

**OREGON HEALTH & SCIENCE UNIVERSITY
STANDARD PURCHASING TERMS AND CONDITIONS**

1. DEFINITIONS:

- 1.1. The term "Contract" means the entire written agreement between the parties, including but not limited to the Invitation to Bid or Request for Proposal and its specifications, terms and conditions; solicitation instructions; solicitation addenda and contract amendments, if any; and the purchase order or price agreement document.
- 1.2. "Contractor" means a person or organization with which the Oregon Health & Science University has contracted for the purchase of goods. The terms "Contractor" and "Seller" as used in the Uniform Commercial Code (ORS Chapter 72) are synonymous; "ORS" means the Oregon Revised Statutes.

2. 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.

3. STANDARD AND SPECIAL TERMS AND CONDITIONS. The terms and conditions printed on this page are standard to Oregon Health & Science University contracts for the purchase of goods. **OHSU ENTERS INTO THIS CONTRACT CONDITIONED UPON ITS TERMS AND CONDITIONS CONTROLLING THE TRANSACTION CONTEMPLATED BY THE PARTIES AND SUPERCEDING ANY AND ALL OTHER TERMS AND CONDITIONS THAT MAY BE ATTACHED TO THIS CONTRACT. BY ACCEPTING PAYMENT FROM OHSU, CONTRACTOR AGREES AND UNDERSTANDS THAT OHSU'S TERMS AND CONDITIONS CONTROL THE TRANSACTION AND SUPERCEDES ANY AND ALL OTHER TERMS AND CONDITIONS CONTRACTOR MAY PUT FORTH. There may also be special terms and conditions in an Invitation to Bid or Request for Proposal which apply only to those Contracts.**

4. DELIVERY: All deliveries shall be F.O.B. destination with all transportation and handling charges paid by Contractor, unless specified otherwise in the solicitation documents. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance by OHSU, at which time responsibility shall pass to OHSU except as to latent defects, fraud and Contractor's warranty obligations.

5. INSPECTIONS: Goods furnished under this Contract shall be subject to inspection and test by OHSU at times and places as determined by OHSU. If OHSU finds goods furnished to be incomplete or not in compliance with solicitation specifications, OHSU may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, whichever is equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by OHSU, OHSU may reject the goods and cancel the Contract in whole or in part. Nothing in this Section shall in any way affect or limit OHSU's rights as a buyer, including, without limitation, the rights and remedies related to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

6. EXPIRED PRODUCTS: For consignment inventory, legal title to products maintained in OHSU's stocking area and under OHSU's control shall remain with Provider until removed from OHSU's stocking area for use by OHSU. Legal title to a product will transfer to OHSU at the time the product inner package is opened. Expired product will not be considered as used by OHSU under this Agreement. If OHSU discovers expired product under its control, it will immediately pull and quarantine that product and contact a Provider Representative for replacement product at no cost to OHSU.

7. SAFETY AND HEALTH REQUIREMENTS: Goods and services provided under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Worker's Compensation Division.

8. 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.

9. EXPORT COMPLIANCE. Contractor represents and warrants that no information, goods or technology shared with OHSU pursuant to this Contract are controlled goods or technology subject to any of the following (collectively "Export Laws"): (a) Trade embargoes administered by the U.S. Treasury Department's Office of Foreign Assets Control and

codified at 31 C.F.R. Part 500 *et seq.*; (b) the Export Administration Regulations administered by the U.S. Commerce Department's Bureau of Industry and Security and codified at 15 C.F.R. Part 730 *et seq.*; or (c) the International Traffic in Arms Regulations administered by the U.S. State Department's Directorate of Defense Trade Controls and codified at 22 C.F.R. Part 120 *et seq.* If the Contractor will be providing any information, goods or technology subject to any Export Laws, it shall receive prior authorization from OHSU's Office of Export Controls **before delivery** and provide any information required by the OHSU Export Controls Officer. Notwithstanding any limitation on damages contained elsewhere in this Contract, Contractor shall indemnify and hold OHSU, 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 and including all civil and criminal penalties assessed against Contractor or OHSU) arising out of or related to a breach of this Section (Export Compliance).

10. **TAX COMPLIANCE CERTIFICATION:** Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), which to the best of Contractor's knowledge Contractor is not in violation of any of the tax laws described in ORS 305.380(4).
11. **PAYMENT:** Payment is normally made within thirty (30) days following the date the entire order is delivered and accepted or the date the invoice is received, whichever is later. Interest on any overdue payment may only be charged for non-payment after 45 days and is limited to two-thirds of one percent per month (8% APR) on the outstanding balance. Any payments by OHSU are subject to reduction by any applicable withholding required under law.
12. **PAYMENTS REQUIRED:** For all goods provided under this Contract, Contractor shall: (a) pay promptly, as due, all persons supplying labor or material; (b) not permit any lien or claim to be filed or prosecuted against OHSU; and (c) pay to the Department of Revenue all sums required to be withheld from employees pursuant to ORS 316.167.
13. **CASH DISCOUNT:** If OHSU is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date the invoice is received, whichever is later.
14. **PAYMENT OF CONTRACTOR CLAIMS:** If Contractor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods provided under this Contract, OHSU may pay such claim and charge the amount of the payment against funds due or to become due the Contractor under this Contract. The payment of a claim by OHSU pursuant to this Section 13 shall not relieve the Contractor or its surety, if any, from its obligation with respect to any unpaid claims
15. **FALSE CLAIMS ACT.** If Contractor is providing services used in the furnishing of federally funded 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 providing the Services Contractor shall fully comply with and abide by the FCA and the OHSU policies and procedures related to the FCA.
16. **BREACH OF CONTRACT:** Should Contractor breach any of the provisions of this Contract, OHSU reserves the right, in addition to other remedies, to cancel this Contract upon written notice to Contractor. Contractor shall be liable for any and all damages suffered by OHSU as the result of Contractor's breach of Contract, including but not limited to incidental and consequential damages, as provided in ORS 72.7110 to 72.7170.
17. **REPRESENTATIONS AND WARRANTIES:** Contractor represents and warrants to OHSU, on a continuing basis during the term, the following: (a) if a corporation, Contractor validly exists, is in good standing in the jurisdiction of incorporation and is duly authorized to transact business in the state of Oregon; (b) entering into this Contract and performance hereunder are fully authorized by all necessary corporate action (if applicable), requires no further authorization or consent, and does not violate the terms of any agreement with any third party; (c) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (d) Contractor is the legal and rightful owner of the products or that it is legally licensed and/or authorized to sell and/or distribute the products. All products delivered under this Contract will be free and clear of any and all encumbrances of any kind. Contractor will pass through to OHSU any applicable manufacturer warranties, to the extent transferrable.

Unless otherwise stated, all goods shall be new and the current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material, and manufacture and to be in compliance with solicitation specifications. All implied and express warranty provisions of the Uniform Commercial Code (ORS Chapter 72) are hereby incorporated into this Contract. All warranties shall run to OHSU. This Section shall survive termination, cancellation or expiration of this Contract.

18. **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).
19. **GOVERNING LAW/VENUE: THIS CONTRACT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON WITHOUT REGARD TO ITS RULES OF CONFLICT OF LAWS.** 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.
20. **DISPUTE RESOLUTION:** If any controversy, claim or dispute (“dispute”) arises 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. Each party shall pay their own attorneys fees associated with any dispute resolution proceeding,
21. **FEDERAL AND STATE PROGRAM ELIGIBILITY:** Contractor represents and warrants to OHSU that neither it nor any of its employees or affiliates (a) are excluded from participation or 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”) and (b) have arranged or contracted (by employment or otherwise) with any employee, contractor, or agent that Contractor or its affiliate knows or should know is Excluded to provide items or services hereunder. If Contractor or one of its employees or affiliates is Excluded during the Term, 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.
22. **NO REQUIREMENTS OR INDUCEMENTS TO REFER.** It is not a purpose of this Contract to induce the referral of patients. The parties acknowledge and agree that there is no requirement under this Contract or any other agreement or arrangement between OHSU and Contractor that either party refer any patient to the other party for products or services. The parties acknowledge and agree that no payment under this Contract is in return for the referral of patients or for the purchasing, leasing or ordering of any products or supplies. The terms and conditions of this Contract represent the result of arms-length negotiations between unaffiliated parties and no terms or payments have been determined in a manner which takes into account the volume or value or business generated or to be generated between the parties. The parties acknowledge and agree that the relationship and arrangement between OHSU and Contractor does not involve the counseling or promotion of a business arrangement or other activity that violates any federal, state or local law, including but not limited to state and federal anti-kickback laws and laws relating to physician self-referrals, and the activities to be performed under this Contract do not and will not exceed those that are reasonably necessary to accomplish the commercially reasonable business purposes and the legitimate educational/research purposes of this arrangement.
23. **ANTIKICKBACK DISCLAIMER** For purposes of this Contract, and unless otherwise specifically provided herein, Contractor acknowledges and agrees that (i) the Hospital Logistics Department at OHSU is the only authorized purchaser with which Contractor may contact and negotiate sales for its product(s) at OHSU ; (ii) OHSU employees not part of and not working under the Hospital Logistics Department are not agents of OHSU and do not have the authority to authorize or bind OHSU in any way for any purchase of Contractor's product(s). Contractor shall contact the Hospital Logistics Department at OHSU for any sale or purchase of its product(s), and Contractor acknowledges and agrees the foregoing is a material term of this contract and a condition precedent to OHSU's performance obligations under this Contract with respect to any sale or purchase that does not comply with the foregoing. 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 that fails to comply with the foregoing. If OHSU elects not to pay for new product that did not get prior approval from the Hospital Logistics Department, then OHSU agrees it shall not seek reimbursement from Medicare or Medicaid for that product.

24. **TERMINATION:** This Contract may be terminated by mutual consent of both parties or by OHSU at its discretion upon 30 days written notice. OHSU may cancel an order for goods, in whole or in part, at any time with written notice to Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under this Contract as directed by OHSU. If this Contract is so terminated, 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).
25. **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 such 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 reasonably 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.
26. **WORKER'S COMPENSATION:** 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).
27. **INDEMNITY:** Contractor shall indemnify, defend (with counsel acceptable to OHSU), and hold harmless OHSU and its Board of Directors, officers, employees, and agents from all claims, suits, and actions of any nature arising out of or related to the activities or omissions of Contractor or its subcontractors, officers, employees or agents acting under or in connection with this Contract.

If this Contract is for the purchase of software or licensed products or goods, Contractor shall hold harmless, indemnify and defend any third party claim(s) brought against OHSU relating to infringement of any trademark, copyright, patent, or trade secret or other intellectual property right by a product or good purchased under this Contract ("Product"), and to indemnify OHSU against all damages and costs assessed against OHSU under any such claim or action. In the event (a) a Product is found or believed by Contractor to infringe such a claim or (b) OHSU has been enjoined from using the Product pursuant to an injunction issued by a court of competent jurisdiction, Contractor may, at its option, (i) procure the right for OHSU to use the Product, (ii) replace or modify the Product to avoid infringement; provided, however, that the replacement or modified product performs substantially in compliance with the original specifications at the time of purchase for such product, or, if options (i) or (ii) are not commercially reasonable, then (iii) refund to OHSU the product purchase price upon the return of the original Product. Contractor shall have no obligation for any claim of infringement arising from: OHSU's use of the Product other than in accordance with the product specifications or applicable written Product instructions; use of the Product with products not manufactured or approved by Contractor; or use of the Product after Contractor has offered OHSU one of the options described herein. The foregoing states the entire liability of Contractor with respect to claims of infringement.

28. **INSURANCE:**

28.1. 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 \$2,000,000 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 \$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.

- 28.2. 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).
- 28.3. 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 (5) business days of the request. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.
- 28.4. 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.
29. **CONFIDENTIALITY:** Contractor acknowledges that OHSU is a public corporation and is subject to the Oregon Public Records Law (ORS 192). 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 not confidential and shall also be considered a public record subject to disclosure under the Oregon Public Records Law
30. **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>.
31. **PARKING AND TRANSPORTATION:** If any performance of this Contract shall occur on OHSU property, Contractor shall contact OHSU's Parking and Transportation Services Department to arrange for proper parking permits. Contractor and its agents, employees and approved subcontractors 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 parking permit fees, fines or any other parking related costs. Unless provided for herein, OHSU be responsible for any parking related costs.
32. **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 and its employees and agents shall have the right to use only those facilities and/or portions of the OHSU Network that are necessary to perform the Services and shall have no right of access to any other facility of OHSU or portions of the OHSU Network without prior approval of OHSU management or OHSU ITG, as applicable. If at an OHSU facility, 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. If accessing the OHSU Network via VPN access, OHSU shall have no responsibility relating to the delay, failure, interruption or corruption of any data or other information in connection with Contractor's use of OHSU's Network.
33. **TIME IS OF THE ESSENCE.** Time is of the essence in Contractor's performance of each and every obligation under this Contract. If no milestones are specified in this Contract, Contractor shall perform its obligations hereunder as if time is of the essence.
34. **HIPAA / Business Associate Requirements.** If Contractor's performance under this Agreement involves or requires the disclosure to or use by Contractor of OHSU's "Individually Identifiable Health Information" or "Electronic PHI" (as those terms are defined by the Health Insurance Portability and Accountability Act and regulations promulgated pursuant thereto ("HIPAA")), then the following provisions apply:
- 34.1. Contractor will use and disclose Individually Identifiable Health Information, Electronic PHI and PHI that has been de-identified as described in 45 CFR 164.514(a)-(b) received from, or created or received by Contractor on behalf of, OHSU in the course of its performance under this Agreement (collectively, "PHI") only as required for such performance or as required by law. Contractor will use all appropriate safeguards to prevent any use or disclosure of PHI other than as allowed in this Agreement. All PHI (in whatever form) is the exclusive property of OHSU.
- 34.2. Contractor shall not, and shall ensure that its directors, officers, employees, contractors, agents and subcontractors (collectively, "Contractor Representatives") do not, use or disclose PHI in any manner constituting a violation of 45 CFR §160 and 164 ("Privacy Standards") if done by OHSU.
- 34.3. Contractor agrees that any request to OHSU for disclosure of PHI shall be limited to the minimum necessary to accomplish Contractor's purpose under this Agreement. This provision shall automatically incorporate any

guidance the Secretary issues pursuant to HIPAA regarding what constitutes "minimum necessary."

- 34.4. Contractor shall immediately notify OHSU in writing of any use or disclosure of PHI other than as allowed by this Agreement, including braches of Unsecured PHI as required by 45 CFR 164.410. Contractor agrees to mitigate, to the extent practicable, any harmful effect of such use or disclosure of PHI by Contractor or any Contractor Representative in violation of the requirements of this Agreement.
- 34.5. Contractor agrees to require Contractor Representatives that create, receive, maintain or transmit PHI on behalf of Contractor to agree to the same restrictions, conditions and requirements that apply through these terms and conditions.
- 34.6. If Contractor maintains Records for OHSU that are a part of OHSU's Designated Record Set ("DRS"), Contractor will: (a) within 10 days of a request from OHSU for access to an individual's PHI contained in the DRS, provide copies of such PHI to OHSU; (b) within 10 days of a request from OHSU 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 Contractor as required by the Privacy Standards; and (c) within 5 days of Contractor's receipt from an individual of a request for access to PHI or for an amendment of PHI, forward that request to OHSU in writing.
- 34.7. Within 10 days of notice from OHSU that OHSU has received a request for an accounting of disclosures of an individual's PHI, Contractor shall make available to OHSU such information in Contractor's possession and as necessary for OHSU to make the accounting required by 45 CFR §164.528, including: (a) the date of the disclosure occurring after April 16, 2003, but no more than 6 years prior to the date of the request; (b) the name and if known the address of the entity or person who received the PHI; (c) a brief description of the PHI disclosed; and (d) 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 Contractor, then Contractor shall within 5 business days of receipt, forward such request to OHSU. Contractor hereby agrees to implement an appropriate record keeping process to enable it to comply with these requirements and shall maintain a record of Disclosure Information for a period of 6 years from the date of each disclosure. Contractor may elect to satisfy its obligations by entering the information required by this subparagraph directly into an OHSU web-based accounting-of-disclosures tool ("Accounting of Disclosures System"). To so elect, Contractor must contact the OHSU 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 subparagraph in conformance with instructions provided by OHSU.
- 34.8. Contractor shall comply with any limitations in OHSU's notice of privacy practices to the extent that such limitations may affect Contractor's use or disclosure of PHI. OHSU's notice of privacy practices can be found at: <http://www.ohsu.edu/xd/about/services/integrity/policies/upload/Notice-of-Privacy-Practices-English.pdf>.
- 34.9. Contractor shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary and OHSU for purposes of determining OHSU's compliance with the Privacy Standards.
- 34.10. With respect to any electronic PHI that Business Associate creates, receives, maintains, or transmits, Business Associate shall:
 - a) 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;
 - b) Ensure that any Contractor Representative to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it;
 - c) Promptly report to OHSU 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; and
 - d) Authorize termination of this Agreement, if OHSU determines that the Business Associate has violated a material term of this Agreement.
 - e) Capitalized terms used in this Paragraph shall have the meaning given them in the Security Standards.
- 34.11. OHSU may terminate this Agreement upon ten (10) days written notice to Contractor if OHSU determines, in its sole discretion that Contractor has violated a material term of these requirements and such breach is not cured within such ten (10) day period. Upon termination of this Agreement for any reason, Contractor shall either return or destroy all PHI maintained by Contractor in any form retaining no copies. If the return or destruction is not feasible, Contractor shall extend the aforementioned protections 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.
- 34.12. Notwithstanding any limitation on damages contained in this Agreement, Contractor shall indemnify and hold OHSU harmless from and against any and all liability and costs, including attorney's fees, arising out of or related to a breach of these requirements by Contractor, its agents or subcontractors.
- 34.13. Contractor agrees to amend this Agreement as necessary to allow each party to comply with (a) the Privacy Standards; (b) the Standards for Electronic Transactions (45 CFR parts 160 and 162); and (c) the Security

Standards, (collectively, the "Standards"), as they are amended from time to time by the Secretary.

- 34.14. Capitalized terms used in this paragraph without definition, have the meanings assigned to them in the Privacy Standards. The terms and conditions of this paragraph shall supersede any conflicting or inconsistent terms in the Agreement.
35. **ASSIGNMENT; SUBCONTRACTORS; SUCCESSORS IN INTEREST.** 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. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee or assignee shall be considered the agent of the Contractor. 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 12. Any approved subcontractor shall be considered the agent of Contractor and Contractor shall ensure any such subcontractor's compliance with any and all of the terms and conditions of this Contract. Contractor shall remain liable to OHSU under the Contract as if no such assignment, subcontract, or transfer has occurred. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
36. **THIRD PARTY BENEFICIARIES.** OHSU and Contractor are the only parties to this Contract and the only parties entitled to enforce its terms. Nothing in this Contract gives, or is intended to give, any benefit or right, directly or indirectly, to third persons unless such third persons are individually named herein and expressly described as intended beneficiaries of this Contract.
37. **PUBLICITY.** Neither Party will use the name, trade or service marks, or any other distinguishing feature of the other Party or any employee of the other Party in any press release, advertising, marketing, promotional or sales literature, in each case without the prior written consent of an authorized representative of the other Party.
38. **NOTICES AND REPRESENTATIVES.** All notices or other communications given hereunder shall be in writing, shall be signed by an authorized representative of the party sending such notice or other communication, and shall be delivered by hand, by overnight courier, by electronic mail or by facsimile with all delivery charges prepaid and addressed 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. 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, or (iii) if sent via electronic mail or facsimile, as of the date stamp of that notice or communication.
39. **DIVERSITY:** Contractor acknowledges that OHSU represents it: (i) is committed to diversity within OHSU and within the community, (ii) is committed to developing and supporting business relationships that encourage affirmative action and the participation of emerging small businesses and businesses owned by women and minorities that meet high quality standards by offering business opportunities available through OHSU contracts. From time to time during the Term, OHSU may request information from Contractor about its diversity related efforts and programs. If possible, when requested, Contractor shall provide such information to OHSU.
40. **RECYCLABLE PRODUCTS:** Contractor shall use recyclable products to the maximum extent economically feasible in the performance of this Contract. Contractor shall specify the minimum percentage of recycled product in the goods provided.
41. **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.
42. **SEVERABILITY; WAIVER:** If 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 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.

43. **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.
44. **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.
45. **MERGER.** THIS CONTRACT, INCLUDING ALL ATTACHMENTS REFERENCED HEREIN, WHICH ARE FULLY INCORPORATED BY THIS REFERENCE, 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 TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE SIGNED BY ALL PARTIES AND SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THE PARTIES, BY THE SIGNATURE BELOW OF THEIR AUTHORIZED REPRESENTATIVES, ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE CONTRACT AND THE PARTIES AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS AND NEITHER PARTY SHALL BE ACCORDED ANY ADVANTAGE OVER THE OTHER BY REASON OF BEING THE DRAFTER OF ANY OF THE LANGUAGE OF THIS CONTRACT. 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.

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SUPPLEMENTAL TERMS AND CONDITIONS FOR THE PURCHASE OF MEDICAL DEVICES

1. DEFINITIONS:
 - a. A "medical device" is an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is:
 - i. recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them,
 - ii. intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or
 - iii. intended to affect the structure or any function of the body of man or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its primary intended purposes.
2. OREGON ELECTRICAL REQUIREMENTS. All applicable equipment provided to OHSU must be listed by a Nationally Recognized Testing Laboratory (NRTL) or be inspected and approved by a testing laboratory approved by the State of Oregon Electrical and Elevator Board as meeting the requirements for electrical safety as required by Oregon Revised Statutes 479.510 through 479.855 and Oregon Administrative Rules. Upon request by OHSU, documentation of this listing will be provided with such equipment's quote and/or upon delivery.
3. SERVICE AND MAINTENANCE DOCUMENTS. Any and all documents available and/or required for service and maintenance of equipment provided to OHSU will be included with such equipment at delivery at no additional cost or requirement. Reference NFPA 99, 2005 edition, section 10.2.8.1. Electronic copies are preferred.
4. SPECIALIZED TRAINING REQUIRED. OHSU understands that additional or specialized training above and beyond normal safety and operational in-service training may be required for physicians, technical, or nursing staff. Unless the parties have agreed otherwise, this specialized training will be provided at no charge to OHSU either before or at the time of installation. Training must be complete before the equipment will be clinically accepted by OHSU. If there will be a fee for specialized training, Contractor will provide an itemized breakdown of all costs and expenses associated with the training program. The itemized breakdown should include any honorariums paid to physicians, cost of supplies provided, expenses and salaries of staff needed for the training program, cost of facilities, and any other anticipated costs. The itemized breakdown of costs must be provided as part of the final purchase order.
5. BIOMEDICAL ENGINEERING TRAINING. With this purchase, Contractor will provide comprehensive training on preventative maintenance, repair and troubleshooting of the equipment. Training for a minimum of two (2) individuals will be provided at no charge to OHSU. Contractor will provide manuals, schematics, diagnostic software and other necessary materials for all training participants. Upon installation of enhancements or upgrades, Contractor will provide additional training at no charge to OHSU.
6. RESPONSE TIME GUARANTEE. Due to the clinical nature of this product, response time to service problems is an important factor in our choice of product. Therefore, OHSU requires that the Contractor provide the following information:
 - a. Service phone number
 - b. Whether this is a national service dispatcher or local office.
 - c. Hours the number will be in service for Pacific Standard Time.
 - d. Average phone and on-site response time to OHSU.
 - e. Guaranteed phone and on-site response time to OHSU.
7. DIAGNOSTIC SOFTWARE. This condition applies only if the equipment is computer-based with disk or tape loading capabilities. The Contractor agrees that equipment purchased by OHSU for which a software license agreement is required for proprietary computer programs, the license will include diagnostic maintenance software as well as the routine operating software. This is to allow OHSU to verify actual equipment failure and components involved before service is performed. The capability to use diagnostic programs will reduce the number of unnecessary service calls due to operator error and protect OHSU's investment in cases where Contractor is no longer available to service the equipment.