

**OREGON HEALTH & SCIENCE UNIVERSITY  
PROFESSIONAL SERVICES CONTRACT**

**1. Services.**

1.1 Contractor shall perform the services set out in the Statement of Work above (the "Services") in accordance with the terms and conditions of this Contract and in a professional and workmanlike manner, in accordance with generally recognized industry standards for similar services;

1.2 This Contract does not create an employer/employee relationship between the parties. It is the parties' intention that Contractor will be an independent contractor and not an employee of OHSU for any purpose. Contractor shall be responsible for compliance with all federal, state and local laws, ordinances, regulations and orders that are applicable to this Contract and Contractor's performance hereunder (« Applicable Laws ») related to its employees and agents. Contractor will retain sole and absolute discretion over the manner and means of carrying out Contractor's activities and responsibilities hereunder.

**2. Payment and Billing; Taxes.**

2.1 OHSU will not pay any amount in excess of the maximum compensation amount set forth on the face of this Contract. Any increase to the maximum compensation must be authorized through a written amendment signed by authorized representatives of OHSU and Contractor before Contractor performs any service subject to the amendment. OHSU shall reimburse for expenses only as expressly provided on the face of the Contract.

2.2 Contractor shall submit invoices for the Services performed under this Contract which shall: (i) describe with particularity all Services performed and by whom performed, and (ii) itemize and explain all expenses for which reimbursement is payable. The invoices shall: (i) include the total amounts (services and expenses shall be listed separately) billed to date by Contractor prior to the current invoice.

2.3 Contractor shall not be compensated for Services from any OHSU department other than the Department.

2.4 Unless otherwise expressly provided for in this Contract, payment shall be made after completion of Services. Contractor shall submit invoices to the Department. OHSU payment terms are net thirty (30) from the date of invoice. Contractor may not charge OHSU interest on an overdue payment unless the payment is at least forty-five (45) days overdue. Interest payable may not exceed two-thirds of one percent per month on the outstanding balance.

2.5 Payments made by OHSU are subject to reduction by any withholding required under Applicable Law.

2.6 OHSU will not be liable for any taxes accruing or coming due as a result of this Contract, whether federal, state or local, and Contractor shall be responsible for any such taxes.

**3. Representations and Warranties.**

3.1 Contractor represents and warrants to OHSU that:

- (a) it is duly organized, validly existing and in good standing under the laws of STATE OF ORGANIZATION/FORMATION;
- (b) it is duly qualified to do business and is in good standing in the State of Oregon;
- (c) it has the full right, power and authority to enter into this Contract, to grant OHSU the rights set forth herein, and to perform its obligations hereunder;
- (d) the execution of this Contract by the individual whose signature is set forth at the end of this Contract, and the delivery of this Contract by Contractor have been duly authorized by all necessary action on the part of Contractor and when so delivered (assuming due authorization, execution and delivery by OHSU) constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity;
- (e) it is in compliance with all Applicable Laws;
- (f) it has obtained all material licenses, authorizations, approvals, consents or permits required by Applicable Laws, including the rules and regulations of all authorities having jurisdiction over the manufacture and sale of the products or the provision of the services to be provided by Contractor under this Contract, and to perform its obligations under this Contract;
- (g) neither Contractor, its employees or agents have, with an intent to establish or maintain a business relationship with OHSU, provided any gift or sponsorship having more than minimal value: (i) to any persons involved in the negotiation of this Contract on behalf of OHSU;

(ii) to any OHSU department procuring items or services under this Contract; or (iii) to any persons with authority to enter into this Contract on behalf of OHSU;

(h) Contractor is not an employee of the U.S. government, nor has Contractor been engaged or otherwise compensated by the U.S. government to provide OHSU the products or services that are the subject of this Contract;

(i) Contractor has all of the requisite resources, skill, experience and qualifications to perform all of the services under this Contract in a professional and workmanlike manner, in accordance with generally recognized industry standards for similar services;

(j) if transferring Intellectual Property rights, contractor has the full right, power and authority (by ownership, license or otherwise) to use all Intellectual Property embodied in the goods or used in performing the services and embodied in the Deliverables, and to grant OHSU the rights and licenses set forth herein, on the terms and conditions of this Contract;

(k) **Contractor and any subcontractor of Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin.** Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability;

(l) it has confirmed the employment eligibility of any employee involved in the performance of this Contract; and

(m) to the extent this Contract is the result of a request for proposal (“RFP”) the representations of Contractor contained in Contractor’s RFP response, are true and correct and shall remain true and correct throughout the term of this Contract.

3.2 Contractor hereby affirms, under penalty of perjury, that to the best of Contractor’s knowledge, Contractor is not in violation of any of the tax laws described in ORS 305.380(4).

3.3 OHSU represents and warrants to Contractor that:

(a) it is a statutory public corporation under the laws of the State of Oregon;

(b) it has the full right, power and authority to enter into this Contract and to perform its obligations hereunder;

(c) the execution of this Contract by the individual whose signature is set forth at the end of this Contract, and the delivery of this Contract by OHSU have been duly authorized by all necessary action on the part of OHSU; and

(d) this Contract has been executed and delivered by OHSU and (assuming due authorization, execution and delivery by Contractor) constitutes the legal, valid and binding obligation of OHSU, enforceable against OHSU in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity.

#### **4. Work Product.**

4.1 For purposes of this Contract, “Work Product” shall mean the data, materials, documentation, computer programs, inventions (whether or not patentable), pictures, audio, video, animation, artistic works, and all works of authorship, including all worldwide rights therein under patent, copyright, trade secret, confidential information, moral rights, and other property rights, created or developed in whole or in part by Contractor while retained by the Contractor and that either (i) is created within the scope of the work of this Contract, as such scope of work may be amended by the parties or (ii) has been or will be paid for by the OHSU. OHSU is and shall be the sole and exclusive owner of all right, title and interest in and to the Work Product, including all copyrights and other intellectual property rights therein. In furtherance of the foregoing, Contractor shall create the Work Product as a work made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent the Work Product does not qualify as, or otherwise fails to be, a work made for hire, Contractor shall and hereby does (a) assign, transfer and otherwise convey to OHSU, irrevocably and in perpetuity, thought the universe, all right, title and interest in and to such Work Product, including all copyrights and other intellectual property rights there; and (b) irrevocably waives any and all claims Contractor may now or hereafter have in any jurisdiction to so-called “moral rights” with respect to such Work. Contractor will sign, upon request, any documents needed to confirm that the Work or any portion thereof is a work made for hire and to effectuate the assignment of its rights to OHSU. Contractor will assist OHSU and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering the Work. Contractor will sign any such applications, upon request, and deliver them to OHSU. OHSU will bear all expenses that it causes to be incurred in connection with such copyright, trademark, and/or patent protection.

4.2 To the extent that any materials that were created or licensed by Contractor prior to the effective date of this Contract (collectively, “Contractor Tools”) are contained in the Work Product, Contractor hereby grants to OHSU and its successors and assigns a non-exclusive, perpetual, irrevocable, freely transferable and sublicensable, fully paid-up and royalty-free right and license to use the Contractor Tools, including all copyrights and other intellectual property rights therein. Subject to the this license, Contractor retains all right, title, and interest in and to the Contractor Tools and nothing herein shall convey or transfer to OHSU any other right, title, or interest in and to the Contractor Tools.

Contractor represents and warrants that it is the owner or licensee of all rights necessary and appropriate to grant the licenses and rights hereunder with respect to the Contractor Tools and that OHSU's use of the Contractor Tools shall not infringe any third party proprietary rights, including (without limitation) any trademark, trade name, trade secret, copyright, moral rights, patents or similar rights.

## **5. Default.**

5.1 With respect to Contractor "Default" means:

- (a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- (b) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract, and Contractor has not obtained such license or certificate within 15 calendar days after notice or such longer period as OHSU may specify in such notice; or
- (c) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, or fails to perform the services under this Contract within the time specified; and such breach, default or failure is not cured and OHSU has not accepted Contractor's plan for cure of such breach, default or failure, by 15 calendar days after Contractor's receipt of OHSU's notice, or such longer period as OHSU may specify in such notice.

5.2 With respect to OHSU "Default" means:

- (a) OHSU fails to remit to Contractor the required payment amounts on or prior to the due date specified in the Contract and does not cure such default within 30 days of written notice from Contractor; or
- (b) OHSU institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis.

5.3 Upon the occurrence of an event of Default, the non-defaulting party may pursue any and all remedies available to it under this Contract and at law or in equity, including (1) the right to terminate this Contract; (2) withholding all monies due for services and products that Contractor has failed to deliver, within any scheduled completion dates, or performed inadequately or defectively; (3) initiation of an action or proceeding for damages, specific performance, or declaratory, injunctive, or other relief; and (4) exercise of its right of setoff. All rights and remedies provided in this Contract are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other Contract between the parties or otherwise.

## **6. Termination**

6.1 This Contract may be terminated for any reason permitted by law, including the following:

- (a) at any time by mutual consent of both parties;
- (b) by Contractor upon a Default by OHSU;
- (c) by OHSU, at its discretion, upon thirty (30) days written notice;
- (d) by OHSU upon Default by Contractor;
- (e) by OHSU effective upon written notice to the Contractor or at such later date as may be established by OHSU, if:
  - (i) Federal or state regulations or guidelines are modified or changed in such a way that the services or products are no longer allowable or appropriate for purchase under this Contract;
  - (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the products or services required by this Contract is for any reason denied, revoked, or not renewed; and
  - (iii) funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of products or services.

6.2 Upon receiving a notice of termination issued by OHSU, Contractor shall immediately cease all performance under this Contract, unless expressly directed otherwise by OHSU in the notice of termination. OHSU shall only be liable for payment for services satisfactorily rendered

prior to the effective date of termination. Contractor shall be paid in accordance with the terms of the Contract for goods delivered and accepted if Contractor's damages arising out of return of goods cannot be mitigated by the resale as provided in the Uniform Commercial Code (ORS 72.7060). Upon termination, Contractor shall deliver to OHSU all contract documents, information, works-in-progress, and other property that are or would be deliverables.

6.3 Neither termination nor expiration of the term of this Contract shall extinguish nor prejudice OHSU's rights to enforce this Contract with respect to any default or defect in performance that has not been cured. In addition, the provisions of Sections 7 (Confidentiality), 8 (Access to Records), 11 (Responsibility for Damages; Indemnity), 13 (Claims for Infringement), and 16.4 (Governing Law/Venue).

## 7. Confidentiality.

7.1 OHSU Confidential Information. Contractor shall safeguard and not disclose confidential information of OHSU including any of the following: (a) patient information; (b) student information; (c) personnel information; (d) matters of a technical nature; (e) matters of a business nature; and (f) other information of a similar nature which is not generally disclosed by OHSU to the public, referred collectively hereafter as "OHSU Confidential Information." All Confidential Information is and shall remain the exclusive property of OHSU. Contractor further agrees not to use OHSU Confidential Information except as may be necessary to perform the Services. No license or other rights under any patents, patent applications, copyrights, or any other intellectual property rights are conveyed by the disclosure of Confidential Information by OHSU under this Contract. Upon expiration or termination of this Contract, or otherwise as requested or instructed by OHSU, Contractor will promptly destroy all OHSU Confidential Information that may be in Contractor's possession or control in such a ways as to be completely unrecoverable:

(a) **Electronic Records:** Electronic records shall be rendered unrecoverable using a process so that information on a computing device or electronic media is not retrievable. Processes shall include: (1) physically destroying the drive or media; (2) degaussing the drive to randomize the magnetic domain; (3) overwriting the drive or media's data (simple deletion or formatting does not meet this definition); or (4) taking other action substantially and materially comparable to (1)-(3).

(b) **Paper Records:** Paper records shall be destroyed by shredding, incineration or similar process to render such records unrecoverable.

In the event Contractor is unable to destroy all OHSU Confidential Information, Contractor's obligation to keep such information confidential shall survive termination or expiration of this Contract. If Contractor becomes aware of an incident that compromises the confidentiality of OHSU Confidential Information, Contractor shall notify OHSU promptly by telephone (503-494-8849) and provide all information related to the incident and OHSU Confidential Information as reasonably requested by OHSU. Notwithstanding any limitation on damages or liability contained in this Contract, Contractor shall reimburse OHSU for all direct damages resulting from such incident including, but not limited to, notification of individuals if deemed necessary by OHSU, fines or penalties levied against OHSU for noncompliance with applicable law related to compromised OHSU Confidential Information.

7.2 Contractor Confidential Information. OHSU is a public corporation and is subject to the Oregon Public Records Law (ORS 192). Contractor acknowledges that any information given by Contractor to OHSU, including, without limitation, the pricing, discounts, other terms of the purchase and other terms and conditions of this Contract is a public record and may be subject to disclosure under the Oregon Public Records Law.

Subject to the foregoing and to the exceptions described below, OHSU agrees that it will keep confidential all information of Contractor labeled 'confidential information' or 'proprietary information' unless the information: (a) is or becomes publicly available through no fault of OHSU; (b) is developed or possessed by OHSU prior to, or independent of, disclosure from Contractor; (c) is or becomes available to OHSU on a non-confidential basis from a third-party source that is not bound by a duty of confidentiality known to OHSU; (d) is information that OHSU obtained Contractor's written permission to disclose or use; (e) is disclosed pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction; or (f) is disclosed to an employee, agent, consultant or contractor of OHSU (including, without limitation, its legal and accounting advisors), for business, regulatory or financial purposes.

8. **Access to Records.** Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles and shall maintain any other records relating to this Contract in such a manner as to clearly document Contractor's performance hereunder. OHSU and its representatives, and, the federal government and its duly authorized representatives shall have access to such fiscal records and to all other books, documents and records of Contractor which relate to this Contract, to perform examination, and audits and make excerpts and transcripts. Except when a longer retention period is specified in this Contract or required by law, such books and records shall be maintained by Contractor for four (4) years from the date of Contract expiration or termination. Contractor is responsible for any audit discrepancies involving deviation from the terms of this Contract and for any commitments or expenditures in excess of amounts authorized by OHSU.

9. **Federal and State Program Eligibility.** OHSU participates in Federal health care programs as defined in 42 U.S.C. Section 1320a-7b(f), and is required to ensure that its contractors are not excluded from participation or otherwise ineligible to participate in a "federal health care program" (as such term is defined in 42 U.S.C. Section 1320a-7b (f)) or from any other government payment program ("Excluded"). Therefore, Contractor represents and warrants to OHSU that neither it nor any of its employees, contractors, board members, or any shareholders (interest 5% or more) (a) are Excluded and (b) have arranged or contracted (by employment or otherwise) with any employee, subcontractor, or agent that Contractor or its affiliate knows or should know is Excluded to provide items or services hereunder. In the event Contractor or one of its employees, contractors, board members, or any shareholders (interest 5% or more) is Excluded during the term of this Contract, Contractor will notify OHSU in writing within three (3) days after such event. Whether or not such notice is given to OHSU, OHSU may, if required by applicable law to retain its eligibility in a Federal health care program or other government payment program or otherwise, (a) terminate this Contract effective as of the date of such

exclusion upon written notice to Contractor; or (b) immediately suspend its payment obligations under this contract upon written notice to Contractor, in which case OHSU shall only be liable for payment in accordance with the terms of this Contract for services satisfactorily rendered or goods delivered and accepted prior to the effective date of termination, until Contractor's eligibility is reinstated whereupon this contract shall continue in full force and effect. In the event that Contractor's eligibility is not reinstated within ninety (90) days of the effective date of exclusion or ineligibility, OHSU may terminate this contract.

## **10. Assignment; Subcontractors; Successors in Interest.**

10.1 Except as otherwise provided below, Contractor may not assign, subcontract, transfer or delegate any of its rights or obligations under this Contract without the prior written consent of OHSU. Notwithstanding the above, Contractor may, without the consent of OHSU, assign any of its rights or delegate any of its duties under this Contract without any prior consent if such assignment or delegation is to: (a) an Affiliate, as such term is defined below; (b) a successor of Contractor, by consolidation, merger or operation of law; or (c) a purchaser of all or substantially all of Contractor's assets. Any assignment pursuant to the preceding sentence shall be effective only upon written notice to OHSU. No assignment or delegation permitted under the terms of this Contract shall relieve the Contractor of any of its obligations under this Contract. Any purported assignment or delegation in violation of this Section is void.

10.2 For purposes of this Contract an "Affiliate" means any corporation, limited liability company, partnership or other entity that directly or indirectly controls or is controlled by or is under common control with a party. As used in this Contract, control means ownership, directly or through one or more Affiliates, of fifty percent (50%) or more of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or fifty percent (50%) or more of the equity interests in the case of any other type of legal entity, or status as a general partner in any partnership, or any other arrangement whereby a party controls or has the right to control the Board of Directors or equivalent governing body of a corporation or other entity.

## **11. Responsibility for Damages; Indemnity.**

11.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work under this Contract, or from any act, omission, or neglect of the Contractor, its subcontractors, or employees.

11.2 Contractor agrees to hold harmless and defend with counsel acceptable to OHSU, and indemnify OHSU, its directors, officers, employees and agents from and against any and all liability, damages, settlements, loss, costs, and expenses (including reasonable attorneys' fees) suffered or incurred in connection with any action, suit, or claim, of any kind or nature, whether in contract, tort or otherwise, resulting from or arising out of Contractor's, or its subcontractors, acts, omissions, activities, services or work performed under this Contract.

11.3 Contractor shall notify OHSU immediately of: (i) any incident, occurrence, or event that is likely to result in a claim against OHSU and (ii) any claim, suit or other demand for compensation by any third party that relates directly or indirectly to activities or omissions of OHSU under the terms of this Contract. Said notice shall be in writing and directed to the OHSU Department of Risk Management, (3181 SW Sam Jackson Park Road, Mail Code L328, Portland, OR 97239-3092.)

11.4 Contractor agrees to cooperate fully with OHSU in the investigation and defense of third party claims brought against OHSU and/or any of its directors, officers, employees and agents as a result of the activities performed under the terms of this Contract. Such cooperation shall include, but not be limited to, making Contractor staff available and providing access to pertinent Contractor records and documentation to allow investigation, evaluation, and defense, except as otherwise prohibited by law.

11.5 If Contractor or its insurer undertakes the representation and defense of claims involving OHSU and/or its directors, officers, employees or agents no settlement or other resolution of the claim involving payments to third parties shall be undertaken without prior approval by OHSU Department of Risk Management at the address provided in Section 11.3 above. Such approval shall not be unreasonably withheld.

## **12. Insurance.**

12.1 If marked on the face of the Contract, throughout the Term, Contractor shall maintain in force at its own expense each of the insurances listed below:

(a) Commercial General Liability insurance with a minimum limit of not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

(b) Automobile Liability insurance with a minimum limit of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

(c) Professional Liability insurance with a combined single limit of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate for damages caused by error, omission or negligent acts related to any professional services to be provided under this Contract. Any self-insured retention or deductible shall not exceed \$25,000 each claim, incident or occurrence.

(d) Contractor shall maintain in force at its own expense Workers' Compensation insurance in compliance with ORS 656.017.

12.2 The insurance policies described in 12.1 shall be issued by an insurance company with an A.M. Best rating of A or better and authorized to provide coverage in the State of Oregon. If written on a claims made basis, the commercial general and professional liability insurance shall be maintained for a period of not less than two (2) years following the expiration or termination of this Contract. With the exception of the professional liability and workers compensation policies, OHSU and its officers and employees shall be included as an additional insured in these insurance policies. All self-insured retentions or deductibles above \$25,000 must be disclosed and are subject to approval by OHSU. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) required by this Contract without thirty (30) days written notice from the Contractor or its insurer(s) to OHSU.

12.3 Before work under this Contract is commenced, Contractor shall furnish to OHSU acceptable certificates of insurance evidencing insurance coverage required by this Contract. The certificate(s) will specify all of the parties who are additional insureds. Contractor or its insurer(s) shall provide complete policy copies to OHSU within five (5) business days of the request. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance.

13. **Claims for Infringement.** If any third party intellectual property and license rights are necessary for OHSU to fully enjoy the benefits of this Contract, Contractor shall secure on behalf of OHSU and in its name, a royalty-free license to use the third party intellectual property, and to authorize others to do the same on behalf of OHSU.

Without limiting Section 11, Contractor shall defend, indemnify, and hold OHSU, and their boards, officers, employees and agents harmless from all claims, suits, actions, losses, damages, liabilities, costs, expenses, including attorneys' fees, and damages arising out of or related to any claims that the services, products or any other tangible or intangible items delivered to OHSU by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or the use thereof by OHSU, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party.

14. **Dispute Resolution.** OHSU and Contractor agree to first enter into negotiations to resolve any failure of the parties to reach agreement on any claim or action arising under or relating to the Contract (in each case a "Dispute") arising under or related to this Contract. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such Dispute within a reasonable period of time. If the Dispute cannot be resolved by the parties through negotiation within thirty (30) days of the date of the initial demand for negotiation by one of the parties, then either party may seek resolution of the Dispute as otherwise provided in this Contract and by law.

15. **HIPAA/Contractor Requirements.** If Contractor's performance under this Contract involves or requires the disclosure to or use by Contractor of OHSU's protected health information as defined by the Health Insurance Portability and Accountability Act and regulations promulgated pursuant thereto ("HIPAA"), then the following provisions apply:

15.1 Contractor agrees to hold all protected health information that may be shared, transferred, maintained, transmitted, or otherwise obtained pursuant to this Contract ("PHI") strictly confidential, and provide all reasonable protections to prevent the unauthorized use or disclosure of such information, including, but not limited to the protection afforded by applicable federal, state and local laws and/or regulations regarding the security and the confidentiality of patient health care information. Contractor further agrees to comply with any regulations, standards, or rules promulgated pursuant to the authority of HIPAA, The Health Information Technology for Economic and Clinical Health Act ("HITECH") or the American Recovery and Reinvestment Act of 2009 ("ARRA"), including those provisions listed below. The Contractor or subcontractor of Contractor may use and disclose PHI when necessary for Contractor or subcontractor's proper management and administration (if such use or disclosure is the minimum necessary), or to carry out the Contractor's specific legal responsibilities pursuant to this Contract, or as required by law.

15.2 Specifically, the Contractor agrees as follows: (1) to maintain administrative, physical, and technical safeguards as necessary to ensure that the PHI is not used or disclosed except as provided herein and to protect the confidentiality, integrity, and availability of PHI including implementing required policies and procedures with respect to PHI and the privacy and security rules pursuant to HIPAA/HITECH or the ARRA; (2) to use appropriate safeguards and comply, where applicable, with 45 CFR Part 164, Subpart C with respect to electronic PHI to prevent use or disclosure of the information other than as provided for by this Contract; (3) to the extent Contractor is to carry out an OHSU obligation under regulations, standards, or rules promulgated pursuant to HIPAA, ARRA or HITECH, comply with the requirements that apply to OHSU in the performance of such obligation; (4) to mitigate, if possible, any harmful effect known to Contractor of a use or disclosure of PHI by Contractor or subcontractor of Contractor; (5) to ensure that any subcontractor of Contractor or agents to whom it provides PHI will agree in writing to substantially similar restrictions and conditions that apply with respect to such information, in the form of a business associate agreement; (6) to make available respective internal practices, books and records relating to the use and disclosure of PHI received from OHSU to the U.S. Department of Health and Human Services or OHSU upon request; (7) to make PHI available for amendment or incorporate any amendments or corrections to PHI when notified by OHSU that the information is inaccurate or incomplete within ten (10) calendar days of request; (8) to return or destroy all PHI received from OHSU that Contractor still maintains in any form and not to retain any such PHI in any form upon termination or expiration of this Contract, if feasible or, if not feasible, Contractor agrees to limit any uses of PHI after this Contract's termination or expiration to those specific uses or disclosures that make it necessary for Contractor to retain the information; (9) to continue to comply with the terms of this Section upon termination of this Contract if Contractor retains any PHI provided pursuant to this Contract; (10) to ensure applicable policies are in place for providing the PHI to OHSU to satisfy an individuals' request to access their information; (11) to immediately, but in no event later than five (5) calendar days, report to OHSU any acquisition, access, use or disclosure of PHI, including breaches of unsecured PHI, which is not provided for in the Contract by calling OHSU's hotline set up for this purpose at 503-494-8849 and to report unsuccessful security incidents to OHSU upon request; (12) to make PHI available to OHSU within ten (10) calendar days to provide an accounting of disclosures to an individual who is the subject of the information, to the extent required by HIPAA/HITECH or ARRA; (13) not to use or further disclose PHI that has been de-identified as described in 45 CFR 164.514(a)-(b) other than as permitted or required by this Contract or as required by law; (14) to require its employees, officers, directors and agents that create, receive, maintain or transmit PHI on behalf of Contractor to agree to the same restrictions, conditions and requirements that apply through this Contract to Contractor with respect to PHI; (15) within fifteen (15) calendar days of OHSU's request, to make available, PHI in a

designated record set, to OHSU or, as directed by OHSU, to an individual or third party designated by the individual in writing in order to meet the requirements under 45 C.F.R. § 164.524; (16) to document disclosures of PHI and information related to such disclosures as would be required for OHSU to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528; (16) to comply with an individual's request for restrictions on use or disclosure of such individual's PHI if OHSU receives and agrees to such a request from an individual in accordance with 45 C.F.R. § 164.522 or as otherwise required by law; (17) to limit the use, disclosure, or request of PHI, to the extent practicable, to the limited data set or to the minimum necessary (as described in guidance by the secretary of the U.S. Department of Health and Human Services) to accomplish the intended purpose of such use disclosure, or request, respectively; and (18) ensure that electronic PHI that is transmitted or maintained by Contractor or subcontractor of Contractor is encrypted. OHSU shall notify Contractor of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes affect Contractor's use or disclosure of PHI, and of any restriction to the use or disclosure of PHI that OHSU has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction affects Contractors use or disclosure of PHI. If at any time after the effective date of this Contract, it is determined that Contractor is in breach of this Section, OHSU, in its sole discretion, may immediately terminate this Agreement. Contractor further agrees to sign any other documents, as appropriate, including but not limited to an additional business associate agreement with OHSU, to maintain compliance with HIPAA, ARRA and HITECH if requested to do so by OHSU.

15.3 Notwithstanding any limitation on damages or liability or any indemnification obligations contained in this Contract, Contractor shall indemnify and hold OHSU, its members, directors, officers, employees, agents, and subcontractors ("Indemnified Party") harmless from and against any and all actual losses, liabilities, fines, penalties, costs and expenses (including reasonable attorneys' fees) arising out of or related to a breach of this Contract, breach of Unsecured PHI, or violation of HIPAA that is caused by the acts or omissions of Contractor or any of its employees, officers, directors, agents or subcontractors. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Contract for any reason.

15.4 Contractor shall maintain in force at its own expense Internet, Network and Privacy liability coverage (or its equivalent) with a minimum limit of not less than \$1,000,000.00 per occurrence and annual aggregate providing protection against liability arising from the loss or disclosure of PHI by Contractor no matter how it occurs. Any subcontractor of Contractor must maintain similar coverage to provide protection against liability arising from the loss or disclosure of PHI by subcontractor no matter how it occurs.

15.5 Notwithstanding any limitation on damages or liability contained in the Contract, Contractor shall be responsible for the full cost of all civil and criminal penalties assessed upon Contractor or upon OHSU as a result of the failure of Contractor, its officers, directors, employees, subcontractors or agents to comply with this Contract or any requirement imposed upon Contractor through HIPAA, HITECH or ARRA as amended from time to time, and including any regulations to those laws, as amended from time to time. This obligation shall survive the expiration or termination of this Contract for any reason.

15.6 Terms used in this section that are not defined in this Contract shall have the same meaning as those terms in HIPAA and any rules, regulations or standards promulgated thereunder.

## **16. Miscellaneous**

16.1 Third Party Beneficiaries. Except as to any person specifically named herein, the parties do not confer any rights or remedies upon any person other than the parties to this Contract and their respective successors and permitted assigns.

16.2 Time is of the Essence. Time is of the essence in Contractor's performance of this Contract.

16.3 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) flood, fire, earthquake or explosion; (b) war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest; (c) government order or law; (d) action by any governmental authority; or (e) national or regional emergency. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Contract. The party suffering a force majeure event shall give notice within five (5) days of the force majeure event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized. Notwithstanding any other termination provision, OHSU may terminate this Contract upon written notice after determining such delay or default will reasonably prevent successful performance of this Contract.

16.4 Governing Law/Venue. All matters arising out of or relating to this Contract shall be governed by and construed in accordance with the internal laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction). Any Proceeding out of or relating to this Contract, or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of Oregon in each case located in the City of Portland and Multnomah County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such Proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of Proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum.

16.5 Export Compliance. Contractor shall and shall ensure that its subcontractors, (a) obtain the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance; (b) obtain export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at OHSU, where the foreign person will have access to export-controlled technical data or software; and (c) for all regulatory record keeping requirements

associated with the use of licenses and license exemptions or exceptions.

16.6 Publicity. Neither party will use the name, image, trade or service marks, likeness, logos or any other distinguishing feature of the other party or any employee of the other party, without the prior written consent of an authorized representative of the other party.

16.7 Contractor Staff and Use of OHSU Facilities and/or OHSU Network. If applicable, Contractor agrees that all Contractor staff performing any Services at any OHSU facility or using any Virtual Private Network (VPN) connection to gain access to OHSU's Network to provide Services shall comply with all applicable OHSU policies, including but not limited to, requirements regarding background and criminal history checks, and complete any training required by OHSU. Contractor shall access only those facilities necessary to perform services under the Contract. All equipment, tools, materials, supplies, and other personal property of Contractor shall remain the sole responsibility of the Contractor at all times.

16.8 Parking and Transportation. If Contractor, its agents, employees, or approved subcontractors shall be performing this Contract on OHSU property, Contractor shall contact OHSU's Parking and Transportation Services Department to arrange for proper parking permits and shall be responsible for all fees incurred.

16.9 Non-Solicitation. During the term of this Contract and for six (6) months after any termination of this Contract, Contractor will not directly or indirectly solicit, induce, recruit, encourage or otherwise endeavor to cause or attempt to cause any employee of OHSU to terminate their relationship with OHSU; provided, however, that nothing in this Section shall prohibit the use of a general solicitation in a publication or by other means.

16.10 Notices. Except as specifically set forth in Sections 7 and 11, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with written confirmation of receipt by addressee) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must include the OHSU contract number, if available, and said notice shall be in writing and directed to OHSU Department of Contracting Services Group, (3930 SW Macadam Ave, Mail Code MC 104, Portland, OR 97239).

16.11 Purchasing Authority. Only OHSU Logistics Department employees have the authority to authorize or bind OHSU for any purchase of Contractor's product(s) or services. Contractor shall contact the Logistics Department at OHSU for any sale or purchase of its product(s) or services. OHSU shall not honor Contractor's invoice for an order unless (a) such order was confirmed by the OHSU Logistics Department in writing; and (b) if applicable, the product(s) are included in OHSU's formulary for medical supplies and devices communicated to Contractor. If Contractor breaches this material term, OHSU may, in addition to all other remedies available to it and without waiving any rights thereto, elect to have no liability to pay for such product or service that fails to comply with the foregoing.

16.12 Amendment. Amendments to this contract shall be in writing and signed authorized representatives of both parties.

16.13 Diversity. Upon request, Contractor shall provide OHSU with copies of its affirmative action plan, equal opportunity policy, diversity outreach and related documents and data, if any.

16.14 Severability. In the event one or more clauses of the Contract are declared illegal, void or unenforceable by a court of competent jurisdiction, the validity of the remaining portions of this Contract shall remain in full force and effect. The failure of OHSU to enforce any provision of this Contract shall not constitute a waiver by OHSU of that or any other provision.

16.15 OHSU Affiliates. The pricing and discounts contained in this Agreement are for the benefit of OHSU and any entity that directly or indirectly controls, is controlled by, or is under common control or management with OHSU, as well as strategic partners designated by OHSU (OHSU Affiliates").

16.16 Waiver. No waiver under this Contract is effective unless it is in writing, identified as a waiver to this Contract, and signed by an authorized representative of the party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Contract: (i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Contract; or (ii) any act, omission or course of dealing between the parties.

16.17 Execution in Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

16.18 Entire Agreement. This Contract constitutes the entire agreement between the parties with respect to the subject matter described herein and all prior or contemporaneous oral or written communications, understandings, or Contracts between Contractor and OHSU with respect to such subject matter are hereby superseded in their entirety. The parties agree that neither party shall be accorded any advantage over the other by reason of being the drafter of any of the language of this Contract.



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