

ADDENDUM TO AGREEMENT

This Addendum to Agreement (“Addendum”) is made and entered into by and between Texas Tech University Health Sciences Center, a public institution of higher education in the state of Texas (“TTUHSC”) and _____, a _____ (“Contractor”). This Addendum modifies and is incorporated by reference into the agreement to which it is attached entitled “_____” with effective date of _____ (TTUHSC # _____) between TTUHSC and Contractor (“Agreement”). Both TTUHSC and Contractor are also referred to herein as “Party” or, collectively “Parties.”

- 1. Representations and Warranties by Contractor.** If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 2. Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code* (“Chapter 171”), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 3. Payments.** So long as Contractor has provided TTUHSC with its current and accurate Federal Tax Identification Number in writing and has otherwise complied with the terms of the Agreement, TTUHSC will pay Contractor for goods and services in accordance with Chapter 2251, *Texas Government Code*. TTUHSC, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (“TAC”) Section 3.322.
- 4. Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 5. Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 6. Notices:** Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement to TTUHSC will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

John Haynes
Managing Director of Purchasing
3601 4th Street, STOP 9021
TTSWMC, Suite 200D
Lubbock, Texas 79430-9021
Fax: 806-743-7850
John.g.haynes@ttuhsc.edu

or such other person or address as may be given in writing by TTUHSC to Contractor.

Notwithstanding any other requirements for notices given by a party under the Agreement, if Contractor intends to deliver written notice to TTUHSC pursuant to Section 2251.054, *Texas Government Code*, then Contractor will send that notice to TTUHSC as follows:

John Haynes
Managing Director of Purchasing
3601 4th Street, STOP 9021
TTSWMC, Suite 200D
Lubbock, Texas 79430-9021
Fax: 806-743-7841
John.g.haynes@ttuhsc.edu

7. **Venue; Governing Law.** This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Lubbock County, Texas, will be the proper place of venue for suit on or in respect to this Agreement.
8. **Contract Dispute Resolution.** Contractor shall use Texas Government Code, Chapter 2260's dispute resolution process to attempt to resolve any claim for breach of contract arising under the Agreement that is not resolved in the ordinary course of business. Chapter 2260 requires Contractor to initiate the process by providing written notice of a claim and negotiating with TTUHSC, conditions precedent to the contested case process. Governed by rules adopted by the Texas Attorney General's Office, the contested case process is Contractor's sole and exclusive method to seek a remedy for breach, unless, after considering the Administrative Law Judge's report, the Legislature gives consent for Contractor to sue under Chapter 107 of the Civil Practices and Remedies Code. An event or claim for breach of contract is not grounds for Contractor to suspend performance under the Agreement.

TTUHSC DOES NOT WAIVE SOVEREIGN IMMUNITY BY ITS EXECUTION OF OR BY ANY CONDUCT OF ITS REPRESENTATIVES UNDER THE AGREEMENT, AND THE DISPUTE RESOLUTION PROCESS DOES NOT AFFECT TTUHSC'S RIGHT TO ASSERT ALL CLAIMS AND DEFENSES IN A LAWSUIT.

9. **Entire Agreement; Modifications.** The Agreement, as modified by this Addendum, supersedes all prior agreements, written or oral, between Contractor and TTUHSC and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except in writing signed by TTUHSC and Contractor.
10. **Loss of Funding.** Performance by TTUHSC under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of the Texas Tech University System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then TTUHSC will issue written notice to Contractor and TTUHSC may terminate the Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TTUHSC.
11. **State Auditor's Office.** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Texas Education Code. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors. In addition, at any time during the term of the Agreement and for a period of four (4) years thereafter, the State of Texas, Texas Tech University System, TTUHSC and/or other federal, state and local agencies which may have jurisdiction over this Agreement, at reasonable times and at its expense reserves the right to audit Contractor's records and books that relate only to this Agreement. In the event such an audit by TTUHSC reveals any errors/overpayments by TTUHSC, Contractor shall refund TTUHSC the full amount of such overpayments within thirty (30) days of such audit

findings, or TTUHSC, at its option, reserves the right to deduct such amounts owing TTUHSC from any payments due Contractor. If needed for audit, original or independently certified copies of off-site records will be provided to auditors at Contractor's expense within two (2) weeks of written request. This Section shall survive termination of this Agreement.

- 12. Ethics Matters; No Financial Interest.** TTUHSC is an entity subject to the Deficit Reduction Act of 2005 and is required to establish and disseminate policies to be adopted by its Contractors and agents. Accordingly, Contractor agrees that it will comply with federal, state or local laws or regulations applicable to Contractor's performance under the Agreement. Contractor further agrees that it will comply with applicable TTUHSC Operating Policies and Procedures located at <http://www.ttuhs.edu/HSC/OP>, including, but not limited to HSC OP 52.06, Standards of Conduct and Ethics Guide, HSC OP 52.03, Compliance Hotline, and HSC OP 52.04, Reporting Violations and Non-Retaliation Policy, as well as all relevant published TTUHSC compliance programs, which are available on its website: <http://www.ttuhs.edu/compliance>. If Contractor performs coding/billing services or provides health care items or services on behalf of TTUHSC, upon request from TTUHSC, Contractor agrees to participate in TTUHSC's billing compliance and HIPAA privacy training sessions.
- 13. HIPAA Compliance.** It is the intent of the Parties to comply with all provisions of the Health Insurance Portability and Accountability Act of 1996, now codified at Title XI, Part C of the Social Security Act and as it may be amended and all regulations promulgated thereunder ("HIPAA"), as these may change from time to time. Contractor shall not, and shall require that its employees and agents, shall not, disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by TTUHSC in writing, any individually identifiable patient or medical record information regarding TTUHSC patients, and the Contractor shall comply, and shall ensure that each of its employees and agents providing Services under this Agreement complies, with all federal and state laws and regulations, and all HIPAA rules, regulations and policies of TTUHSC regarding the confidentiality of such information. If required, Contractor agrees to execute TTUHSC's business associate agreement.
- 14. Use of Name.** Neither Party to this Agreement shall use the name or indicia of the other Party, nor of any of a Party's employees, in any manner of publicity, advertising, or news releases without prior written approval of the other Party.
- 15. Independent Contractor.** Nothing in the Agreement is intended nor shall be construed to create an employer/employee relationship between the contracting Parties. The sole interest and responsibility of the Parties is that the services covered by the Agreement shall be performed and rendered in a competent, efficient, and satisfactory manner.
- 16. Insurance.** The TTUHSC School of Medicine Medical Self-Insurance Plan for medical liability provides coverage to its employed physicians in accordance with the terms of the Plan. TTUHSC also maintains workers compensation insurance in accordance with Texas law. TTUHSC state employees are subject to Texas Civil Practice and Remedies Code, Chapter 104, State Liability for Conduct of Public Servants, under which state employees acting and the course and scope of their employment are entitled to protection from the state with limits as set forth in §104.003. Notwithstanding anything in the Agreement to the contrary, TTUHSC shall not be required to purchase or maintain any additional insurance required by the Agreement.
- 17. Limitations.** THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF TTUHSC (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON TTUHSC'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS OF THE

AGREEMENT RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON TTUHSC EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

18. Addendum Controlling. Notwithstanding anything in the Agreement to the contrary, in the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

Contractor:

Texas Tech University Health Sciences Center:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____