOJ, DOJ may terminate this Agreement without penalty or liability to the State.

**13.6 Records Maintenance; Access.** The Firm shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the Firm shall

maintain any other records pertinent to this Agreement in such a manner as to clearly document the Firm's performance hereunder. The Firm shall permit DOJ, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives, to have access to such financial records and other books, documents, papers, plans and writings of the Firm pertinent to this Agreement to enable them to perform examinations and audits, and make excerpts and transcripts. The Firm shall retain and keep all such financial records, books, documents, papers, plans, and writings for a minimum of six (6) years or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

### **13.7 Choice of Law; Designation of Forum; Federal Forum.**

**13.7.1 Choice of Law.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

**13.7.2 Designation of Forum.** Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

**13.7.3 Federal Forum.** Notwithstanding Section 13.7.2, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**13.8 Force Majeure.** Neither the State nor the Firm are responsible for delay or default caused by fire, riot, acts of God, or war, where such cause was beyond the State's or the Firm's respective reasonable control. The Firm shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default, and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

**13.9 Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions are not affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**13.10 Waiver.** No provision in this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced. A waiver made on one occasion is effective only in that instance and only for the purpose that it is given and will not be construed as a waiver on any future occasion.

**13.11 Execution and Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.


**13.12 Disclosure of Tax ID Number.** The Firm must provide the Firm's federal tax ID number. This number is requested pursuant to OAR 150-305.100. Numbers disclosed pursuant to this authority will be used for the administration of state, federal and local tax laws.

**13.13 Survival.** The covenants, warranties, representations, rights, and obligations set forth in Article V, Article VIII, Article IX, Sections 13.6, 13.7, 13.9 and this Section 13.13 survive termination of this Agreement.

**13.14 Merger Clause.** THIS AGREEMENT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER IDENTIFIED IN ARTICLE II. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE FIRM, BY ITS SIGNATURE BELOW, HEREBY ACKNOWLEDGES THAT THE FIRM'S AUTHORIZED REPRESENTATIVE HAS READ AND UNDERSTOOD THIS AGREEMENT, AND THAT THE FIRM AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**GARVEY SCHUBERT/BARER, P.C.**

By:

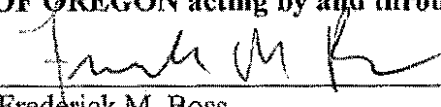
  
\_\_\_\_\_  
John C. Rothermich  
Owner Principal

Date:

1/17/18

**STATE OF OREGON acting by and through the OREGON DEPARTMENT OF JUSTICE**

By:

  
\_\_\_\_\_  
Frederick M. Boss  
Deputy Attorney General

Date:

1/17/18

**Reviewed:**

By:

\_\_\_\_\_  
Stephanie A. Thompson  
Senior Assistant Attorney General

Date: \_\_\_\_\_

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**GARVEY SCHUBERT BARER, P.C.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John C. Rothermich  
Owner

**STATE OF OREGON acting by and through the OREGON DEPARTMENT OF JUSTICE**

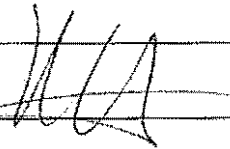
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Frederick M. Boss  
Deputy Attorney General

Reviewed: \_\_\_\_\_  
By:  Date: Jan 11, 2018  
Stephanie A. Thompson  
Senior Assistant Attorney General

**EXHIBIT A**

**ATTORNEY INFORMATION**

The following attorneys are members or associates of the Firm, are members in good standing of the bar of the state or district indicated below, and each, by signing below, has agreed to accept appointment as Special Assistant Attorney General subject to the terms and conditions of this Agreement.

ATTORNEY'S NAME	STATE/ DISTRICT OF BAR ADMISSION	DATE ADMITTED	SIGNATURE*
John Rothermich	Oregon	2007	

**\*Each attorney must sign this form.**

**EXHIBIT B-1**

**State of Oregon  
Department of Justice  
Oath of Office**

State of Oregon                    )  
  )  
County of Multnomah            )        ss.

I, John Rothermich, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Oregon, and the laws thereof, and that I will faithfully discharge the duties of Special Assistant Attorney General according to the best of my ability, so help me God.

\_\_\_\_\_  
John Rothermich

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires \_\_\_\_\_

Note: Execute this oath of office before either a notary public or judicial official and return it to the Supervising Attorney for filing with the Secretary of State.

**EXHIBIT B-2**

**State of Oregon  
Department of Justice  
Affirmation of Office**

State of Oregon                    )  
  )  
County of Multnomah            )        ss.

I, John Rothermich, do solemnly affirm that I will support the Constitution of the United States, the Constitution of the State of Oregon, and the laws thereof, and that I will faithfully discharge the duties of Special Assistant Attorney General according to the best of my ability.

\_\_\_\_\_  
John Rothermich

Signed and affirmed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires \_\_\_\_\_

Note: Execute this affirmation of office before either a notary public or judicial official and return it to the Supervising Attorney for filing with the Secretary of State.



**EXHIBIT C**

**CERTIFICATE OF FIRM**


<b>Name:</b> Garvey Schubert Barer, P.C.	<b>Address:</b> Bank of America Financial Center 121 SW Morrison St., 11 <sup>th</sup> Floor Portland, OR 97204-3141
<b>Federal Tax ID#</b>	

*This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject SAAG to 31 percent withholding.*

On behalf of the Firm, I, the undersigned, certify that: (i) I have authority to sign this Agreement on behalf of the Firm; (ii) no attorney will perform Services under this Agreement unless the attorney is (A) a member of the Firm who has been appointed and has accepted appointment as a Special Assistant Attorney General, or (B) an employee affiliate, subcontractor or partner of the Firm working under the supervision of a member of the Firm who has been appointed and has accepted appointment as a Special Assistant Attorney General; and (iii) each attorney identified in **Exhibit A** has accepted appointment as a Special Assistant Attorney General and is a member in good standing of the bar of the state indicated on **Exhibit A**.

On behalf of the Firm, I further certify under penalty of perjury, that: the undersigned is authorized to act on behalf of the Firm, and that the Firm is, to the best of the Firm's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "**Oregon Tax Laws**" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax for Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes and Tobacco Products) and the elderly rental assistance program under ORS 310.657 and any local taxes administered by the Department of Revenue under ORS 305.620.

**GARVEY SCHUBERT BARER, P.C.**

By:  \_\_\_\_\_

Name: John C. Rothermich

Title: Principal

Date: January 17, 2018

**EXHIBIT D**  
**BUSINESS ASSOCIATE AGREEMENT**

DOJ and the Firm agree that the following terms and conditions constituting a business associate agreement (“BAA”) apply to the performance of their obligations under the Agreement. Capitalized terms used, but not otherwise defined in this BAA, have the same meaning as those terms in the Privacy Rule and Security Rule, 45 CFR 160 and 164.

**1. Business Associate Status.**

**1.1** DOJ is, for purposes of the Agreement, either a business associate (a covered entity) or is a business associate acting in its capacity as a business associate of a health care component of another State agency (a hybrid covered entity), because DOJ performs some functions on behalf of another State agency that involve the creation, receipt, maintenance or transmission of Protected Health Information (“PHI”); and

**1.2** The Firm creates, receives, maintains or transmits PHI and Electronic Protected Health Information (“EPHI”) in the performance of its obligations under the Agreement on behalf of DOJ; and

**1.3** The Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as “HIPAA”), requires a business associate to enter into a business associate agreement with a subcontractor that creates, receives, maintains or transmits PHI on behalf of a business associate; and

**1.4** Both DOJ and the Firm are committed to compliance with the standards set forth in HIPAA as may be amended further from time to time, in the performance of their obligations under the Agreement.

**2. Obligations and Activities of Firm.**

The Firm shall:

**2.1** Not use or disclose PHI or EPHI other than as permitted or required by the Agreement or this BAA, as permitted by the Privacy Rule, the Security Rule or as required by law.

**2.2** Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to EPHI, to prevent use or disclosure of the PHI and EPHI other than as provided for by the BAA and the Agreement, or as required by law.

**2.3** Implement and maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of DOJ. The Firm represents that the PHI and EPHI it creates, receives, maintains, or transmits on behalf of DOJ is:

**2.3.1** Ensured as to its confidentiality, integrity, and availability,

**2.3.2** Protected against threats or hazards to its security or integrity, and

**2.3.3 Protected against unauthorized use or disclosure.**

**2.4 Create and maintain documentation that demonstrates its compliance with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316. Minimally, the Firm shall:**

**2.4.1 Maintain PHI and EPHI in a secured server and only permit access to PHI and EPHI by employees or subcontractors who have signed confidentiality agreements and have a need to know the information maintained in the PHI and EPHI for the purposes set forth in the Agreement and this BAA. Firm represents that its workforce complies with the security standards, including policies and procedures that Firm maintains pursuant to the Security Rule.**

**2.4.2 Document the level of security and privacy protection required under this BAA in a security risk management plan. The Firm shall make this plan available to DOJ upon request.**

**2.4.3 Provide DOJ, as reasonably requested, access to the Firm's data officers, agents, contractors, subcontractors, employees, facilities, equipment, records, and any other information reasonably necessary to:**

- a) Determine Firm's compliance with the terms and conditions of this BAA;
- b) Determine whether or not to continue to provide PHI or EPHI, in whole or in part, under this BAA;
- c) Verify documentation of a written security risk management plan.
- d) Meet any applicable state or federal laws, rules and regulations regarding use and disclosure relating to PHI and EPHI; and
- e) Allow DOJ's Information Security and Privacy Office to audit facilities, equipment, processes, and procedures.

**2.5 Mitigate, to the extent practicable, any harmful effect that is known to the Firm of a use or disclosure of PHI or EPHI by Firm in violation of the requirements of the BAA.**

**2.6 Report to DOJ, as promptly as possible, any use or disclosure of the PHI or EPHI not provided for by the Agreement or this BAA, of which it becomes aware.**

**2.7 In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI or EPHI on behalf of the Firm agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.**

**2.8 At the request of DOJ, and in the time and manner designated by DOJ, provide access to PHI and EPHI in a Designated Record Set, to DOJ or, as directed by DOJ, to an Individual in order to meet the requirements under 45 CFR 164.524.**

**2.9 Make any amendment(s) to PHI and EPHI in a Designated Record Set that the DOJ directs or agrees to pursuant to 45 CFR 164.526 at the request of DOJ or an Individual, and in the time and manner designated by DOJ.**

**2.10** Make internal practices, books, and records, including policies and procedures and any PHI or EPHI, relating to the creation, receipt, maintenance or transmission of PHI or EPHI on behalf of DOJ, available to DOJ or to the Secretary of United States Department of Health and Human Services (“Secretary”), within the time and in the manner designated by DOJ or the Secretary, for purposes of the Secretary determining DOJ’ compliance with the Privacy Rule or Security Rule.

**2.11** Refer requests for disclosures of PHI and EPHI to DOJ for response. To the extent the Firm discloses PHI or EPHI for purposes not related to services provided under the Agreement but are otherwise permitted by this BAA or permitted by the applicable privacy rules, the Firm agrees to document such disclosures to the extent such documentation is required for DOJ to respond to a request by an Individual for an accounting of disclosures of PHI and EPHI in accordance with 45 CFR 164.528.

**2.12** In time and manner to be designated by DOJ, provide to DOJ or an Individual any information collected in accordance with Section 2.11 of this BAA, to permit DOJ to respond to a request by an Individual for an accounting of disclosures of PHI and EPHI in accordance with 45 CFR 164.528.

**2.13** In the event of discovery of a Breach of Unsecured Protected Health Information:

**2.13.1** Notify DOJ of such Breach without unreasonable delay, and in any event no later than thirty (30) days after the discovery of the Breach. A Breach is considered discovered as of the first day on which the Breach is known or, exercising reasonable diligence would have been known, to Firm or any employee or agent of Firm, other than the individual committing the Breach. Notification must include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Firm to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by DOJ necessary for DOJ to meet its notification obligations;

**2.13.2** Confer with DOJ as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Firm to have been accessed, acquired or disclosed as a result of such Breach;

**2.13.3** Where the Breach involves more than 500 individuals, confer with DOJ as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions;

**2.13.4** Confer with DOJ in a timely manner as to the preparation and issuance of an appropriate notice to the Secretary of Unsecured Protected Health Information that has been acquired or disclosed in a Breach in order for the Firm to meet its obligations under 45 CFR 164.408. Firm understands that if the Breach was with respect to 500 or more individuals, Firm must provide notice to the Secretary contemporaneously with the notices to individuals. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log must be provided to the Secretary by the Firm annually documenting such Breaches occurring during the year involved;

**2.13.5** Except as set forth in Section 2.13.6 below, provide notifications to individuals without unreasonable delay and in no case later than 60 calendar days after the discovery of a Breach. Any notice must be provided in the manner required by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, sec 13402(e) and (f), Public Law 111-5, 45 CFR 164.404 through 164.410 and as agreed upon by DOJ; and

**2.13.6** Delay any notification required by this section if requested by a law enforcement official in accordance with 45 CFR 164.412.

**2.13.7** For purposes of this section, the terms “**Unsecured Protected Health Information**” and “**Breach**” have the meaning set forth in 45 CFR § 164.402. A Breach will be considered as “**discovered**” in accordance with 45 CFR 164.410(a)(2).

**2.14** Be liable to DOJ, and indemnify DOJ for any and all costs incurred by DOJ, including, but not limited to, costs of issuing any notices required by HITECH or any other applicable law, as a result of Firm’s Breach of Unsecured Protected Health Information.

### **3. Permitted Uses and Disclosures by Firm.**

#### **3.1 General Use and Disclosure Provisions.**

**3.1.1** Except as otherwise permitted, limited or prohibited by this BAA, Firm may use or disclose PHI and EPHI to perform the Services and deliver the associated work product required under this Agreement for or on behalf of DOJ as specified in the Agreement and this BAA, provided that such use or disclosure would not violate the Privacy Rule, Security Rule, or other applicable federal or state laws or regulations if done by DOJ, or the minimum necessary policies and procedures of DOJ.

**3.1.2** All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this BAA, except to the extent preempted by the HIPAA Privacy Rule and Security Rule.

**3.1.3** Firm may use or disclose PHI or EPHI as required by law.

#### **3.2 Specific Use and Disclosure Provisions.**

**3.2.1** Except as otherwise limited in this BAA, Firm may use PHI and EPHI for the proper management and administration of the Firm or to carry out the legal responsibilities of the Firm.

**3.2.2** Except as otherwise limited in this BAA, Firm may disclose PHI and EPHI for the proper management and administration of the Agreement, if applicable, provided that disclosures are required by law, or Firm obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Firm of any instances of which it is aware in which the confidentiality of the information has been breached.

**3.2.3** Firm may use PHI and EPHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

**3.2.4** Firm may not aggregate or compile PHI or EPHI with the PHI or EPHI of other Covered Entities unless the Agreement permits Firm to perform Data Aggregation services. If the BAA permits Firm to provide Data Aggregation services, Firm may use PHI and EPHI to provide the Data Aggregation services requested by DOJ as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this BAA. If Data Aggregation services are requested by DOJ, Firm is authorized to aggregate PHI and EPHI with PHI or EPHI of other Covered Entities that the Firm has in its possession through its capacity as a Firm to such other Covered Entities provided that the purpose of such aggregation is to provide DOJ with data analysis relating to the Health Care

Operations of DOJ. Under no circumstances may Firm disclose PHI or EPHI of DOJ to another Covered Entity absent the express authorization of DOJ.

**4. Permissible Requests by DOJ.** DOJ may conduct an audit and inspection of Firm with respect to Firm's compliance with the terms of this BAA and applicable law for the establishment of policies and procedures for the safeguarding of any PHI and EPHI provided to Firm by DOJ. Firm shall implement any recommendations of DOJ resulting from such audit and inspection as may be reasonably necessary to ensure compliance with the terms of this BAA and applicable law for the safeguarding of any PHI and EPHI provided to Firm by DOJ.

**5. Regulatory References.** A reference in this BAA to a section in HIPAA, the Privacy Rule, Security Rule, or the HITECH Act means the section in effect as of the effective date of this BAA or as the Privacy Rule or Security Rule may be subsequently amended from time to time.

**6. Agreement; Waiver.** The parties agree to take such action as is necessary to amend the BAA from time to time as is necessary for DOJ to comply with the requirements of the Privacy Rule, Security Rule, HIPAA and the HITECH Act. No provision hereof may be deemed waived unless in writing, duly signed by authorized representatives of the parties. A waiver with respect to one event may not be construed as continuing, or as a bar to or waiver of any other right or remedy under this BAA or the Agreement.

**7. Interpretation; Order of Precedence.** Any ambiguity in this BAA, or ambiguity or apparent conflict between this BAA and the Agreement, will be resolved to permit DOJ to comply with the Privacy Rule and the Security Rule. This BAA does not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the BAA and the Privacy Rule or Security Rule, the Privacy Rule and Security Rule control.

**8. No Third-Party Beneficiaries.** DOJ and Firm are the only parties to this BAA and are the only parties entitled to enforce its terms. Nothing in this BAA gives, is intended to give, or may be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this BAA.