

**PORTLAND STATE UNIVERSITY**  
**REQUEST FOR QUOTES #21910 – Medeco Locks for the OHSU/OUS**  
**Collaborative Life Sciences Building (CLSB)**

Portland State University (PSU) Purchasing Rules, Policies and Guidelines allows PSU departments to use an “Informal Procurement Process” for all purchases of supplies, equipment, and trade and professional services where the estimated cost exceeds \$25,000 but does not exceed \$100,000. The Informal Procurement Process is the solicitation of a minimum of three competitive quotes. Solicitation shall be accomplished by advertisement on the OUS Procurement Website making a request for vendors to provide a quote. A clearly documented record must be kept per the State of Oregon’s records retention rules, showing the vendors contacted, their responses including quote amounts, the basis for selection, evaluation results, and any other pertinent information to the solicitation.

The posting of solicitation on the OUS Procurement Website shall serve as the primary solicitation requirements document which in conjunction with the vendors’ written responses and proposals and/or quotes shall satisfy the “clearly documented record” requirement described above. Additionally, depending on the nature of the scope of work of the project and other specific project details, there may be other documented “pertinent information” required to ensure a complete and clearly documented record for the informal solicitation.

**THE INSTITUTIONS SHALL CONSIDER VENDOR QUOTES RECEIVED AS VALID FOR ONE HUNDRED TWENTY (120) DAYS.**

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**RFQ ISSUE DATE:**

March 25, 2013

**VENDOR RESPONSE DATE:**

To be considered for selection, quotations must arrive at Portland State University, Contracting and Procurement Services by 5 p.m. local time, **March 28, 2013**. Please email your response to the contact information listed below. No other responses will be accepted. The contact information for Contracting and Procurement Services is:

**Only email responses shall be accepted:**

Attention: Paul L. Thomas  
Email: [plthomas@pdx.edu](mailto:plthomas@pdx.edu)  
Portland State University  
Contracting and Procurement Services  
PO Box 751, Mailcode: PUR  
Portland, OR 97201-0751  
Contact phone number: 503-725-9841

Emailed quotes shall include the name, title and contact information of the primary contact who prepared the quote. Respondents selected may be requested to provide additional information, either formally or via interview process, to clarify their quotations.

***Emerging Small Businesses and Minority and Women Owned Businesses***

The Institutions are committed to increasing opportunities for Emerging Small Businesses and Minority and Women Owned Businesses, and the Institutions strongly encourage its contractors to use these businesses in providing services and materials for PSU contracts and projects.

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**BACKGROUND:**

Established in 1946, Portland State University (PSU) is located in downtown Portland, Oregon, and is part of the Oregon University System (OUS). PSU has more than 29,000 enrolled students, over 3,000 faculty and staff, and serves nearly 40,000 individuals in credit and non-credit classes each year. PSU serves the entire region, although its influence predominates in the six county Portland metropolitan area, the region from which 80% of PSU's enrollments originate.

Oregon Health and Science University (OHSU) is Oregon's only academic medical center and largest research institution. Approximately 2,500 medical, dental, nursing, science and engineering, allied health students are enrolled at OHSU, with another 1,000 people in training programs. OHSU is an Oregon statutory public corporation since 1995.

Founded in 1868, Oregon State University (OSU) is located in Corvallis, Oregon, and is part of the Oregon University System (OUS). As Oregon's largest public research university, with \$261.7 million in external funding in the 2011 fiscal year, Oregon State's impact reaches across the state and beyond. OSU welcomes a diverse student body of nearly 25,000 students from across Oregon. With 12 colleges, 15 Agricultural Experiment Stations, 35 county Extension offices, the Hatfield Marine Sciences Center in Newport and OSU-Cascades in Bend, Oregon State has a presence in every one of Oregon's 36 counties, with a statewide economic footprint of \$2.06 billion.

Additionally, this past fall, PSU, OSU, and OHSU (individually, an "Institution", and collectively, the "Institutions") broke ground on a unique project which will combine the resources of these nationally respected institutions to benefit all 96,000 square miles of the state. The Collaborative Life Sciences Building (the "CLSB") is jointly owned by OUS and OHSU and will place portions of OHSU, OSU and PSU under one roof. In doing so, the facility will expand partnerships between the universities, expand their teaching facilities, class sizes, research activities and create new employment opportunities.

The 500,000 square foot OHSU/OUS Collaborate Life Sciences Building and OHSU Skourtes Tower (collectively, the "Project") will include lecture halls, classrooms, labs, specialty research centers, OHSU School of Dentistry facilities, and offices for health professionals and undergraduate and graduate education involving students and instructors from multiple institutions.

For this procurement PSU will be acting on behalf of OUS. It is the Institutions intent to award directly from quotes received in response to this RFQ.

**EQUAL OPPORTUNITY:**

The Institutions promote equal opportunity for all individuals without regard to age, color, disability, marital status, national origin, race, religion or creed, sex or gender, sexual origin, or veteran status.

**COOPERATIVE PURCHASING:**

This procurement is a cooperative procurement by PSU and OHSU. In addition to PSU and OHSU, Oregon State University may utilize any ensuing contract for the purchase of Medeco Locks.

**PURCHASE ORDER:**

It is the Institutions intent that OHSU will enter into a purchase contract with the vendor awarded the contract pursuant to this RFQ, and OHSU will issue the purchase order for the Medeco lock equipment identified herein.

**HARDWARE NEEDED:**

The Institutions desire to purchase the Medeco items listed below:

<b>CLSB MEDECO ORDER</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total</b>
Medeco 31-0175-Z34-626 Mortise Housings	840	ea.		
Medeco 31-0175-Z01-626 Mortise Housings	25	ea.		
Medeco 31-0175-Z02-626 Mortise Housings	25	ea.		
Medeco 31-0375H-626-CP180041 Rim Housings	110	ea.		
Medeco 31T0100-626-DQ-S 6 Pin Sub-Assembled Interchangeable Core	1,100	ea.		
Medeco KY346600-DQ99 Small Bow Key Blanks	2,200	ea.		
Medeco KY346611-DQ99 Small Bow Control Key Blanks	20	ea.		
Keedex K-24L-26D Cylinder Guard Ring	1,000	ea.		
Medeco Staking Tool CP282430	1	ea.		
Medeco Holding block CP282451	1	ea.		
Medeco Mortise Housing Tool T7185A	1	ea.		
Medeco Pin Kit K-5006	1	ea.		
Medeco TP-F50-1K Biaxial Bottom Pin	6	pkg.		
Medeco TP-F50-2K Biaxial Bottom Pin	6	pkg.		
Medeco TP-F50-3K Biaxial Bottom Pin	7	pkg.		
Medeco TP-F50-4K Biaxial Bottom Pin	7	pkg.		
Medeco TP-F50-5K Biaxial Bottom Pin	4	pkg.		
Medeco TP-F50-1B Biaxial Bottom Pin	2	pkg.		
Medeco TP-F50-2B Biaxial Bottom Pin	2	pkg.		
Medeco TP-F50-3B Biaxial Bottom Pin	3	pkg.		
Medeco TP-F50-4B Biaxial Bottom Pin	2	pkg.		
Medeco TP-F50-5B Biaxial Bottom Pin	1	pkg.		
Medeco TP-F50-1S Biaxial Bottom Pin	4	pkg.		
Medeco TP-F50-2S Biaxial Bottom Pin	4	pkg.		
Medeco TP-F50-3S Biaxial Bottom Pin	6	pkg.		
Medeco TP-F50-4S Biaxial Bottom Pin	4	pkg.		
Medeco TP-F50-5S Biaxial Bottom Pin	2	pkg.		
Medeco TP-F50-1W Biaxial Master Wafer	17	pkg.		
Medeco TP-F50-2W Biaxial Master Wafer	17	pkg.		
Medeco TP-F50-3W Biaxial Master Wafer	16	pkg.		
Medeco TP-F50-4W Biaxial Master Wafer	5	pkg.		
Medeco TP-F50-5W Biaxial Master Wafer	5	pkg.		
Medeco TP-F10-2T Driver Pin	10	pkg.		
Medeco TP-F15-3T Driver Pin	20	pkg.		
Medeco TP-F15-5T Driver Pin	15	pkg.		
Medeco TP-F15-6T Driver Pin	15	pkg.		
Medeco CP-030001 Tumbler Springs	60	pkg.		
Medeco CP-170011 6 Pin Spring Cover	10	pkg.		
<b>TOTAL COST</b>				

**MINIMUM MANDATORY REQUIREMENTS:**

The following are the minimum **MANDATORY** requirements that must be met by vendors submitting a Quote Response. Compliance with these requirements must be clearly indicated and the extent of compliance described in detail in the vendors Quote Response. Failure to meet any or all of these requirements will likely result in rejection of vendors Quote Response by the Institutions.

1. All Medeco items shall be new and unused, and shall include a two year warranty. Warranty shall begin up substantial completion of the CLSB project which is estimated to occur December 31, 2013.
2. All pricing shall be F.O.B Destination with all, delivery, insurance, transportation and handling charges included.
3. Prices quoted shall include all costs for which the Institutions are responsible (e.g. shipping). Describe shipping and delivery costs, if any. If shipping costs apply, describe the carrier or transport system used by your company. Demonstrate how the Institutions can be insured the most economical, safe and dependable shipping method/company is being used.
4. Vendor shall ship this order complete.
5. Vendor's quote shall include a time frame for delivery.

**QUOTE AWARD:**

The basis of any quote award shall be lowest cost, provided the vendor has met all mandatory requirements as defined in this quote solicitation document. The Institutions reserve the right to not award this to any of the vendors if it is in the best interest of the Institutions to do so.

**PAYMENT/INVOICING:**

Payment of vendor invoices by the Institutions is normally made within 30-45 days of receipt of complete and accurate invoices. The vendor is responsible for ensuring that the invoice clearly references the associated Institutions Purchase Order and that all items on the invoice match those listed in the quote response. The Institutions will not be responsible for paying any invoices that are not complete and accurate. Vendor payment terms may not require payment in less than 30 days after receipt of invoice by the Institutions and any payment delinquency terms are subject to the provisions of ORS (Oregon Revised Statute) 293.462.

**CHANGES AFTER AWARD/ACCEPTANCE OF QUOTE:**

After award or acceptance of vendor quote, any changes in the Scope of Work or additional work otherwise unforeseen at the time of preparation of this solicitation document and subsequent award, shall be addressed in writing, and signed by authorized representatives of the Institutions.

**BEST AND FINAL OFFER:**

The Institutions reserve the right to select the vendor that, in the collective opinion of the evaluation team, offers the best overall benefit, convenience, functionality and service at the best-value cost to the Institutions. In the event that finalist quotes do vary significantly, The Institutions reserve the right to conduct discussions with the finalists, to accept best and final offers from those finalists, and to negotiate changes, if it's in the Institution's best interest to do so.

**PUBLIC RECORDS:**

This RFQ and one copy of each original quote received in response to it, together with copies of all documents pertaining to the Award of a Contract, shall be kept by PSU and shall be open to public inspection. If a quote contains any information that is considered a trade secret by the Contractor under ORS 192.501(2), each sheet of such information must be clearly marked with the following:

**"This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."**

The Oregon Public Records Law, ORS 192.501(2), exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies "unless the public interest requires disclosure in the particular instance." Therefore, non-disclosure of documents or any portion of a document submitted as part of a proposal may depend upon official or judicial determinations made pursuant to the Public Records Law. Pricing information cannot be labeled a trade secret and must be open to public inspection. Contractors are requested to mark only specific pages or text in their quote considered a "trade secret" under Public

Records Law. Quotes in which the entire document is marked or otherwise identified in its entirety as confidential or a "trade secret" will be rejected.

**OTHER TERMS AND CONDITIONS:**

*(The following terms and conditions will govern the agreement entered into by Contractor and the Institutions, resulting from this RFQ.)*

**CONTRACT TERMS AND CONDITIONS FOR COLLABORATIVE LIFE SCIENCES BUILDING (CLSB) AND SKOURTES TOWER COOPERATIVE PROCUREMENTS BY PORTLAND STATE UNIVERSITY (PSU) AND OREGON HEALTH SCIENCES UNIVERSITY (OHSU)**

1. DEFINITIONS:

- 1.1. The term "Contract" means the entire written agreement between the parties, which includes the [*insert title of contract* document], the Request for Qualifications and its specifications, riders, attachments, exhibits, terms and conditions, solicitation instructions, solicitation addenda and contract amendments, if any, and the Institutions purchase order, and the Contractors proposal.
- 1.2. "Contractor" means a person or organization with which the Institutions have contracted for the purchase of goods or services. The terms "Contractor" and "Seller" as used in the Uniform Commercial Code (ORS Chapter 72) are synonymous; "ORS" means the Oregon Revised Statutes.
- 1.3. The term "Institution" means Portland State University or Oregon Health Sciences University, individually, and the term "Institutions" means Portland State University and Oregon Health Sciences University, collectively.
- 1.4. The term "Portland State University" or "PSU" means the State Board of Higher Education acting by and through Portland State University.
- 1.5. The term "OHSU" means Oregon Health and Science University.
- 1.6. The term "OSU" means the State Board of Higher Education acting by and through Oregon State University.
- 1.7. The term "OUS" means the Oregon University System.
- 1.8. The term "Terms & Conditions" means the terms and conditions set forth in this CONTRACT TERMS AND CONDITIONS FOR COLLABORATIVE LIFE SCIENCES BUILDING (CLSB) AND SKOURTES TOWER COOPERATIVE PROCUREMENTS BY PORTLAND STATE UNIVERSITY (PSU) AND OREGON HEALTH SCIENCES UNIVERSITY (OHSU).

2. ACCESS TO RECORDS: Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this contract. The Institutions, and their duly authorized representatives, the Oregon Secretary of State, and State of Oregon or Federal Government and their duly authorized representatives shall have access to the books, documents, papers and records of Contractor which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts, and transcripts. Such books and records shall be maintained by Contractor for six (6) YEARS, OR SUCH LONGER PERIOD AS MAY BE AUTHORIZED BY LAW, FROM THE DATE OF CONTRACT EXPIRATION UNLESS A SHORTER PERIOD IS AUTHORIZED IN WRITING BY THE INSTITUTIONS. Contractor is responsible for any audit discrepancies involving deviation from the terms of this Contract and any commitments or expenditures in excess of amounts authority by the Institutions.

3. AMENDMENTS: The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval by authorized representatives of the Institutions.

4. ASSIGNMENT; 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 the authorized representatives of the Institutions. 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 shall remain liable to the Institutions under the Contract as if no such assignment or transfer has occurred. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to the Contractor and their respective successors and assigns.

5. **ATTORNEY FEES:** In the event any litigation or dispute between the Institutions and Contractor arises out of or in connection with this Contract, each party shall pay their own attorneys' fees associated with any such proceeding.
6. **BREACH OF CONTRACT:** Should Contractor breach any of the provisions of this Contract, the Institutions reserve 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 the Institutions 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.
7. **CASH DISCOUNT:** If the Institutions are 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.
8. **CAPTIONS:** The captions or headings in the Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
9. **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. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contractor shall comply with the Americans with Disabilities Act, 42 USC § 12100 et.seq. ORS 659.425 and all regulations and administrative rules established pursuant to those laws. 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).
10. **CONFIDENTIALITY:** Contractor acknowledges that the Institutions are public entities and are 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 the Institutions is not confidential and shall also be considered a public record subject to disclosure under the Oregon Public Records Law.
11. **CONFIDENTIAL INFORMATION:** Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this contract, be exposed to or acquire information that is confidential to the Institutions or the State of Oregon. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this contract shall be deemed confidential information of Institutions ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than in the performance of the contract, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor agrees that Contractor will not at any time during or after the term of this contract disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this contract, or at Institutions request, Contractor will turn

over to Institutions all documents, papers and other material in Contractor's possession which contain Confidential Information.

12. **CONFLICT OF INTEREST:** Contractor acknowledges that the Institutions use ethical business practices in their vendor selection and other contracting practices and that the Institutions do 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 and intent to establish or maintain a business relationship with the Institutions, provided any gift or sponsorship having more than minimal value: (i) to any person working on behalf of the Institutions involved in the negotiation of the Contract; (ii) to any Institutions' department(s) or unit procuring goods or services under this Contract; or (iii) to any person with authority on behalf of the Institutions to enter into the Contract.
13. **CONFLICTING PROVISIONS:** These Terms & Conditions and all of the exhibits, schedules, and documents attached to the Contract 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 these Terms & Conditions, then these Terms & Conditions shall control, and such conflicting provision shall be deemed removed and replaced with the governing provision herein.
14. **CONTRACTOR STAFF AND USE OF INSTITUTION FACILITIES AND/OR INSTITUTION NETWORK:** If applicable, Contractor agrees that all Contractor staff performing any services at an Institution's facility or using any Virtual Private Network (VPN) connection to gain access to an Institution's Network to provide services shall comply with all applicable policies of the respective Institution, including but not limited to, requirements regarding background, criminal history checks, and complete any training required by the Institution. Contractor and its employees or agents shall have the right to use only those facilities of the Institutions and/or portions of the Institutions' Networks that are necessary to perform the services under this Contract and shall have no right of access to any other facility of the Institutions or portions of the Institutions' Networks without prior approval of the respective Institution's management or Institution's Information Technology Group or Office, as applicable. If Contractor is performing services at an Institution's facility, such Institution 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 the Institution's premises. If accessing an Institution's Network via VPN access, the Institution 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 the Institution's Networks.
15. **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 the Institutions, at which time responsibility shall pass to the Institutions except as to latent defects, fraud and Contractor's warranty obligations.
16. **DUAL PAYMENT:** Contractor shall not be compensated for work performed under Contract from any other agency or entity other than the Institutions.
17. **DISPUTE RESOLUTION:** The Institutions 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.

18. **DIVERSITY:** Contractor acknowledges that the Institutions represent they: (i) are committed to diversity within the Institutions and within their community, (ii) are 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) encourage and support the development of minority business enterprises, women business enterprises, and emerging small businesses that meet high quality standards by offering business opportunities available through the Institutions' contracts.  
In order to show that the Institutions value and support diversity efforts in their contracting partners, the Institutions may request information from Contractor about its diversity related efforts and programs. If possible, when requested, Contractor shall provide such information to the Institutions.
19. **EXPIRED PRODUCTS:** For consignment inventory, legal title to products maintained in an Institution's stocking area and under an Institution's control shall remain with Contractor until removed from the Institution's stocking area for use by the Institution. Legal title to a product will transfer to the an Institution at the time the product inner package is opened. Expired product will not be considered as used by the Institutions under this Contract. If the Institutions discover expired product under their control, the Institutions will immediately pull and quarantine that product and contact a Contractor's Representative for replacement product at no cost to the Institutions.
20. **EXECUTION AND COUNTERPARTS:** This Contract may be executed in several counterparts that may be transmitted electronically, each of which shall be an original, all of which shall constitute one and the same instrument.
21. **EXPORT COMPLIANCE:** Contractor represents and warrants that no information, goods or technology shared with the Institutions, including the potential principal investigator, pursuant to this Contract shall be considered export controlled goods or technology subject to any of the following:
  - 21.1.** 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.*; or
  - 21.2.** 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
  - 21.3.** 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.*
22. **FALSE CLAIMS ACT:** If Contractor is providing services used in the furnishing of Medicaid health services to the Institutions in this Contract, Contractor acknowledges that Contractor is aware of the requirements of the False Claims Act ("FCA") and the Institutions' 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 Institutions' policies and procedures related to the FCA.
23. **FEDERAL AND STATE PROGRAM ELIGIBILITY:** Contractor represents and warrants to the Institutions 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 have known is Excluded to provide goods or services hereunder. In the event Contractor or one of its employees or affiliates is excluded during the term of this Contract, Contractor will notify the Institutions in writing within three (3) days after such event. Whether or not such notice is given to the Institutions, the Institutions may immediately terminate this Contract upon written notice to Contractor and the Institutions



shall have no responsibility to pay for any services from the date Contractor was excluded or ineligible from participation.

24. FERPA: As required by the 20 USC 1232(g) (Family Educational Rights and Privacy Act, "FERPA"), and ORS 326.565, the Contractor shall not disclose any information or records regarding students or their families that Contractor may learn or obtain in the course and scope of its performance of this Contract, except as otherwise allowed by this Contract. The parties acknowledge that Contractor is a "school official" for purposes of FERPA and University's Student Records Policy and recognize that FERPA imposes strict penalties for improper disclosure or re-disclosure of confidential student information, including but not limited to denial of access to personally identifiable information ("PII") from education records for at least five years (34 CFR 99.33(e)). Therefore, consistent with FERPA's requirements, PII obtained by Contractor in the performance of this Contract may not be re-disclosed to third parties without the written consent of the student's parent/guardian and must be used only for the purposes identified in this Contract.
25. FORCE MAJEURE: Neither Institutions 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. The Institutions may terminate this Contract upon written notice after determining such delay or default will reasonably prevent successful performance of this Contract.
26. 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 AN INSTITUTION OR THE INSTITUTIONS 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.
27. HAZARD COMMUNICATION: In the course of rendering services under this Contract, Contractor shall notify the Institutions prior to using products containing hazardous chemicals to which the Institutions employees or members of the public may be exposed. Contractor shall provide the Institutions 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 the Institutions or a member of the public, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
28. HIPAA / Business Associate Requirements: The parties agree that to the extent Contractor is functioning as a Business Associate of the Institutions, a Covered Entity, the provisions of this Section 37 shall apply. All capitalized terms used in this Section 37 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 37, Contractor shall be called "Business Associate" and the Institutions shall be called "Covered Entity".
  - 28.1. 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.
- 28.2. 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.
  - 28.3. 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.
  - 28.4. 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).
  - 28.5. 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 37.
  - 28.6. 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.
  - 28.7. 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 37.7 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 37.7. by entering the information required by this subsection 36.7 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 37.7 in conformance with instructions provided by Covered Entity.
  - 28.8. 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.
  - 28.9. Compliance with Security Regulations. With respect to any electronic PHI that Business Associate creates, receives, maintains, or transmits, Business Associate shall:

- 28.9.1. 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;
  - 28.9.2. Ensure that any agent, including a subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it;
  - 28.9.3. 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; and
  - 28.9.4. Authorize termination of the Existing Contracts, if Covered Entity determines that Business Associate has violated a material term of this Contract.
  - 28.9.5. Comply with provisions of the HIPAA Security Rule, defined in HITECH Act §13401(a);
- 28.10. 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 immediately after the first day on which such breach is known to Business Associate or Business Associate's employee, officer, or other agent (excepting the individual committing the breach) or, by exercising reasonable diligence, would have been known to the Business Associate, Business Associate's employee, officer, or other agent (excepting the individual committing the breach). Business Associate shall not contact any individuals suspected to be effected by the Breach without prior written approval of Covered Entity.
- 28.10.1. Such notice shall be sent to: Information, Security and Privacy Office, Oregon Health & Science University, 2525 SW 1<sup>st</sup> Ave, Suite 140, Portland, OR 97201-4753.
  - 28.10.2. 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:
    - 28.10.2.1. 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;
    - 28.10.2.2. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - 28.10.2.3. 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);
    - 28.10.2.4. Any steps the individual should take to protect themselves from potential harm resulting from the Breach; and
    - 28.10.2.5. A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against further Breaches.
  - 28.10.3. If any of the information in Section 37.10.2 is not available, Business Associate shall provide such information to Covered Entity as promptly thereafter as information becomes available.
  - 28.10.4. 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:
    - 28.10.4.1. 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
    - 28.10.4.2. 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 36.10.3) shall apply).

- 28.10.5. 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.
- 28.11. Business Associate shall comply with the following:
- 28.11.1. 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);
- 28.11.2. 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 Contract, HIPAA, and HITECH Act §13406.
- 28.12. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an individual, unless:
- 28.12.1. 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
- 28.12.2. Any of the exceptions listed in HITECH Act §13405(d) (2) apply.
- 28.12.3. 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 37.
- 28.13. 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.
- 28.14. 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 36 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 37 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.
- 28.15. 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 37 that is directly attributable to Business Associate. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Section 37 for any reason.
- 28.16. 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 37 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.
- 28.17. Business Associate agrees to amend this Contract 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.

28.18. The terms and conditions of this Section 37 shall supersede any conflicting or inconsistent terms in this Contract.

29. INDEMNITY: FOR OHSU: 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. 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.

FOR PSU: 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 Contractor, its subcontractors, agents, or employees. Contractor shall save, defend (at PSU's request and with legal counsel acceptable to PSU), indemnify, and hold harmless the Oregon University System, the State Board of Higher Education, PSU, and their officers, employees and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities or omissions of Contractor or its officers, employees, subcontractors, or agents acting under this Contract.

30. INDEPENDENT CONTRACTOR: The services to be rendered under this Contract are those of an independent contractor. Contractor is not to be considered an agent or employee of the Institutions for any purpose and neither Contractor or Contractor's agents or employees are entitled to any of the benefits that the Institutions provide for its employees. Contractor will be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Contract.
31. INSPECTIONS: Goods furnished under this Contract shall be subject to inspection and test by the Institutions at times and places as determined by the Institutions. If the Institutions find goods furnished to be incomplete or not in compliance with solicitation specifications, the Institutions 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 the Institutions, the Institutions may reject the goods and cancel the Contract in whole or in part. Nothing in this Section shall in any way affect or limit the Institutions 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.
32. INSURANCE:
- 32.1.** 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.

(d) Inland Marine or Motor Truck Cargo insurance with a minimum limit of not less than \$3,000,000 per occurrence.

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 insurance shall be maintained for a period of not less than two (2) years following the expiration or termination of this Contract. Oregon Health & Science University, Portland State University, the Oregon University System, the State Board of Higher Education, and their officers, agents and employees shall be listed as additional insureds on these insurance policies. All self-insured retentions or deductibles above \$25,000 must be disclosed and are subject to approval by the Institutions.

- 32.2. 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).
- 32.3. Before work under this Contract is commenced, Contractor shall furnish copies of certificates of insurance as evidence of insurance coverage required by this Contract to the Institutions. The certificate(s) will specify all of the parties who are additional insureds. Contractor shall provide the Institutions with copies of all policy endorsements/amendments confirming Oregon Health & Science University, Portland State University, the Oregon University System, the State Board of Higher Education, and their officers, agents and employees are additional insureds as required by this Contract. If requested, Contractor, or its insurer(s) shall provide complete policy copies to the Institutions 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.
- 32.4. 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 the Institutions.

33. LIQUIDATED DAMAGES: RESERVED.

34. 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 the Institutions 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 the Institutions 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.

35. NOTICES AND REPRESENTATIVES: All notices or other communications given hereunder shall be in writing, shall be signed by an officer 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 another location as

designated by notice given in accordance with this Section. Notice shall be considered given and effective (i) upon delivery if personally delivered, (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.

36. 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>.

37. PARKING AND TRANSPORTATION: If Contractor, its agents, employees, or approved subcontractors shall be performing this Contract on an Institution's property, Contractor shall contact such Institution's Parking and Transportation Services Department to arrange for proper parking permits and shall be responsible for all fees incurred, unless otherwise provided for in this Contract. Contractor and its agents, employees and approved subcontractors shall adhere to the Institutions' policies related to parking on the Institutions' campuses and Contractor is liable for, and shall promptly pay, all parking costs, including any parking permit fees, fines or any other parking related costs. In no event shall the Institutions be responsible for any parking related costs.

38. PAYMENTS REQUIRED: For all goods and services 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 the Institutions; and (c) pay to the Department of Revenue all sums required to be withheld from employees pursuant to ORS 316.167.

39. 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, or services if applicable, provided under this Contract, the Institutions 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 the Institutions pursuant to this section shall not relieve the Contractor or its surety, if any, from its obligation with respect to any unpaid claims.

40. 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 the Institutions are subject to reduction by any applicable withholding required under law.

41. PUBLICITY: Neither Party will use the name, image, trade or service marks, landmarks, monuments, likeness, logos or any other distinguishing feature of another Party or any employee of another Party in any press release, general publication, advertising, marketing, promotional or sales literature ("*Releases*"), in each case without the prior written consent of an authorized representative of the appropriate other Party.

42. 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.

43. REPRESENTATIONS AND WARRANTIES: Contractor represents and warrants to the Institutions, 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 the Institutions 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 the Institutions. This Section shall survive termination, cancellation or expiration of this Contract.

44. 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.
45. 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.
46. SUBCONTRACTORS: 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 the Institutions. No such written approval shall relieve Contractor of any obligations of this Contract and Contractor shall remain liable to the Institutions under the Contract as if no such subcontract has occurred. Contractor may not request the Institutions' approval of any subcontractor without first ensuring that such subcontractor is not Excluded from participation as set forth in Section 23. 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.
47. 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 the Institutions' rights 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 the Institutions' rights to indemnity under this Contract.
48. TAX COMPLIANCE CERTIFICATION: Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), 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). The tax laws described in ORS 305.380(4) are those imposed by ORS chapters 118, 314, 316, 317, 318, 320, 321, and 323, and sections 10 to 20, chapter 533, Oregon Laws 1981, as amended by chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620.
49. TERMINATION: This Contract may be terminated by mutual consent of both parties or by the Institutions at their discretion upon 60 days written notice. The Institutions may cancel an order for goods or services, 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 the Institutions. If this Contract is so terminated, Contractor shall be paid in accordance with the terms of the Contract for goods and services 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).



50. **THIRD PARTY BENEFICIARIES:** The Institutions 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.
51. **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.
52. **WAIVER:** The failure of the Institutions to enforce any provision of this Contract shall not constitute a waiver by the Institutions of that or any other provision.
53. **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).
54. **PREVAILING WAGE (BOLI):** Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as are incorporated by reference herein and are available at [http://www.oregon.gov/BOLI/WHD/PWR!pwr book.shtml](http://www.oregon.gov/BOLI/WHD/PWR!pwr%20book.shtml). Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.
55. **PAYROLL CERTIFICATION AND FEE REQUIREMENTS:** In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Institutions designated representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement, and, that to the Contractor's or Subcontractor's best knowledge and belief, the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

Pursuant to ORS 279C.845(7), the Institutions shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by this section #55. The Institutions shall pay to the Contractor the amount retained under this section within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Institutions the certified statements required by this section #55. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor

files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this section.

In accordance with statutory requirements and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by the Institutions to the Commissioner.

56. PROMPT PAYMENT AND CONTRACT CONDITIONS: As a condition to performance hereunder, the Contractor shall:

- (i) make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract; and,
- (ii) pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract; and,
- (iii) not permit any lien or claim to be filed or prosecuted against the Institutions on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Institutions, or assign any sums due by Institutions, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Institutions; and,
- (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167; and,
- (v) as a condition to Institutions performance hereunder, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor of a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the Institutions may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims; and,
- (vi) Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by the public contracting agency under such contract; and,
- (vii) all employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

**OHSU ADDITIONAL TERMS AND CONDITIONS: THE FOLLOWING TERMS AND CONDITIONS AND SUPPLEMENTAL TERMS AND CONDITIONS FOR THE PURCHASE OF MEDICAL DEVICES ARE APPLICABLE TO OHSU ONLY:**

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.

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## **SUPPLEMENTAL TERMS AND CONDITIONS FOR THE PURCHASE OF MEDICAL DEVICES**

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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.

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.

**END OF RFQ #21910**