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**Contract for Professional Services – CPS**

**(Fairview)**

***THIS CONTRACT FOR PROFESSIONAL SERVICES AGREEMENT*** (“Agreement”) is entered into by and between Regents of the University of Minnesota, a Minnesota constitutional corporation, through its       (“University”), and Fairview Health Services (“Fairview”).

University and Fairview agree as follows:

**1. Term of Agreement.** The term of this Agreement shall commence when signed by both parties until terminated as set out in Section 4.8, or Fairview has completed performance of the Scope of Work and all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first. All provisions of this Agreement which, by their sense and context, are intended to survive the completion, expiration or termination of this Agreement, will survive.

**2. Scope of Work.** Fairview shall perform all of the services and/or provide all of the goods set forth on Exhibit A (“Scope of Work”) in accordance with the milestones or schedule set forth in Exhibit A.

**3. Consideration and Terms of Payment.**

3.1 Total Obligation. University’s total obligation to Fairview under this Agreement, including compensation for goods, services, and reimbursable expenses, shall not exceed the amount set out on the cover sheet without the prior written approval of University.

3.2 Frequency of Invoicing and Terms of Payment. Fairview shall submit invoices monthly. University will pay Fairview’s invoices within thirty (30) days of receipt. For any disputed amount, University may withhold payment to the extent goods or services do not conform to this Agreement and the parties will work together in good faith to resolve such dispute.

**4. General Terms and Conditions.** The terms and conditions of this Agreement shall govern and take precedence over any different or additional terms and conditions which either party may have included in documents attached to or accompanying this Agreement. Handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties. If University has been notified that goods or services provided hereunder are being procured with federal funds, and Fairview agrees to provide goods or services procured with federal funds, University and Fairview will mutually agree in writing on which federal requirements shall be incorporated into this Agreement and Fairview shall adhere to such additional requirements.

4.1 Choice of Law, Forum Selection, Entire Agreement, and Amendment. This Agreement shall be construed under Minnesota law (without regard for choice of law considerations). This Agreement constitutes the entire agreement and understanding of the parties regarding the Scope of Work, and replaces any prior or contemporaneous agreement, whether written or oral. Neither party shall be bound by any amendment to this Agreement unless such amendment has been signed by authorized representatives of each party.

4.2 Warranty. Fairview warrants that its services and goods (if any) (i) will be consistent with professional standards and quality (ii) are free from defects in material and workmanship; (iii) comply with the warranties and representations expressed by Fairview in any written, correspondence, response to University’s RFP or RFI, or other document provided to University; (iv) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (v) are not restricted in any way by patents, copyrights, trade secrets, or other rights of third parties. If any warranty is breached, Fairview will cure the breach at Fairview’s sole expense, and will be liable for all direct damages suffered by University and any other persons, and to defend, indemnify, and hold harmless University and its regents, faculty members, students, employees, and agents from any claim asserted by any person to the extent proximately caused by such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by University. FAIRVIEW MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.2.1 Fairview represents that it is not debarred or suspended from doing business with the federal government. Fairview shall notify University if it becomes debarred or suspended during the term of this Agreement. University may immediately terminate this Agreement in the event of such termination or suspension and Fairview shall be responsible for any costs incurred by University in connection therewith.

4.3 Inspections and Improper Delivery. University shall have a reasonable time after receipt to inspect and test any goods or services provided under this Agreement. Goods or services rejected or supplies in excess of quantities ordered may be returned to Fairview at Fairview’s expense. Failure by University to inspect and test the goods or services shall not relieve Fairview of its obligations hereunder. Any acceptance by University shall not be deemed a waiver or settlement of any defect or nonconformity.

4.4 Assignment. Neither party may assign any part of this Agreement without prior written consent of the other.

4.5 Taxes. University is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70 Subd 2(a). Fairview shall not charge University for such sales and use taxes.

4.6 Risk of Loss. With respect to any goods provided under this Agreement, risk of loss shall pass to University upon receipt and acceptance, pursuant to Section 4.3, at the destination specified by University. Fairview assumes full responsibility for packing, crating, marking, transporting and liability for loss or damage in transit, notwithstanding any agreement by University to pay freight, express, or other transportation charges.

4.7 Use of Name or Logo. Neither party shall use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the other or the name of any representative of the other in any sales promotion work or advertising, or any form of publicity, without the written permission of the other in each instance. In the case of University, such permission must be from University’s Office of University Relations.

4.8 Termination. Either party may terminate this Agreement in whole or in part for its sole Convenience upon thirty (30) days notice to the other party. Upon notice of termination by University, Fairview shall immediately stop all work and shipment of goods under this Agreement and cause its suppliers and subcontractors to cease work for this Agreement. In the event of such termination, Fairview shall be entitled to payment, calculated on a pro rata or other equitable basis, for conforming goods or services. Fairview shall not be paid for work performed or costs incurred which reasonably could have been avoided.

4.8.1 Either party may terminate this Agreement in whole or in part for Cause upon thirty (30) days written notice if the other party fails to comply with any material term or condition of this Agreement, becomes insolvent or files for bankruptcy protection, and does not cure that breach during that thirty (30) day period.

4.9 Relationship. EACH PARTY IS AN INDEPENDENT CONTRACTOR, NOT AN EMPLOYEE, PARTNER, OR JOINT VENTURER OF THE OTHER. NEITHER PARTY SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE OTHER. NEITHER PARTY SHALL HAVE AUTHORITY, EXPRESS OR IMPLIED, TO BIND THE OTHER TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. EACH PARTY SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF ITS EMPLOYEES, AND AGENTS.

4.10 Non-Waiver. No waiver by either party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

4.11 Audit and Retention of Books and Records. University may inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Fairview, its agents, and subcontractors to verify Fairview’s performance and all expenses submitted pursuant to this Agreement. Fairview shall make such items available for inspection during normal business hours at Fairview’s place of business. All such items shall be retained by Fairview during the term of this Agreement and for a period of three (3) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Agreement shall be retained by Fairview, its agents and subcontractors until the claim has been resolved.

4.12 Changes. University may at any time by a written notice change the drawings, designs, specifications, materials, packaging, and the time and place of delivery and/or completion of the goods and services to be provided under this Agreement. Promptly upon receipt of the details of any such change, Fairview shall either advise that the change will not affect its costs, or furnish: (i) a breakdown of estimated cost and changes in the price, and (ii) a statement of any necessary changes in the time of completion. Fairview’s failure to advise University in writing within ten (10) days of the effect of any change shall constitute Fairview’s acceptance of the change without increase in the amount to be paid by University or the time of completion or without change to other terms and conditions of this contract.

4.13 Confidential Information. Each party agrees that any information it receives during the course of its performance, which concerns the personal, financial, or other affairs of the other, its regents, directors, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13 and the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as it may be amended from time to time.

4.14 Ownership of Works and Intellectual Property Rights. The term “Works” includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and discoveries, and works of any similar nature (whether or not eligible for copyright, trademark, patent or other proprietary rights), which are to be prepared for University under this Agreement. Ownership of the Works and all copyrights, trademarks, patents and other proprietary rights in the Works shall be owned exclusively by University. Fairview agrees that all copyrightable Works shall be considered a “work made for hire” and that University is the author of and owns all rights in and to the Works, and agrees that if the Works may not be considered a work made for hire under 17 U.S.C., Sections 101 and 201(b), Fairview shall without further compensation, assign all rights Fairview may have in the Works to University. Fairview waives any and all statutory moral rights in the Works which Fairview may have arising under 17 U.S.C. 1006(a), as well as any rights arising under any other federal, state, or foreign law that conveys any other type of right. Fairview shall, without further compensation, disclose information to University and execute such documents as may be reasonably necessary to assist University in securing and enforcing rights in the Works.

4.15 Insurance. At all times during its performance under this Agreement, Fairview shall obtain and keep in force comprehensive general and professional liability insurance, including coverage for death, bodily or personal injury, property damage, including liability and automobile coverages, with limits of not less than $1,000,000 each claim and $3,000,000 each occurrence.

4.16 Responsibility. Subject to applicable law, including the Minnesota Tort Claims Act, each party will be responsible for all liability, injuries, claims, damages, or loss to the extent caused by the party’s negligent acts or omissions, or breach of warranty. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT.

4.17 Anti-Kickback Enforcement Act of 1986. This Agreement is subject to the provision of the Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 U.S.C. 51-58). By accepting this Agreement, Fairview: (i) certifies that it has not paid kickbacks directly or indirectly to any University employee for the purpose of obtaining this or any other University Agreement; (ii) agrees to cooperate fully with any investigation involving a possible violation of the Act; and (iii) agrees to report any suspected violations of the Act to University’s Director of Audits at (612) 625-1368. Fairview certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation of Minnesota Statute, Section 15.43.

4.18 Affirmative Action, Equal Employment Opportunity, and Targeted Group Business. Each party is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices in their employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Each party will (i) maintain non-segregated facilities for their employees and not allow their employees to perform services at any segregated facilities under its control; (ii) develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor; (iii) comply with (a) Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor (41 CFR Chapter 60) in promoting Equal Employment Opportunities; (b) Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations of the Secretary of Labor (41 CFR Part 60-250) in promoting employment opportunities for disabled and Vietnam veterans; (c) Section 503 of the Rehabilitation Act of 1973, Public Laws 93-112 and 93-516, Executive Order 11758 and the regulations of the Secretary of Labor (41 CFR Part 60-47 1) in promoting affirmative action in Employment of the Handicapped; (d) Public Law 95-507 in promoting the policy that small business concerns owned and controlled by socially and economically disadvantaged shall have maximum practicable opportunity to participate in University’s Bidding process; and (e) Minnesota Statutes, Chapter 363 in promoting the equal rights and non-discrimination of persons based on race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status or sexual orientation. If the price is in excess of $10,000, **University and Fairview shall abide by the requirements of 41CFR 60-741.5(a), which prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.** If the price is in excess of $100,000**, University and Fairview shall abide by the requirements of 41 CFR 60-300.5(a), which prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

4.19 Rights of the Federal Government to Inventions Made Under a Contract or Agreement. To the extent this Agreement involves the performance of experimental, developmental, or research work, the rights of the Federal Government and University to any resulting inventions shall be determined in accordance with 37 CFR part 401, “Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

4.20 Notices/Administration. All notices that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to University: University of Minnesota

Purchasing Services

Attn: Director

Room 277 West Bank Office Building

1300 South Second Street

Minneapolis, MN 55454

With a copy to: University of Minnesota

Office of the General Counsel

Attn: Transactional Law Services Group

360 McNamara Alumni Center

200 Oak Street SE

Minneapolis, MN 55455-2006

Facsimile No.: (612) 626-9624

E-mail: [ogcweb@umn.edu](mailto:ogcweb@umn.edu)

If to Fairview: Fairview Health Services

Research Administration

Attn: Research Regulatory Affairs Officer

2344 Energy Park Drive

St. Paul, MN 55108

4.21 University Contract Number. Fairview will place University Contract Number indicated at the top of this document on any packages, invoices, packing slips, notices and correspondence related to this Agreement.

4.22 Return of Data. Within fifteen (15) days of the completion or earlier termination of this Agreement, or upon earlier request of University, Fairview shall return all documents, data and other information provided by University in connection with this Agreement. Upon University’s request, Fairview shall destroy all copies of University-provided data, documents, or information in Fairview’s possession or control, and provide University with certification of such destruction.

4.23 Fund Availability; Federal Funds Contingency. Financial obligations of University payable after the current project period are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Agreement is funded in whole or in part with sponsored funds, University’s payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof. Notwithstanding anything to the contrary in the foregoing, in the event that Fairview has performed services or provided goods prior to being notified that University did not have, or no longer has, federal funds available for such services or goods, Fairview shall be entitled to payment, calculated on a pro rata or other equitable basis, for conforming goods or services. Fairview shall not be paid for work performed or costs incurred which reasonably could have been avoided.

4.24 Severability. If any provision of this Agreement shall be invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.

4.25 Survivability. The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

4.26 Delegation of Authority. This Agreement must be signed on behalf of University by a person with authorized authority pursuant to the [President’s Delegation of Authority Program.](http://www.compliance.umn.edu/delegationSearchForm.asp)

**IN WITNESS WHEREOF**, the parties have entered into this Agreement as of the date specified above.

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| **Regents of the University of Minnesota**  By:  Name:  Title:  Date: | **Fairview Health Services**  By:  Name:  Title:  Date: |

[SIGNATURE PAGE TO CONTRACT FOR GOODS OR SERVICES BY AND BETWEEN UNIVERSITY AND FAIRVIEW]

**EXHIBIT A**

**SCOPE OF WORK**

**(Include Milestones and Payment Terms and/or Schedule)**

1. The goods and/or services to be provided include [select all that apply]:

Labor

Technical Process

Patient Care Services

Supplies and Materials

2. Provide a description of the goods and/or services: