

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement") is made and entered into as of this 8th day of November, 2010 by Myers and Stauffer LC, a Kansas limited liability corporation ("Contractor") and the State of Oregon, acting by and through its Department of Human Services ("Agency").

WHEREAS, Agency and Contractor have entered into Contract No. 133169 ("Contract") wherein Contractor collects various types of information from pharmacies within the State of Oregon that participate in Agency's Medicaid program in the course of preparing various reports and summaries that it delivers to Agency pursuant to that Contract;

WHEREAS, the information that Contractor collects may be of a sensitive and proprietary nature to the various participating pharmacies ("Protected Information"), and these pharmacies have expressed a desire that the sensitive and proprietary nature of their information be maintained;

WHEREAS, Agency is a unit of the State of Oregon and is subject to Oregon's Public Records Law as codified in Chapter 192.410-192.505 (the "Oregon Public Records Law") of the Oregon Revised Statutes ("ORS");

WHEREAS, except as otherwise provided in the Oregon Public Records Law, (a) ORS 192.501(2) conditionally exempts from disclosure information which has been identified as "trade secrets"; (b) ORS 192.502(2) conditionally exempts from disclosure information of a personal nature if such disclosure would constitute an unreasonable invasion of privacy; (c) ORS 192.502(4) exempts from disclosure information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure; and (d) ORS 192.502(9) generally exempts from disclosure records or information that is prohibited, restricted, or otherwise made confidential or privileged under Oregon law; and

WHEREAS, although Agency will not routinely gain access to Protected Information in the normal course of Contractor's performance under the Contract, Agency nevertheless has the right to control and possess the contract documents, especially including the Protected Information in the exercise of its rights under Medicaid law and this Contract, including its audit rights;

WHEREAS, the parties are contractually required to enter into a standard form Nondisclosure Agreement.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the parties agree as follows:

1. Purpose, Scope and Definition. Any Protected Information that is included in portions of documents, records and other material forms or representations remains subject to the terms of this Agreement.
2. Non-Disclosure. Subject to Paragraph 4, below, Contractor and Agency shall keep the Protected Information in strict confidence and shall not disclose such information or otherwise make it available, in any form or manner, to any other person or entity other than its employees, consultants and attorneys unless required to do so by law, and then only in accordance with the Oregon Trade Secrets Act, ORS 646.461 to 646.475, and the Oregon Public Records Law, if applicable. Each party will inform each of its consultants who will have access to the Protected Information of this Agreement and its provisions, and ensure that the consultants and attorneys agree to abide by all of its terms. Each party shall store the Protected Information in a secure fashion so that access to the Protected Information is limited only to those employees, consultants who have a legitimate reason to access the Protected Information. Each party and its employees, consultants may make copies or notes of the Protected Information, but such copies and notes are subject to the terms and conditions of this Agreement. To the extent Agency uses any Protected Information in a regulatory or adjudicatory process, such disclosure shall be subject to an appropriate protective order and the Protected Information shall be identified as "Protected Materials" and marked on each page and on computer-readable storage media with the following label: "Contains Privileged and Confidential Information – Do Not Release."
3. Use of the Protected Information. Agency may only use the Protected Information accessed or received hereunder for the purpose of exercising its rights under the Contract. Contractor may only use the Protected Information for the purpose of fulfilling its obligations to Agency under the Contract. All other uses of Protected Information are hereby prohibited.
4. Exceptions to Non-Disclosure. Notwithstanding Paragraph 2, above, a party is not in breach of this Agreement if it discloses any Protected Information to a third party when the disclosed Protected Information:
 - (a) is in the public domain at the time of such disclosure or is subsequently made available to the public consistent with the terms of this Agreement; or
 - (b) had been received by the party at the time of such disclosure through other means without restriction on its use, or had been independently developed by the party as shown through documentation; or
 - (c) is subsequently disclosed to the party by a third party without restriction on use and without breach of any agreement or legal duty; or

- (d) is otherwise no longer legally eligible for protection under either the Oregon Trade Secrets Act or the Oregon Public Records Law (if disclosed to Agency); or
 - (e) subject to the provisions of Paragraph 5, below, is used or disclosed pursuant to statutory duty or an order, subpoena or other lawful process issued by a court or other governmental authority of competent jurisdiction.
- 5. Notice of Pending Third Party Disclosure. All provisions of this Agreement, and these provisions expressly, are subordinate to and limited by the Contract provisions of Exhibit A, Part 3, Special Provisions, Section 4. In the event that a court or other governmental authority of competent jurisdiction, including the Oregon Department of Justice pursuant to ORS 192.450, issues an order, subpoena, or other lawful process requiring Agency to disclose Protected Information, Agency shall notify Contractor. Agency does not violate this Agreement if it complies with an order of such court or governmental authority to disclose the Protected Information, provided Agency first notifies Contractor such that it or an affected pharmacy has reasonable opportunity to seek to maintain the confidentiality of such information or has notified Agency in writing that it will take no action to maintain such confidentiality. The Contractor shall inform the State of requests for disclosure of Protected Information.
- 6. Term. This Agreement remains in effect until the date upon which Contractor's obligations under Paragraph 14 of the Contract expires.
- 7. Return or Destruction of Documents. Upon termination of this Agreement and if permitted by the Oregon State Archivist, Agency shall destroy all Protected Information in the possession or control of Agency, including its employees, consultants or, if destruction is not feasible or permitted under Oregon law, archive the Protected Information with the Oregon State Archivist in a privileged and confidential manner pursuant to ORS 357.805 et seq. and regulations adopted pursuant to ORS 357.895. The Agency intends that Protected Information received and archived under this Agreement will be subject to ORS 357.875 and will be maintained as privileged and confidential by the Oregon State Archivist.
- 8. Notices. All notices, requests, demands, and other communications required or permitted under this Agreement must be in writing, unless otherwise agreed by the parties, and must be delivered in accordance with the notice provisions of the Contract.
- 9. Governing Law. This Agreement is made in the State of Oregon and is governed by and to be interpreted in accordance with its laws.

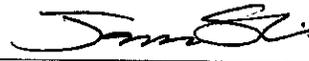
10. Assignment. This Agreement is binding upon the parties, their successors, and their assigns.
11. Construction of Agreement. Ambiguities or uncertainties in the wording of this Agreement must be construed as subject to and in harmony with the Contract between the parties and within that in the manner that most accurately reflects the intent of Agency and Contractor as of the date of this Agreement.
12. Signature Authority. Each person signing below warrants that he or she has been duly authorized to execute this Agreement on behalf of the named party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

AGENCY:

CONTRACTOR:

By: 
Name: Thomas BURNS
Title: Pharmacy Director
Date: 11/8/10

By: 
Name: James Shin
Title: Manager
Date: 11/8/2010