

## **Canopy Subscription Agreement**

This Subscription and License Agreement ("Agreement"), effective as of February 1, 2022 ("Effective Date"), is between Cascade Inc., dba Canopy Wellbeing, an Oregon corporation, located at 7180 SW Fir Loop Suite 100, Portland, Oregon, 97223 ("Canopy") and the Oregon City County Management Association (OCCMA), an Oregon company ("Customer" or "Employer") (each a "Party" and collectively, the "Parties").

This Agreement governs the provision of certain EAP services offered by Canopy (the "Service" or "Services") to Customer and sets forth the terms and conditions under which those Services will be delivered.

This Agreement applies to members of OCCMA who are Managers in Transition access to, and use of, all or part of any service of Canopy. Managers in Transition are defined as any active members in OCCMA who have resigned or been removed from a position in local government. They may retain active membership status for a period of three years, or for a longer period if authorized by a majority vote of the Board.

### **AGREEMENT**

In consideration of the mutual covenants and promises contained herein, and of other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **1. Services**

Canopy shall provide the Services listed on Exhibit A to Customer. Customer may opt for Additional Services as described in Exhibit A by executing an additional Order Form.

#### **2. Term of Subscription**

This Agreement will commence upon the Effective Date and continue for the one-year initial term unless this Agreement is terminated earlier in accordance with the terms of this Agreement. This Agreement will automatically renew for additional successive one-year terms unless at least 60 days before the end of the then-current term either party provides written notice to the other party that it does not want to renew.

#### **3. Fees**

The subscription fees for the Term shall be calculated at the rates listed in Exhibit A, per employee per month (the "Subscription Fees").

#### **4. Rate Guarantee**

No later than ninety (90) days prior to the Agreement anniversary date, Canopy will provide Customer with the PEPM rate and supplemental fees applicable to the next renewal term and such service fees will become effective on the Agreement

anniversary date unless this Agreement is terminated pursuant to the terms of Agreement. Canopy may not increase Subscription Fees nor decrease services during the term of this agreement.

#### **5. Payments**

Canopy shall bill Customer for the Subscription Fees on a monthly basis. Unless otherwise agreed to in writing by the Parties, Customer will pay all invoiced fees within thirty (30) days of receipt of the applicable invoice.

#### **6. Suspension of Services**

Canopy reserves the right to suspend or terminate access to services provided by third-party vendors upon sixty (60) days' written notice if, in Canopy's judgement, such services cease to be available on commercially reasonable terms from third party vendors. If Canopy elects to suspend or terminate any such services, the remaining provisions of this Agreement will remain in full force and effect, except that Canopy will adjust its Fees prorate to reflect the suspension or termination of these services.

#### **7. Termination**

This Agreement shall continue in effect until terminated as set forth herein. This Agreement may be terminated (a) by Canopy, if Customer fails to pay Subscription fees when due; or (b) by Customer, without cause, on sixty (60) days' written notice. Canopy shall have the right to recover all direct damages resulting from any breach by End User of this Agreement, including, without limitation, all unpaid fees under Section 3 (Fees) and

Section 4 (Payments). End Customer's payment obligations under this Agreement are non-cancellable and non-refundable.

## 8. User Eligibility

Eligible employees and family members are those persons eligible for EAP benefits under Customer Employment policy.

## 9. Limited License

Unless otherwise indicated, the Services and all content and other materials therein, including, without limitation, the Canopy trademark, logo and all designs, text, graphics, pictures, information, data, software, sound files, other files and the selection and arrangement thereof (collectively, "Materials") are the proprietary property of Canopy and are protected by intellectual property laws.

Upon acceptance of the Terms of Use, Privacy Policy, and compliance with all of the terms and conditions stated herein, Canopy hereby grants Customer and Users a non-exclusive, non-transferable, and non-sub-licensable limited license for the term of this Agreement to use the Services and Materials. Customer will promptly discontinue the display or use of any Materials to change the manner in which a Material is displayed or used when requested by Canopy. Other than the express licenses granted by this Agreement, Canopy grants no right or license to Customer, by implication, estoppel or otherwise, to the Materials or any Intellectual Property Rights of Canopy.

Such license is subject to this Agreement and the Terms of Use and does not include: (a) any resale or commercial use of the Services; (b) modifying or otherwise making any derivative uses of the Services and Materials, or any portion thereof; (c) use of any data mining, robots or similar data gathering or extraction methods; (d) downloading (other than the page caching) of any portion of the Services, the Site Materials or any information contained therein, except as expressly permitted on the Services; or (e) any use of the Services or the Materials other than for its intended purpose. Any use of the Services or Materials other than as specifically authorized herein, without the prior written permission of Canopy, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws, including, without limitation, copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in this Agreement or the Terms of Use shall be construed as conferring in any manner, whether by implication, estoppel or otherwise, any title or ownership of, or exclusive use-rights to, any

intellectual property or other right and any goodwill associated therewith.

## 10. Intellectual Property

Customer acknowledges that the Services and any copies that Customer and/or Users are authorized by Canopy to make are the intellectual property of Canopy. Canopy warrants that it owns, controls, or otherwise has full rights to use all software utilized in connection with providing the Services. With regard to Canopy proprietary elements of the structure, organization and code of the system used to provide the Services, such elements are the valuable intellectual property and confidential information of Canopy and are protected by copyright laws, including without limitation United States Copyright Law, international treaty provisions and applicable laws in the country in which it is being used. With regard to the proprietary elements of Canopy system, Customer acknowledges that Canopy retains the ownership of all patent rights, copyrights, trade secrets, trademarks and other intellectual property rights to those elements as they are used in connection with the Services.

## 11. Trademark Information

Canopy and the Canopy logo are trademarks of Canopy. Other product or company names referred to on the Services may be trademarks of their respective owners. Customer may not use any trademark, service mark, domain name, logo, company name, trade name or indicia of origin of Canopy or any third party without permission from the owner of the applicable trademark, service mark, domain name, logo, company name, trade name or indicia of origin.

## 12. Confidentiality

### *Health Information and Protected Health Information.*

Canopy agrees to protect the confidentiality of participants and their individually identifiable health information ("Protected Health Information" as defined in 45 CFR §164.501) in accordance with the requirements of state and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA). All records of participants are and will remain the property of Canopy.

Both Canopy and Customer shall treat individually identifiable health information as confidential and will take reasonable precautions to safeguard the privacy, security, and confidentiality of all Protected Health Information and other such individually identifiable health information.

### **13. WARRANTY DISCLAIMER**

**EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THE PARTIES UNDERSTAND AND AGREE THAT THE SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CANOPY MAKES COMMERCIALLY REASONABLE EFFORTS TO TRY TO KEEP THE SERVICE UP AND RUNNING, AND SAFE, BUT CUSTOMER USES IT AT CUSTOMER'S OWN RISK. CANOPY PROVIDES THE SERVICE WITHOUT ANY REPRESENTATION OR GUARANTY THAT THE SERVICE WILL BE SAFE OR SECURE. CANOPY IS NOT RESPONSIBLE FOR THE ACTIONS, CONTENT, INFORMATION, OR DATA OF THIRD PARTIES, AND CUSTOMER RELEASES CANOPY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY SUCH CLAIM THAT INVOLVES THIRD PARTIES.**

### **14. Limitation of Liability**

To the maximum extent permitted by applicable law, Canopy and its officers, directors, employees, shareholders or agents shall not be liable for any indirect, punitive or consequential damages, or any other damages of any kind, including but not limited to loss of income, profits, goodwill, data, contracts, use of money, or loss or damage arising from or connected in any way to business interruption, whether in tort (including without limitation negligence), contract or otherwise, arising out of or in connection with the use of or inability to use the Services, the content or the materials contained in or accessed through the Services, including without limitation any damages caused by or resulting from reliance by a User on any information obtained from Canopy , or that result from mistakes, omissions, interruptions, deletion of files or email, errors, defects, viruses, delays in operation or transmission or any failure of performance, whether or not resulting from acts of God, communications failure, theft, destruction or unauthorized access to Canopy ' records, programs or services. In no event shall the aggregate liability of Canopy, whether in contract, warranty, tort (including negligence, whether active, passive or imputed), product liability, strict liability or other theory, arising out of or relating to the use of or inability to use the

Services exceed any compensation Customer pays to Canopy for access to or use of the Services during the six (6) month period immediately preceding the events giving rise to the damages. Some jurisdictions do not allow the limitation of liability in contracts with consumers, so some or all of these limitations of liability may not apply to Customer.

### **15. Limited Liability and Warranties**

Canopy warrants that it and its third-party vendors will make every effort to ensure the accuracy of the information or the appropriateness of any service or product provided to Customer's members. Referrals given by Canopy to Customer's members for elder or childcare, legal or financial consultation services or other community services are not endorsements or recommendations for the referred programs or providers. The responsibility for selecting and engaging such providers lies solely with the employee. Vendors and such other providers are not and shall not be deemed agents of Canopy or Customer.

### **16. Indemnification**

Canopy shall save, defend, indemnify, and hold harmless the Customer, and their officers, agents, employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the negligent acts or omissions of Canopy or its subcontractors, officers, agents, or employees acting under this Agreement. Customer shall save, defend, indemnify, and hold harmless Canopy, and their officers, agents, employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the negligent acts or omissions of Contractor or its subcontractors, officers, agents, or employees acting under this Agreement.

### **17. Publicity**

Canopy may identify Customer as a client of Canopy in marketing materials.

### **18. Compliance**

Customer and Canopy shall comply with all applicable laws in the administration of this Agreement and the operation of the employee assistance program provided by Canopy for Customer, including but not limited to the Americans with Disabilities Act, the Health Insurance Portability and Accountability Act (HIPAA), the Genetic Information Nondiscrimination Act, the Health Information Technology for

Economic and Clinical Health (HITECH) Act, and any and all applicable laws.

Customer agrees to be solely responsible and financially liable for any non-compliant messages sent pursuant to this Agreement. Customer agrees to defend and indemnify Canopy for any claim of an alleged violation of the regulations promulgated thereunder, or any state laws covering the same subject-matter that relates to any communication made by Customer relating to Canopy or this Agreement.

#### 19. Governing Law; Venue

Access to and use of the Services and this Agreement are governed by U.S. federal law and/or the laws of the State of Oregon, without resort to conflict of law provisions. Any legal action or proceeding relating to Customer's access to, or use of, the Services or this Agreement shall be instituted only in a state or federal court located in Washington County, Oregon. Customer agrees to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

#### 20. Injunctive Relief

The parties acknowledge that the Services and each party's Confidential Information are unique property, and the unauthorized use thereof may cause the injured Party irreparable harm that may not be adequately compensated by monetary damages. Accordingly, the Parties agree that the injured Party will, in addition to other remedies available to it at law or in equity, be entitled to seek injunctive relief to enforce the terms of this Agreement, including to prevent any actual or threatened unauthorized use or sublicensing of each Party's Confidential Information, the Services, or any information or data contained therein.

#### 21. Notices and Assignment

All notices hereunder must be in writing and sent by hand delivery; or by postal service, postage prepaid; or by expedited mail courier service; or by electronic mail (e-mail) to the addresses listed below. Notices are deemed received and effective as follows: If hand-delivered, upon delivery; if sent by e-mail, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver. Either Party may change its

notice address by giving written notice to the other Party in a manner prescribed above.

The terms of this Agreement shall be binding on the Parties, and all successors to the foregoing who take their rights hereunder. Neither Party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other Party's prior written consent except pursuant to a transfer of all or substantially all of such party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void.

#### 22. Independent Contractors

Each Party shall act at all times as an independent contractor, and the Agreement shall not establish any fiduciary relationship or other relationship of partnership, joint venture, employment, franchise or agency between them. Neither Party shall have the authority to enter into any commitments on behalf of or otherwise bind the other Party without the express written consent of the other Party.

#### 23. All Amendments in Writing

No variation, waiver, modification or amendment of this Agreement shall be binding upon either Party unless in writing executed by the duly authorized representatives of both Parties. This Agreement may not be supplemented or modified by course of dealing or performance. The waiver or failure of either Party to exercise any right provided for herein shall not be deemed a waiver of any further right hereunder.

#### 24. Severability

If any provision of this Agreement shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

#### 25. Taxes.

Customer shall be solely responsible for collecting and remitting any and all applicable sales and use taxes pursuant to this Agreement. In no event shall Canopy be liable for any taxes owed by Customer, including for Customer's use of the Services. Each Party shall bear sole responsibility for all taxes, assessments, and other ad valorem levies on its owned property.

26. Additional Terms.

Canopy and Customer agree that the Additional Terms listed on Exhibit A shall apply to this Agreement.

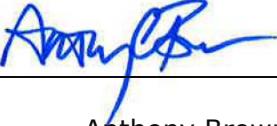
27. General

This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the Agreement when a duly authorized representative of each Party has signed the counterpart. Facsimile or electronic signatures will be deemed original signatures for all purposes under this Agreement.

By signature below, Canopy and Customer have each caused this Agreement to be executed by their duly authorized representative as of the Effective Date and such execution evidences each Party's acceptance of and agreement with the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized

**CASCADE CENTERS, INC DBA CANOPY  
WELLBEING**

By 

Name Anthony Brown

Title CEO

7180 SW Fir Loop Suite 100  
Portland OR 97223

Date: December 8, 2021

**OREGON CITY COUNTY MANAGEMENT  
ASSOCIATION (OCCMA)**

By 

Name Susie Marston

Title 2022 OCCMA President

Address: 1201 Court Street NE, Suite 200

Salem, OR 97301

Date: February 1, 2022

## Exhibit A

<b>Canopy EAP Services</b>	<b>Fee</b>
<b>One Time Set Up Fee</b>	Waived
<b>Administrative Services :</b> <ul style="list-style-type: none"> <li>• Initial Case Set-up or Phone Intake</li> <li>• Billing &amp; Account Maintenance</li> <li>• Subsequent Appointment Maintenance</li> </ul> <b>24/7/365 crisis telephone coverage:</b> Staffed by professional counselors	\$150.00 per month
<b>Interactive EAP Website</b> <ul style="list-style-type: none"> <li>• Self-Assessments</li> <li>• Videos</li> <li>• Webinars</li> <li>• Legal Resource Center</li> </ul>	Included
<b>Clinical Services :</b> <ul style="list-style-type: none"> <li>• Diagnosis and Treatment Planning – up to 3 sessions per unrelated incident for each member/family unit. Sessions available face-to-face, telephonic or live online virtual sessions through secure video or chat.</li> <li>• Telephone Consultation</li> <li>• Wellbeing Text Support</li> <li>• Career Development Services</li> </ul>	\$125.00 per hour
<b>Promotional Materials*</b> <ul style="list-style-type: none"> <li>• Posters (available in English and Spanish)</li> <li>• Tear-Offs for Posters</li> <li>• Brochures (available in English and Spanish)</li> <li>• Wallet Cards - EAP or Wellness (if applicable for the program)</li> <li>• Flyers (color)</li> <li>• Flyers (black and white)</li> </ul>	\$1.25 each \$2.54 each \$0.54 each \$0.17 each \$0.50/each \$0.40/each

\* Available free via our website