OHSU STANDARD CONTRACT PROVISIONS
PROFESSIONAL SERVICES CONTRACT

1. **Independent Contractor Status**. OHSU and the Contractor intend that the Contractor's relationship to OHSU at all times and for all purposes under this Contract is to be that of independent contractor. The Contractor is not to be considered an agent or employee of OHSU for any purpose, and neither the Contractor nor any of the Contractor's agents or employees are entitled to any of the benefits that OHSU provides for its employees. The Contractor is solely and entirely responsible for its acts and the acts of its agents, subcontractors and employees during the performance of this Contract. Further, the parties acknowledge that OHSU neither controls nor directs the manner in which any services are rendered pursuant to this Contract. The Contractor is not an officer, employee, or agent of OHSU as those terms are used in ORS 30.265.

   An independent contractor is not eligible for any Federal Social Security, State Workers' Compensation, unemployment insurance, Public Employees Retirement System, or University Pension Program benefits under an independent contractor relationship. OHSU will report the total amounts of all payments to the Contractor, including any expenses, in accordance with the Federal Internal Revenue Service and the State of Oregon Department of Revenue regulations.

2. **Government Employment Status**. If payment under this contract is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.

3. **Subcontracts**. Contractor shall not enter into any subcontracts for any of the services under this Contract, without the prior written consent of OHSU. Contractor may not request OHSU's approval of any subcontractor without first ensuring that such subcontractor is not Excluded from participation as set forth in Section 14. No such written approval shall relieve Contractor from any obligations of this Contract. An approved subcontractor shall be considered the agent of Contractor and Contractor must ensure any such subcontractor's compliance with any and all of the terms and conditions of this Contract.

4. **Assignment**. Contractor shall not assign or transfer any of its interests or rights nor delegate its obligations under this Contract, in whole or in part, without the prior written consent of an authorized representative of OHSU.

5. **Successors in Interest**. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

6. **Third Party Beneficiaries**. OHSU and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, directly or indirectly, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

7. **Payment and Billing**.

   a. OHSU will not pay any amount in excess of the maximum compensation amount set forth on the face of this Contract. If the maximum compensation is increased by amendment, as provided for in Section 41 of this Contract, the amendment must be in writing and signed by authorized representatives of OHSU and Contractor before Contractor performs services subject to the amendment. OHSU shall reimburse for expenses only as expressly provided on the face of the Contract.

   b. Contractor shall submit invoices for the services performed under this Contract. The invoices shall describe with particularity all services performed, by whom performed, and shall itemize and explain all expenses for which reimbursement is payable. The invoices shall include the total amounts (services and expenses shall be listed separately) billed to date by Contractor prior to the current invoice. Contractor shall specifically note in the invoice when one-third and two-thirds of the maximum contract amount, including expense reimbursement, has been billed.

   c. Contractor shall not be compensated for services performed under this Contract from any OHSU department other than that named on the face page of this Contract.

   d. Unless otherwise provided in the scope of work, payment shall be made after completion of services. Contractor shall submit invoices to the department listed on the face page of the Contract. 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. The maximum interest rate payable by OHSU is two-thirds of one percent per month on the outstanding balance.

   e. Any payments by OHSU are subject to reduction by any applicable withholding required under law.

8. **Termination**.

   a. This Contract may be terminated at any time by mutual consent of both parties or by OHSU, at its discretion, upon thirty (30) days written notice.

b. Contractor may terminate this Contract upon a material default and failure to cure by OHSU. Contractor must provide written notice specifying the nature of the default and allow OHSU thirty (30) days from the date of the notice to cure the default.

c. OHSU may terminate this Contract effective upon delivery of written notice to the Contractor, or effective 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 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 services required by this Contract is for any reason denied, revoked, or not renewed.

   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 services.

   iv. Any receiver or trustee in bankruptcy or other similar officer is appointed over any or all of Contractor's property or assets or a filing by or against Contractor of a voluntary or involuntary petition in bankruptcy is made which is not dismissed within ninety (90) days, or Contractor becomes insolvent, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis.

   If this Contract is terminated under this subsection, OHSU shall only be liable for payment in accordance with the terms of this Contract for services satisfactorily rendered prior to the effective date of termination.

d. This Contract may also be terminated by OHSU for default (including breach of contract) if:

   i. Contractor fails to provide services called for by this Contract within the time specified; or

   ii. Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from the OHSU, fails to correct such failures within ten (10) days or such other period as OHSU may designate in such notice.

e. The rights and remedies provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

f. Upon receiving a notice of termination issued by OHSU, Contractor shall immediately cease all activities under this Contract, unless expressly directed otherwise by OHSU in the notice of termination. Upon termination, Contractor shall deliver to OHSU all contract documents, information, works-in-progress, and other property that are or would be deliverables.

9. **Survival of Terms**. Termination of this Contract and/or the passage of the Contract expiration date (as recorded on the face of the Contract) shall not extinguish or prejudice OHSU's right to enforce this Contract with respect to any default or defect in performance that has not been cured, any rights or remedies under any warranties, or OHSU's right to indemnity under this Contract.

10. **Time is of the essence**. Time is of the essence in Contractor's performance of each and every obligation under this Contract.

11. **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 if applicable, the federal government and their duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writings 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, such books and records shall be maintained by Contractor for four (4) years from the date of Contract expiration or termination unless a shorter period is authorized in writing. 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.

12. **Compliance with Applicable Law**. Contractor agrees to comply with all federal, state, county and local laws, ordinances and regulations applicable to the work to be done under this Contract. The Contractor agrees to comply with all federal and state laws prohibiting discrimination on the basis of race, sex, national origin, religion, age, or handicap. Failure or neglect on the part of the Contractor to comply with any or all such laws, ordinances, rules and regulations shall not relieve the Contractor of these obligations nor of the requirements of this Contract. Contractor warrants that it has verified the employment eligibility of all its employees to work in the United States in accordance with applicable governmental standards including, but not limited to, E-Verify (if applicable to this Contract).

13. **Diversity**. Contractor acknowledges that OHSU represents it: (i) is committed to diversity within OHSU and within our community, (ii) is committed to developing business relationships that encourage affirmative action and the participation of emerging small businesses and businesses owned by women and minorities, and (iii) encourages and supports the development of minority business enterprises, women business enterprises, and emerging small businesses that meet high quality standards by offering business opportunities available through OHSU contracts.

    In order to show that OHSU values and supports diversity efforts in its contracting partners, OHSU may request information from Contractor about its diversity related efforts and programs. If possible, when requested, Contractor shall provide such information to OHSU.

14. **Federal and State Program Eligibility**. Contractor represents and warrants that it is not excluded from participation, and is not otherwise ineligible to participate in a "federal health care program," as defined in 42 U.S.C. Section 1320a-7b(f) or in any other government payment program ("Excluded"). In the event Contractor is Excluded or becomes otherwise ineligible to participate in any such program 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 immediately terminate this Contract upon written notice to Contractor and OHSU shall have no responsibility to pay for any services from the date Contractor was Excluded or ineligible from participation.

15. **Responsibility for Damages.** 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.

16. **Indemnity**.

    a. 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.

    b. Contractor shall notify OHSU immediately of any incident, occurrence, or event that is likely to result in a claim against OHSU. 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.) Contractor shall also notify OHSU of 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.

    c. 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.

    d. In the event that 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 notice to OHSU Department of Risk Management at the address provided in Section 16(b) above.

17. **Insurance**.

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

        i. Commercial General 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. It shall include contractual liability coverage for the indemnity provided under this Contract.

        ii. 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.

iii. Professional Liability insurance with a combined single limit of not less than $1,000,000 per occurrence and $2,000,000 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.

These insurance policies, are to be issued by an insurance company authorized to do business in the State of Oregon, and must also have an A.M. Best rating of A or better. 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. 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.

b. Contractor shall maintain in force at its own expense Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, and as defined by ORS 656.027).

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

d. 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.

18. **Ownership of Work Product**. Contractor and OHSU intend this to be a contract for services and each consider the products and results of the services to be rendered by Contractor pursuant to this Contract (the “Work Product”) to be a “work made for hire.” Contractor acknowledges and agrees that the Work Product (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of OHSU and that OHSU shall be deemed the author. If for any reason the Work Product would not be considered a “work made for hire” under applicable law, Contractor hereby irrevocably assigns to OHSU all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as OHSU may reasonably request in order to fully vest such rights in OHSU. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

19. **Force Majeure**. Neither OHSU nor Contractor shall be held responsible for delay or default caused by fire, riot, strike, acts of God or war which is beyond the affected party’s reasonable control. 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. Notwithstanding any other termination provision, either party may terminate this Contract upon written notice to the other party after determining such delay or failure is beyond the control of the party and will reasonably prevent successful performance in accordance with the terms of the Contract. OHSU may terminate this contract upon written notice after determining such delay or default will reasonably prevent successful performance of this Contract.

20. **Severability**. In the event that any provision of this Contract is rendered invalid or unenforceable by any law or regulation, or declared null and void by any court of competent jurisdiction, that part shall be reformed, if possible, to conform to law and if reformation is not possible, that part shall be deleted, the remainder of the provisions of this Contract shall, subject to this Section, remain in full force and effect.

21. **Waiver**. The failure of OHSU to enforce any provision of this Contract shall not constitute a waiver by OHSU of that or any other provision.

22. **Conflict of Interest**. Contractor acknowledges that OHSU uses ethical business practices in its vendor selection and other contracting practices and that OHSU does not take into account any gifts or sponsorship provided by Contractor or vendors. Contractor certifies that neither it nor 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 person working on behalf of OHSU involved in the negotiation of the contract; (ii) to any OHSU Department or unit procuring items or services under this Contract; or (iii) to any person with authority on behalf of OHSU to enter into the Contract.

23. **Execution and Counterparts**. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

24. **Governing Law/Venue**. **THIS CONTRACT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON**. ANY CLAIM, ACTION, OR SUIT BETWEEN OHSU AND CONTRACTOR THAT ARISES OUT OF OR RELATES TO PERFORMANCE OF THIS CONTRACT SHALL BE BROUGHT AND CONDUCTED SOLELY AND EXCLUSIVELY WITHIN THE CIRCUIT COURT FOR MULTNOMAH COUNTY, OREGON. PROVIDED, HOWEVER, THAT IF ANY SUCH CLAIM, ACTION OR SUIT MAY BE BROUGHT ONLY IN A FEDERAL FORUM, IT SHALL BE BROUGHT AND CONDUCTED SOLELY AND EXCLUSIVELY WITHIN THE UNITED STATES DISTRICT COURT OF OREGON. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

25. **Hazard Communication**. In the course of rendering services under this Contract, Contractor shall notify OHSU prior to using products containing hazardous chemicals to which OHSU employees or members of the public may be exposed. Contractor shall provide OHSU with a Material Safety Data Sheet for any goods or services provided under this Contract that may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use. In addition, Contractor must label, tag, or otherwise mark such goods. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon request of OHSU or a member of the public, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

26. **Publicity**. Contractor shall not advertise, market, or use other promotional efforts that include any data, pictures, or other representations of OHSU, including any object which OHSU considers a service mark, trademark, or landmark of OHSU, without the prior written permission of an authorized representative of OHSU.

27. **Oregon Registration**. Contractor represents and warrants that it has complied with all applicable requirements of the Oregon Department of Revenue and the Secretary of State Corporation Division in order for it to provide services under this Contract.

28. **Contractor Staff and Use of OHSU Facilities**. If applicable, Contractor agrees that all Contractor staff performing any services at any OHSU facility shall comply with all applicable OHSU policies, including but not limited to, requirements regarding background, criminal history checks, and complete any training required by OHSU. Contractor and its employees or agents shall have the right to use only those facilities of OHSU that are necessary to perform the services under this Contract and shall have no right of access to any other facility of OHSU without prior approval of OHSU management. OHSU shall have no responsibility for the loss, theft, disappearance of, or damage to, equipment, tools, materials, supplies, and other personal property of Contractor or its employees, subcontractors or agents that may be stored, or located on OHSU premises.

29. **Parking and Transportation**. Unless otherwise stated herein, parking costs shall be borne by the Contractor and not reimbursed by OHSU. Contractor and its employees and agents shall adhere to OHSU policies related to parking on OHSU's campus and Contractor is liable for, and shall promptly pay, all parking costs, including any citations that may be issued.

30. **Non-Solicitation**. Contractor agrees not to induce or solicit any person who is employed by OHSU to leave his/her employment at OHSU or to accept any other employment other than OHSU during the term of this Contract plus six (6) months after the date of termination. Contractor further agrees not to assist any person or enterprise in hiring or otherwise engaging such person employed by OHSU during the term of this Contract plus six (6) months after the date of termination.

31. **Taxes.** OHSU will not be liable of 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.

32. **Notices and Representatives**. All notices, certificates, or communications contemplated by this Contract shall be delivered or mailed postage prepaid to the respective parties at their respective places of business as identified in the signature block of this Contract or to such other location as designated by notice given in accordance with this section 32. Any notice or other communication required or permitted to be given by either party to the other pursuant to this Contract shall be in writing and delivered by personal delivery or sent postage prepaid by registered or certified mail or by overnight courier, addressed to the other party at the address set forth below or such other address designated hereafter in writing by notice given in accordance with this section 32. Notice shall be considered given and effective (i) upon delivery if personally delivered, or (ii) if sent by registered or certified mail or overnight courier as described above, upon the date the return receipt or courier documentation shows the notice or communication was accepted, refused or returned undeliverable.

33. **Confidentiality**. 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." Contractor further agrees not to use OHSU Confidential Information except as may be necessary to perform the services identified in this Contract for OHSU. Upon expiration or termination of this Contract, or otherwise as requested by OHSU, Contractor will promptly deliver all OHSU Confidential Information to OHSU, in whatever form, that may be in Contractor's possession or control.

Contractor acknowledges that OHSU is a public corporation and is subject to the Oregon Public Records Law (ORS 192). Without limiting the foregoing, Contractor acknowledges that the pricing, discounts, other terms of the purchase and other terms and conditions of this Contract and any of information given by Contractor to OHSU is a public record subject to disclosure under the Oregon Public Records Law

34. **Attorney Fees.** In the event any litigation or dispute between OHSU and Contractor arises out of or in connection with this Contract, each party shall pay their own attorneys fees associated with any such proceeding.

35. **Representations and Warranties**. Contractor represents and warrants to OHSU that: (a) if a corporation, Contractor validly exists and is duly authorized to transact business in the state of Oregon; (b) Contractor has the power and authority to enter into and perform the Contract, (c) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, and (d) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the services in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession, and (e) at all times during the term of this Contract, Contractor shall be qualified, professionally competent, and duly licensed to perform the services contemplated herein.

36. **Conflicting Provisions**. This Contract and all of the exhibits, schedules, and documents attached hereto are intended to be read and construed in harmony with each other, but in the event any provisions in any attachment conflict with the provisions of this contract, then this Contract shall control, and such conflicting provision shall be deemed removed and replaced with the governing provision herein.

37. **False Claims Act.** If Contractor is providing services used in the furnishing of Medicaid Health Services to OHSU in this Contract, Contractor acknowledges that Contractor is aware of the requirements of the False Claims Act ("FCA") and OHSU's policies and procedures for detecting and preventing fraud, waste and abuse. In connection with the work Contractor is performing under this Contract, to the extent required by law, Contractor shall comply with and abide by the FCA and the OHSU policies and procedures related to the FCA.

38. **Office of Federal Contract Compliance Programs (OFCCP).** If applicable to this Contract, the requirements of Executive Orders 13496 and 11246 and 41 CFR part 60 are hereby incorporated by reference. Information about EO 11246 can be found at: http://www.dol.gov/compliance/guide/discrim.htm.

39. **HIPAA / Business Associate Requirements.** The parties agree that to the extent Contractor is functioning as a Business Associate of OHSU, a Covered Entity, the provisions of this section 39 shall apply. All capitalized terms used in this section 39 without definition have the meanings assigned to them in the Health Insurance Portability and Accountability Act and regulations promulgated pursuant thereto ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 ("ARRA"). For purposes of this section 39, Contractor shall be called "Business Associate" and OHSU shall be called "Covered Entity".

    a. Business Associate will comply with the HIPAA and HITECH Business Associate Provisions, as they are amended from time to time, and with the obligations of a Business Associate as proscribed by HIPAA and its regulations, as amended from time to time, and the HITECH Act and its regulations, as amended from time to time, commencing on the Applicable Effective Date of each such provision.

    b. Business Associate will use and disclose Individually Identifiable Health Information received from, or created or received by Business Associate on behalf of, Covered Entity in the course of its performance under this Contract ("PHI") only as required for such performance, as permitted herein or as required by law, and Business Associate will use all appropriate safeguards to prevent any use or disclosure of PHI other than as allowed in this Contract. All PHI (in whatever form) is the exclusive property of Covered Entity.

    c. Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents (collectively, "Business Associate Representatives") do not, use or disclose PHI in any manner constituting a violation of 45 CFR §160 and 164 ("Privacy Standards") if done by Covered Entity.

    d. Business Associate agrees that any request to Covered Entity for disclosure of PHI shall be limited to the minimum necessary to accomplish Business Associate's purpose under this Contract, in accordance with HITECH Act §13405(b).

    e. Business Associate shall ensure that each of the Business Associate Representatives having access to PHI, agree to comply with the restrictions and conditions of this section 39.

f. If Business Associate maintains Records for Covered Entity that are a part of Covered Entity's Designated Record Set ("DRS"), Business Associate will: (i) within ten (10) days of a request from Covered Entity for access to an individual's PHI contained in the DRS, provide copies of such PHI to Covered Entity; (ii) within ten (10) days of a request from Covered Entity for an amendment of an identified individual's PHI in a DRS, make available the PHI for amendment and incorporate such amendment into PHI maintained by Business Associate as required by the Privacy Standards; and (iii) within five (5) days of Business Associate's receipt from an individual of a request for access to PHI or for an amendment of PHI, forward that request to Covered Entity in writing. If Business Associate maintains an electronic health record containing PHI created for or obtained from Covered Entity that is part of Covered Entity's Designated Record Set, Business Associate shall provide Covered Entity a copy of such information in an electronic format, as provided for in HITECH Act §13405(e), when an individual has made such a request of the Covered Entity that would apply to PHI maintained by Business Associate.

g. Within ten (10) days of notice from Covered Entity that Covered Entity has received a request for an accounting of disclosures of an individual's PHI, Business Associate shall make available to Covered Entity such information in Business Associate's possession and as necessary for Covered Entity to make the accounting required by 45 CFR §164.528, including: (i) the date of the disclosure occurring after April 16, 2003, but no more than six (6) years prior to the date of the request, (ii) the name and if known the address of the entity or person who received the PHI, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose and basis of the disclosure, (collectively, "Disclosure Information"). If the request for an accounting of disclosures of PHI is delivered to Business Associate, then Business Associate shall within five (5) business days of receipt, forward such request to Covered Entity. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this subsection g. and shall maintain a record of Disclosure Information for a period of six (6) years from the date of each disclosure. Business Associate may elect to satisfy its obligations under this subsection g. by entering the information required by this subsection g. directly into an Covered Entity web-based accounting-of-disclosures tool ("Accounting of Disclosures System"). To so elect, Business Associate must contact the Covered Entity Privacy Officer at (503-494-8849), obtain access to the Accounting of Disclosures System and thereafter input into that system, all information required under this subsection g. in conformance with instructions provided by Covered Entity.

h. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Standards.

   i. Compliance with Security Regulations. With respect to any electronic PHI that Business Associate creates, receives, maintains, or transmits, Business Associate shall:
   ii. Implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI, as required by the Security Standards:
   iii. Ensure that any agent, including a subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it:
   iv. Report to Covered Entity any attempted or successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI, or interference with system operations in an Information System, of which it becomes aware;
   v. Authorize termination of the Existing Agreements, if Covered Entity determines that Business Associate has violated a material term of this Contract; and
   vi. Comply with provisions of the HIPAA Security Rule, defined in HITECH Act §13401(a).

i. Breach Notification Requirements. Business Associate shall report any Breach of Unsecured PHI (as those terms are defined in 45 C.F.R. §164.402, including all of its subsections) to Covered Entity promptly by telephone and following up in writing no later than twenty four (24) hours after the earlier of (i) the occurrence of such Breach or (ii) Business Associate's knowledge of such Breach. For purposes of this Agreement, Business Associate shall be deemed to have knowledge of such Breach at the time such Breach is known to Business Associate or any of Business Associate's employees, officers, directors, contractors or other agents (excepting an individual purposely committing such Breach) or, by exercising reasonable diligence, would have been known to Business Associate, or any of Business Associate's employees, officers, directors, contractors or other agents (excepting an individual purposely committing the Breach). Business Associate shall not contact any Individuals suspected to be effected by the Breach without prior written approval of OHSU.

   i. Such notice shall be sent to: Information, Security and Privacy Office, Oregon Health & Science University, 2525 SW 1st Ave, Suite 140, Portland, OR 97201-4753.
   ii. Within fifteen (15) calendar days, Business Associate shall provide the following to Covered Entity in writing, to the extent such information is known to the Business Associate acting with reasonable due diligence:

1. The identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;
2. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
3. A description of the types of Unsecured PHI that were involved in the Breach (e.g., full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information that was involved);
4. Any steps the individual should take to protect themselves from potential harm resulting from the Breach; and
5. A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against further Breaches.

iii. If any of the information in Section 39(j)(ii) is not available, Business Associate shall provide such information to Covered Entity as promptly thereafter as information becomes available.

iv. If a Law Enforcement Official (as that term is defined in 45 C.F.R. §164.103) states to the Business Associate that any notification required under 45 CFR §§164.404 to 164.410 would impede a criminal investigation or cause damage to national security, the Business Associate shall:

1. If the statement from the Law Enforcement Official is in writing and specified the time for which a delay is required, delay such notification, notice, or posting for the time period specified by the Law Enforcement Official; or

2. If the statement from the Law Enforcement Official is made orally, document the statement, including the identity of the Law Enforcement Official making the statement, and delay the notification, notice or posting temporarily and no longer than thirty (30) days from the date of the oral statement, unless a written statement is submitted during that time (in which case Section 39(j)(iii)) shall apply).

v. For any notification regarding the Breach of Unsecured PHI caused by Business Associate that Covered Entity is required to provide pursuant to 45 C.F.R. §§ 164.404 – 164.408, Business Associate shall reimburse Covered Entity for all costs associated with Covered Entity's obligation of notifying patients, the government, and the media of a breach where the PHI was maintained, used, or disclosed by the Business Associate when the breach occurred.

j. Business Associate shall comply with the following:

i. Requests for restrictions on use or disclosure to health plans for payment or health care operations purposes when the provider has been paid out of pocket in full consistent with HITECH Act §13405(a);

ii. The prohibition on receiving remuneration for certain communications that fall within the exceptions to Marketing (as defined in 45 C.F.R. §164.501) unless permitted by the Agreement, HIPAA, and HITECH Act §13406.

k. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an individual, unless:

i. Covered Entity obtained in accordance with 45 C.F.R. §164.508, a valid authorization from the individual that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual; or

ii. Any of the exceptions listed in HITECH Act §13405(d)(2) apply.

The parties agree any of the regulations promulgated by the Secretary pursuant to HITECH Act §13405(d)(3) shall automatically be incorporated into, and apply as of the Applicable Effective Date, to this section 39.

l. If Business Associate obtains or creates PHI pursuant to a written contract (or other written arrangement) described in 45 C.F.R. §164.502(e)(2) with Covered Entity, Business Associate may use and disclose such PHI only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 C.F.R. §164.501(e). The additional HIPAA requirements that relate to privacy and that are made applicable with respect to covered entities shall also be applicable to Business Associate; provide, however, that in applying 45 C.F.R. §164.504(e)(1)(ii) each reference to Business Associate, with respect to such contract, shall be treated as a reference to Covered Entity.

m. Covered Entity may terminate this contract upon ten (10) days written notice to Business Associate if Covered Entity determines, in its sole discretion that Business Associate has violated a material term of this section 39 and such breach is not cured within such ten (10) day period. Upon termination of this contract for any reason, Business Associate shall either return or destroy all PHI maintained by Business Associate in any form retaining no copies. If the return or destruction is not feasible, Business Associate shall extend the protections of this section 39 to such PHI and such PHI shall be used or disclosed solely for such purpose(s) that make the return or destruction of such PHI infeasible.

n. Notwithstanding any limitation on damages contained herein, Business Associate shall indemnify and hold Covered Entity, its 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 section 39 that is directly attributable to Business Associate. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this section 39 for any reason.

o. Business Associate shall be responsible for the full cost of all civil and criminal penalties assessed upon Business Associate or upon Covered Entity as a result of the failure of Business Associate, its officers, directors, employees, or agents to comply with this section 39 or any requirement imposed upon Business Associate 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.

p. Business Associate agrees to amend this Agreement as necessary to allow each party to comply with (i) the Privacy Standards, (ii) the Standards for Electronic Transactions (45 CFR parts 160 and 162) and (iii) the Security Standards, (collectively, the "Standards"), as they are amended from time to time by the Secretary. Specifically, Business Associate agrees that Title XIII of the American Recovery and Reinvestment Act of 2009 ("ARRA"), called the Health Information Technology for Economic and Clinical Health ("HITECH") Act, which codifies and expands on many of the requirements promulgated by the Department of Health & Humans Services pursuant to HIPAA, shall automatically apply to Business Associate and this Contract as applicable upon becoming effective without requiring an amendment to this Contract, notwithstanding any other provision requiring such amendment herein.

q. The terms and conditions of this section 39 shall supersede any conflicting or inconsistent terms in this Contract.

40. **Dispute Resolution:** OHSU and Contractor agree to first enter into negotiations to resolve any controversy, claim or dispute ("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 good faith negotiations are unsuccessful, then such dispute will be mediated by a mutually-acceptable mediator to be chosen by the parties within fifteen (15) business days after written notice by one of the parties demanding mediation. Neither party may unreasonably withhold consent to the selection of the mediator. The parties agree to share the cost of the mediation equally. Such mediation will take place in Portland, Oregon. If the dispute cannot be resolved by the parties through negotiation or mediation within forty-five (45) days of the date of the initial demand for mediation by one of the parties, then either party may seek resolution of the dispute as otherwise provided in this Contract and by law.

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF THE TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES.