

3343

ADVENTIST HEALTH PORTLAND

AUDIOLOGY TESTING SERVICES AGREEMENT

This AUDIOLOGY TESTING SERVICES AGREEMENT (this "Agreement"), is entered into effective as of the Effective Date set forth in Section (C) below, by and between PORTLAND ADVENTIST MEDICAL CENTER dba Adventist Health Portland ("AH Portland"), and the entity identified below in Section (A) (each individually, a "Party" or, collectively, the "Parties"). This Agreement includes this cover sheet, the attached Recitals and General Terms and Conditions, and the attached schedules identified below.

(A)	<u>Client's Legal Name:</u> <u>Address for notices:</u>	City of Newport 169 SW Coast Hwy Newport OR 97365	("Client")
(B)	<u>AH Portland's Legal Name:</u> <u>Address for notice:</u> With a copy to:	Portland Adventist Medical Center dba Adventist Health Portland 10123 SE Market St. Portland, Oregon 97216 Attn: Finance Officer Adventist Health System/West One Adventist Health Way Roseville, California 95661 Attention: Office of General Counsel	("AH Portland")
(C)	<u>Effective Date:</u> 7-1-22		("Effective Date")
(D)	The following attached Schedules are an integral part of this Agreement:		
	Schedule 1: Description of Services and Pricing		

The Parties have executed this Agreement effective as of the Effective Date.

AH Portland: By: <u>Donald E Welch</u> Name: Donald E. Welch Title: Finance Officer Date: <u>06/27/2022</u>	Client: By: <u>Spencer Nebel</u> Name: <u>Spencer Nebel</u> Title: <u>city manager</u> Date: <u>07/05/2022</u>
--	---

AUDIOLOGY TESTING SERVICES AGREEMENT

RECITALS

AH Portland operates an acute care hospital and related departments, including the Audiology Department (the "Audiology Department");

Client wishes to engage AH Portland for the purpose of providing Client with the Audiometric Hearing Testing services described in Exhibit A attached hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the foregoing and as follows:

GENERAL TERMS AND CONDITIONS

1. **Engagement; Time and Manner of Performance of the Services.** Client hereby engages AH Portland to perform the services described in **Schedule 1: Description of Services and Pricing** (the "Services"). Services shall be performed in the time and manner described in Schedule 1 and as otherwise mutually agreed by the Parties, subject to all of the terms and conditions of this Agreement.
2. **Payment Terms.** Client shall pay AH Portland the fees set forth in Schedule 1 for engaging Client to provide Services under this Agreement. AH Portland shall invoice Client on a monthly basis. All fees shall be due within thirty (30) days of the invoice date. A late fee of 1.5% per month may be assessed for any late payments. All fees, payments and reimbursements that are required by this Agreement to be made to AH Portland shall survive the expiration and/or termination of this Agreement.
3. **Term.** This Agreement shall become effective on the Effective Date and shall continue for one (1) year thereafter, subject to the termination provisions of this Agreement. This Agreement shall automatically renew for two (2) additional terms of one (1) year each, unless either Party gives the other Party written notice of its intention not to renew this Agreement at least thirty (30) calendar days prior to the expiration of the then current term.
4. **Termination.** This Agreement may be terminated as follows:
 - a. Either Party shall have the right at any time to terminate this Agreement without cause and without penalty upon thirty (30) days' advance written notice to other Party; provided, that AH Portland shall complete all Services ordered up to the date of termination, and Client shall remain responsible for payment for all Services actually performed up to the effective date of termination.
 - b. Either Party shall have the right to terminate this Agreement in the event of the other Party's material breach hereof; provided, however, termination for the breach of this Agreement will not become effective unless and until the Party not in default, has given the other Party written notice of breach, which notice shall state the general nature of said breach, and the Party allegedly in default shall thereafter have a period of ten (10) days following the giving of said notice in which to remedy said default to the reasonable satisfaction of the other Party. This Section specifically applies to claims by Client regarding timely payment of its invoices.
5. **Confidential Information; Data Ownership.**
 - a. Neither Party may publicize or disclose the existence or terms of this Agreement, except with the prior written approval of the other Party.
 - b. Each Party acknowledges that during the performance of its obligations under this Agreement, it or its personnel may receive confidential information of the other Party, whether disclosed orally, visually or in writing, and whether or not bearing any legend or marking indicating that such information or data is confidential, including individually identifiable health information or

Protected Health Information (as defined under HIPAA) and derivatives thereof, fees paid by patients, financial and operational information, and other matters relating to the operation of the other Party's business; or other information which the receiving Party knows or has reason to know is confidential information of the other Party (all referred to herein as "Confidential Information"). The Parties shall hold all Confidential Information in confidence, using the same degree (but no less than a reasonable degree) of care and protection that each exercises with its own confidential information, during the term of this Agreement. Each Party shall not directly or indirectly disclose, copy, distribute, republish or allow access to any Confidential Information to a third party; nor shall either Party use Confidential Information of the other Party for any purpose other than as necessary to fulfill its obligations under this Agreement. AH Portland will not disclose confidential patient information to Client or any other third-party without prior written authorization from the patient. For the sole purpose of this Section of the Agreement, "patient" or "patients" are defined as post-offer, pre-employment candidates of Client and Client employees receiving Services from AH Portland pursuant to this Agreement.

- c. Each Party shall retain ownership of, and all right, title and interest in and to, its respective intellectual property.
6. **Compliance with Law.** The Parties to this Agreement will comply with all laws, ordinances, rules, and regulations that are applicable to this Agreement.
7. **Governing Law, Exclusive Jurisdiction.** This Agreement, and all the rights and duties of the Parties arising from or relating in any way to the subject matter of this Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of Oregon. Each of the Parties consents to the exclusive personal jurisdiction and venue of the courts, state and federal, located in Portland, Oregon.
8. **Relationship of the Parties.** The relationship of the Parties hereto is and will be that of independent contractors. This Agreement does not create any relationship of employment, agency, franchise, joint venture, partnership or other similar legal relationship between and Client. No Party has the authority to bind or act on behalf of the other Party except as otherwise specifically stated in this Agreement.
9. **Force Majeure.** Either Party's obligations under this Agreement shall be excused if and to the extent that any delay or failure to perform such obligations is due to fire or other casualty, epidemics, product or material shortages, strikes or labor disputes, transportation delays, change in business conditions (other than insignificant changes), manufacturer out-of-stock or delivery disruptions, acts of God, or other causes beyond the reasonable control of such Party.
10. **LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES WILL AH PORTLAND'S TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES PAID BY CLIENT UNDER THIS AGREEMENT.
11. **Dispute Resolution.** The Parties shall attempt to resolve disputes by negotiating with each other in good faith. In the event a matter is not amicably resolved through negotiation, any controversy, dispute or disagreement arising out of or relating to this Agreement, (whether such claim is based in contract, tort or otherwise) arising out of or relating to this Agreement (or the breach, termination or validity thereof), or arising in any way out of the relationship of the Parties may, at the request of either Party, be settled in accordance with the alternative dispute resolution program of JAMS/Endispute in effect at that time. In such event, the Parties agree to mediation of the dispute. If mediation is not successful in resolving the dispute the Parties agree to arbitrate the dispute under JAMS/Endispute rules (the "Rules") then in effect, except as such Rules may be modified from time to time in the future. Any mediation or arbitration proceedings conducted under this Section shall be held in Portland, Oregon. This Section shall survive the expiration or early termination of this Agreement.
12. **Indemnification.** Each Party agrees to defend, indemnify and hold harmless the other Party against all actions, claims or demands brought by third parties, including costs, expenses and attorney's fees, which the other Party may incur to the extent arising out of indemnifying Party's negligent acts and omissions during the performance of this Agreement.

13. **Insurance.** Throughout the term of this Agreement, each Party shall maintain, at each Party's sole cost and expense, policies of insurance or self-insurance providing coverage for general liability and professional liability in the minimum amount of \$1 million per occurrence and \$3 million annual aggregate, as may be necessary to protect the Party and its employees, agents or representatives in the discharge of its or their responsibilities and obligations under this Agreement.
14. **Restriction on Assignment.** Client may not assign its rights under this Agreement without the prior written consent of AH Portland. This Agreement will be binding on, inure to the benefit of, and be enforceable by and against the respective successors and assigns of each Party to this Agreement.
15. **Order of Precedence.** Except as otherwise provided herein, in the event of any conflict or inconsistency between or among the provisions of this Agreement, the following order of precedence shall apply:
 - a. the body of this Agreement,
 - b. the Schedules as attached to this Agreement by mutual agreement of the Parties,
 - c. a purchase order, and
 - d. an invoice for Services performed.
16. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be delivered by personal delivery, overnight courier, confirmed facsimile, confirmed email, or certified or registered mail, return receipt requested, and will be deemed to have been given at the earlier of: if by personal delivery then immediately upon delivery, if by overnight courier then one (1) day after deposit with such overnight courier, if by certified or registered mail then three (3) days after deposit in the mail, or if by facsimile or email then immediately upon confirmation of receipt of such facsimile or email.
17. **Integration; No Waivers; Severability; Attorney's Fees; Counterparts.** This Agreement, including the Exhibits and Schedules attached hereto, is the entire agreement between the Parties relating to the subject matter hereof. This Agreement supersedes all prior understandings, statements or agreements between the Parties, whether written or oral, regarding such subject matter. No amendments, changes or additions to this Agreement shall be valid unless approved in writing by both Parties. A waiver of any of the provisions of this Agreement must be in writing and signed by the Party making the waiver; provided, that any waiver so signed shall not constitute a waiver of any other provision, nor shall it constitute a continuing waiver. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid. The prevailing Party in any legal action to enforce the terms of this Agreement shall be entitled to recover its attorney's fees and litigation costs in addition to any other relief granted. This Agreement may be executed in any number of counterparts, including by electronically transmitted signatures, each of which will constitute an original, but all of which will constitute one Agreement.

SCHEDULE 1: DESCRIPTION OF SERVICES AND PRICING

On an annual basis, the fees set forth on this Schedule 1 may be adjusted by AH Portland, giving consideration to cost factors impacting the medical care industry, but not to exceed 3% per year.

HEARING CONSERVATION PROGRAM PRICING

DAILY RATE OPTION

Full Day Rate (6-10 hours of testing) <ul style="list-style-type: none"> • Includes two 40-minute breaks and one 20-minute break • Accommodates up to 100 people • Includes travel <30 miles one-way from Adventist Health Portland 	\$1,850.00
Half Day Rate (4-5 hours of testing) <ul style="list-style-type: none"> • Includes one 40-minute break • Accommodates up to 52 people • Includes travel <30 miles one-way from Adventist Health Portland 	\$1,075.00
Quarter Day Rate (3 hours of testing) <ul style="list-style-type: none"> • No breaks needed • Accommodates up to 36 people • Includes travel <15 miles one-way from Adventist Health Portland 	\$775.00
2-hour minimum (up to 2 hours of testing) <ul style="list-style-type: none"> • No breaks needed • Accommodates up to 24 people • Includes travel <15 miles one-way from Adventist Health Portland 	\$625.00
Van set-up fee	\$75.00 per set-up
Diagnostic Audiogram in clinic	\$150.00 per hour
Audiogram Reviews (required for all problem audiograms)	\$25.00 per review
Retest Summary (required for all retest audiograms)	\$25.00 per review
HPD fitting fee	\$10.00 per person
Individual screening in clinic	\$35.00 per test
Late Cancel Fee (cancelled 10-30 days prior to appointment) <ul style="list-style-type: none"> • >30 days no charge • <10 days, Day Rate fee as previously scheduled 	\$300.00
Custom earplugs (as requested) <ul style="list-style-type: none"> • Standard/Colored • Filtered/Specialty 	\$150.00/pair \$250.00/pair
Overnight stay expenses (if applicable) <ul style="list-style-type: none"> • Hotel reimbursement • Meals per diem reimbursement 	Not to exceed \$300.00/day Equal to IRS standard
Additional charges will be billed at \$150.00 per hour by 15-minute increments. These may include but are not limited to: <ul style="list-style-type: none"> • Travel in excess of Daily Rate limits • Lecture-style training • Scheduled consultation with the audiologist • Data entry/Data Management • FIT testing • Work-related determinations 	

