


<b>Purchase Order</b>	 <b>MARSHALL UNIVERSITY</b>	Marshall University Office of Purchasing One John Marshall Drive Huntington WV, 25755-4100 Direct all inquires regarding this order to: (304) 696-2599	<b>Purchase Order #</b> MU20MEDHUB
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<b>TO:</b>  ASCEND LEARNING HOLDINGS LLC MEDHUB LLC 11161 OVERBROOK ROAD LEAWOOD KS 66211  FEIN: 32-0222868      PH: 612-877-4573	Vendor Code:	Ship to:  n/a  Room #    per agreement	THIS ORDER IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN  WVFIMS Account #:
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P.O. Date	FY	Buyer	Ship Via	F.O.B	Terms	Contract #
04/07/2020	2020	AWN				

CONTRACT ACCEPTANCE

On behalf of the Governing Board, MARSHALL UNIVERSITY hereby accepts the quotation of MedHub LLC

MedHub Computer Software System

signed by Kareem Hasan

Title Enterprise Account Executive

on April 8, 2020

\*Sole Source

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
 West Virginia Attorney General

By: n/a  
 Chief Counsel

Effective April 1, 2020 through June 30, 2023  
 Pricing - page 44

THIS ORDER IS EXEMPT FROM ALL SALES TAX  
 LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER

Line No.	Fund	Org.	Account	Encumber Amount			Total:
1.	159401	9313	70274	59,850	FY2021		OPEN-END
2.	159401	9313	70274	51,200	FY2022		
3.	159401	9313	70274	51,200	FY2023		
4.	159401	9313	70274	OPEN END	FY2021 - 2023		

Mail Original Invoice and 1 Copy to:  
 Marshall University Accounts Payable  
 One John Marshall Drive Huntington,  
 WV 25755-4500

  
 Authorized Signature      Date



## Software as a Service Agreement

This Software as a Service Agreement (this "Agreement") is entered into as of March 1<sup>st</sup> 2020 (the "Effective Date") by and between MedHub, LLC, a Delaware limited liability company ("MedHub"), with offices located at 510 Marquette Avenue S. 3rd Floor Minneapolis, MN 55402 and Marshall University ("Client"), with offices located at 1600 Medical Center Drive Huntington, WV 25701.

### Recitals

MedHub provides certain computer software programs, and the parties have agreed that MedHub will provide the computer software programs (the "System") selected by Client in the Software as a Service Order Form(s) executed by Client ("Order Form") and certain maintenance and support services related to the System to Client. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below, including those outlined on the appendices hereto (which are incorporated into this Agreement by this reference), the adequacy of which consideration is hereby accepted and acknowledged, the parties agree as set forth below.

### Terms and Conditions

#### 1. Use of the System.

1.1. During the Term, MedHub grants to Client and Client accepts from MedHub, a limited, non-exclusive, non-transferable right to access and use, and permit individuals from Client ("Authorized Users") to access and use, the System solely for Client's internal business use. Client shall use its best efforts to ensure that the Authorized Users use the System in accordance with the terms and conditions of this Agreement.

1.2. Client acknowledges that its right to use the System will be web-based only pursuant to the terms of this Agreement and the software will not be installed on any servers or other computer equipment owned or controlled by Client or otherwise provided to Client. The use of the System by Client or any Authorized User pursuant to this Agreement shall be subject to any end user agreement, terms of use, and/or privacy policy applicable to System or any other applicable website used to access the System.

2. Documentation. Client may reproduce and use documentation related to use of the System (the "Documentation") solely as necessary to support Authorized Users' use of the System.

#### 3. Term & Termination.

3.1. Term of the Agreement. Unless earlier terminated as provided in this Agreement, this

Agreement commences on the Effective Date and shall continue for as long as any Order Form is in effect ("Term").

3.2. Term of Order Form. The term of each Order Form shall be as set forth in the Order Form.

3.3. Termination as a Result of Breach. If a party breaches any material provision of this Agreement, the non-breaching party may begin the process of terminating this Agreement by giving written notice of termination to the breaching party. If the breach is capable of being cured and is reasonably cured by the breaching party within 60 days after receipt of the notice of termination, the termination will not become effective. If the breach is not capable of being cured or is not reasonably cured by the breaching party within 60 days after receipt of the notice of termination, this Agreement shall be terminated. Notwithstanding the foregoing, a breach that involves failure to make payment as required herein will permit the non-breaching party to terminate this Agreement immediately. Any termination of this Agreement shall automatically terminate all Order Forms then in effect.

3.4. Effect of Termination. Upon termination of this Agreement or an Order Form, MedHub shall immediately cease providing access to the System and all usage rights granted under this Agreement shall terminate. Provided that Client has paid for all Fees in full as of the date of termination, Client may, upon request promptly following termination of the Agreement, receive from MedHub the most recently completed Client Data in the format that MedHub regularly provides to Client.

#### 4. Maintenance and Support.

4.1. Support Policy. In addition to the obligations set forth in Sections 4.3 and 4.4, maintenance and support shall be provided as set forth in the then current MedHub Support Policy ("MSP") available at [http://info.medhub.com/medhubllc\\_gsm](http://info.medhub.com/medhubllc_gsm). MedHub may update the MSP from time to time; provided, however, that MedHub may not materially reduce the maintenance and support provided pursuant to the MSP during the Term of this Agreement.

4.2. Service Levels. MedHub shall use commercially reasonable efforts to make the System available for access by Authorized Users at the service levels as set forth and defined in MSP.

4.3. Maintenance and Updates. MedHub shall maintain the System and provide all patches and fixes to the System at no additional cost. MedHub shall exercise commercially reasonable efforts promptly to correct any failure of the System to perform according to the Documentation. MedHub shall provide Client with copies of all new versions, updates, or upgrades of the System, in object code format made generally available to all clients ("Upgrades") without additional charge, promptly after commercial release. Upon delivery to Client, each Upgrade will constitute an element of the System and will thereafter be subject to this Agreement's terms regarding System, including without limitation, license, warranty, and indemnity terms.

4.4. Support. During the term of this Agreement, MedHub will provide telephone and remote computer support regarding guidance as to operation of the System, explanations of functions and features of the System, and explanations of the Documentation.

4.5. **System Revisions.** MedHub may revise System features and functions at any time, including without limitation by removing such features and functions or reducing service levels. If any such revision to the System materially reduces features or functionality, Client may within thirty (30) days of notice of the revision terminate the Order Form, without cause.

5. **Fees and Payment.**

5.1. **Fees.** Client shall pay MedHub the fees set forth in the Order Form for use of the System by Authorized Users (the "**Subscription Fees**") as well as any implementation fees set forth therein ("**Implementation Fees**"). Subscription Fees may be increased by MedHub upon thirty (30) days advance notice; provided, however, that the Subscription Fees may not be increased by more than five percent (5%) per contract year during the Term.

5.2. **Orders.** Client shall order the System pursuant to an Order Form. In the event of a conflict between the terms of an Order Form and this Agreement, the terms of the Order Form shall take precedence. At any time during the Term, Client may elect at its discretion to migrate from one System to the other System by executing a new Order Form containing mutually agreed terms.

5.3. **Invoicing and Payment.** Unless otherwise provided in an Order Form, MedHub shall invoice Client for the applicable Subscription Fees and Implementations Fees upon execution of the Agreement and each year thereafter for the applicable Subscription Fees on the anniversary date of execution of the Agreement. Client shall pay all undisputed invoices within 30 days after Client receives the invoice. Except as expressly provided otherwise, fees are non-refundable.

5.4. **Expenses.** Client will reimburse MedHub for its reasonable, out-of-pocket travel and related expenses incurred in performing the implementation and other professional services. MedHub shall notify Client prior to incurring any such expense. MedHub shall comply with Client's travel and expense policy if made available to MedHub prior to the required travel.

5.5. **Taxes.** Client shall pay all applicable sales, use, value added, transfer and any other taxes (other than MedHub's income and payroll taxes), fees, or costs, however designated, which are collected or levied against MedHub pursuant to providing the System under this Agreement. MedHub will collect from Client and transmit to the proper authorities all taxes, which MedHub is required by law to collect from Client in connection with this Agreement or the transactions contemplated by this Agreement. MedHub shall invoice Client for all such taxes, which may be paid by MedHub unless, prior to the commencement of this Agreement, Client provides MedHub with a valid tax-exempt certificate.

5.6. **Suspension for Non-Payment.** MedHub reserves the right to suspend access to the System if Client is more than ninety (90) days past due on any undisputed amounts due to MedHub under this Agreement, but only after MedHub notifies Client of such failure in accordance with Section 16.3 and such failure continues for fifteen (15) days after receipt of such notice. Suspension of access to the System shall not release Client of its payment obligations under this Agreement. Client agrees that MedHub shall not be liable to Client or to any third party for any liabilities, claims or expenses arising from or relating to suspension of access to the System resulting from Client's nonpayment.

6. **Implementation and Training; Project Management Approach.** MedHub will provide implementation and training services related to the System as set forth on Appendix A. In addition, MedHub and Client shall each designate an employee to serve as that party's Project Manager and will follow a structured methodology to assist with coordination and communication regarding the activities of the parties hereunder, as further described in Appendix A.

7. **Other Services.** During the Term, MedHub may provide certain professional services to Client. Such services will be provided on a time and material basis at such times or during such periods as may be mutually agreed to by the parties. All other services will be provided on a non-work for hire basis, pursuant to a mutually agreed upon statement of work, and will be performed at MedHub's then current rates. Standard statement of work requirements are set forth in Appendix B.

8. **Client Data.**

8.1. Any and all information submitted to MedHub or submitted to the System by Client, its officers, employees, representatives, doctors, residents or students ("Client Data") shall remain the sole property of Client during and after the Term of this Agreement. MedHub shall use the Client Data submitted by Client for sole purpose of performing its obligations under this Agreement.

8.2. Client represents and warrants that all Client Data is the property of Client, or that Client has the rights to disclose or deliver the Client Data to MedHub, and that the Client Data does not infringe any copyright, trademark, trade secret, patent or other right of any third party. It is the Client's responsibility to vet the accuracy and quality of Client Data. MedHub shall be entitled to rely on the accuracy, truthfulness and completeness of all Client Data. Client agrees that if the Client Data is not provided in the agreed-to format, reformatting may alter time-frames and costs of the implementation.

8.3. MedHub will not and does not populate, edit, manage, modify, delete or otherwise directly handle any Client Data without the express written consent and instruction of the Client project sponsor.

8.4. MedHub may compile and use statistical, diagnostic, technical or general usage information related to the System, and may in some cases make such information publicly available, provided that such information is aggregated, de-identified, and/or made anonymous and does not identify Client Confidential Information, personally identifiable Client Data or include Client's name. MedHub retains all intellectual property rights in such information.

9. **CLIENT'S RESPONSIBILITIES & RESTRICTIONS.**

9.1. **Unauthorized Access.** Client shall take reasonable steps to prevent unauthorized access to the System, including without limitation by protecting its passwords and other log-in information. Client shall notify MedHub immediately of any known or suspected unauthorized use of the System or breach of its security and shall use best efforts to stop said breach.

9.2. **Compliance with Laws.** In its use of the System, Client shall comply with all applicable laws,

including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Client Data.

9.3. **Users & System Access.** Client is responsible and liable for: (a) Authorized Users' use of the System, including without limitation unauthorized Authorized User conduct and any Authorized User conduct that would violate the requirements of this Agreement applicable to Client; (b) any use of the System through Client's account, whether authorized or unauthorized; and (c) the acts and omissions of each Client employee designated by Client to serve as technical administrator of the System on Client's behalf ("**Administrative Users**"). MedHub shall not be liable for any loss of data or functionality caused directly or indirectly by the Administrative Users.

## 10. **IP & FEEDBACK.**

10.1. **IP Rights to the System.** MedHub retains all right, title, and interest in and to the System, including without limitation all software used to provide the System and all graphics, user interfaces, logos, and trademarks reproduced through the System, and anything developed and delivered under the Agreement, including without limitation, all work performed pursuant to Section 7. This Agreement does not grant Client any intellectual property license or rights in or to the System or any of its components. Client recognizes that the System and its components are protected by copyright and other laws.

10.2. **Feedback.** MedHub has not agreed to and does not agree to treat as confidential any suggestion, enhancement request, customization request, recommendation or idea for improving or otherwise modifying any of MedHub's products or services ("**Feedback**") Client or Authorized Users provide to MedHub. Nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict MedHub's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Client or the Authorized User in question.

## 11. **CONFIDENTIAL INFORMATION; SECURITY.**

11.1. **MedHub's Confidential Information.** Client agrees that any information Client receives or reviews concerning MedHub, including, but not limited to, any information concerning MedHub's past, present and future research, marketing, development, operations and business activities, information regarding the System, methods of database creation, MedHub's translation, standardization, enhancement, and data analysis techniques, MedHub's data reporting methods and formats, MedHub's software tools for report creation, distribution and retrieval, associated algorithms, tools, programs, software architecture and technology, and any other information or material proprietary to MedHub of which the Client may obtain knowledge or access from MedHub during MedHub's performance hereunder (hereinafter "**MedHub Confidential Information**") is proprietary and confidential to MedHub. Client agrees, on behalf of itself and all of its agents, to hold in confidence and not to directly or indirectly reveal, report, publish, disclose or transfer any of the MedHub Confidential Information to any person or entity, or utilize any of the MedHub Confidential Information except as otherwise agreed to in writing by MedHub and Client.

11.2. **Client's Confidential Information.** MedHub agrees that any information MedHub receives

or reviews concerning Client, including, but not limited to, any information concerning Client's past, present and future research, marketing, development, operations and business activities, all Client Data input by or for Client, all reports generated using such Client Data, information regarding Client's users and evaluation results, information regarding the Client's products and services, documentation and reports generated by or for Client and any other information or material proprietary to Client of which the MedHub may obtain knowledge or access from Client during MedHub's performance hereunder (hereinafter "Client Confidential Information") is proprietary and confidential to Client. MedHub agrees, on behalf of itself and all of its agents, to hold in confidence and not to directly or indirectly reveal, report, publish, disclose or transfer any of the Client Confidential Information to any person or entity, or utilize any of the Client Confidential Information except as otherwise agreed to in writing by MedHub and Client.

11.3. Use of Confidential Information. Except as otherwise permitted herein, each party agrees that, with respect to the Confidential Information of the other party, (i) it will use such information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Agreement, and (ii) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party agrees to take at least such precautions to protect the other party's Confidential Information as it takes to protect its own confidential information, but in no event less than reasonable precautions.

11.4. Disclosure of Confidential Information. If either party believes it is required by law, by a subpoena or by court order to disclose any of the other party's Confidential Information, it shall promptly notify the other party prior to any disclosure and shall make all reasonable efforts to allow the other party an opportunity to seek a protective order or other judicial relief.

11.5. Information Not Deemed Confidential. Nothing in this Agreement shall be construed to restrict disclosure or use of information that (i) was in the possession of or rightfully known by the recipient, without an obligation to maintain its confidentiality, prior to receipt from the other party, (ii) is or becomes generally known to the public without violation of this Agreement, (iii) is obtained by the recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality, or (iv) is independently developed by the receiving party without the participation of individuals who have had access to the other party's confidential or proprietary information.

11.6. Security. MedHub shall take commercially reasonable security precautions to prevent unauthorized access to, use of, disruption to, and/or modification of, the System, and to its materials, facilities, software, hardware, server, and/or communication lines related to the System as further described in Appendix C. Client acknowledges and agrees that no network security system can guarantee complete network security or prevent all unauthorized network access. Client will be responsible for maintaining access to the System server, which will include tracking log-in accounts and ensuring that adequate security precautions are in place to protect username and password information for such accounts.

## 12. REPRESENTATIONS & WARRANTIES.

12.1. Warranty. MedHub represents and warrants that it will provide the System in a professional manner consistent with general industry standards and that the System will perform substantially

in accordance with the Documentation. If Client notifies MedHub of a breach of this warranty in writing, MedHub shall correct such breach in accordance with its maintenance obligations. In conjunction with Client's right to terminate for breach where applicable, the preceding sentence states MedHub's sole obligation and liability, and Client's sole remedy, for breach of the warranty in this Section 12.1. The warranties set forth in this Section 12.1 apply only to use of the System in accordance with this Agreement and the Documentation, and do not apply if the software code for the System has been subject to accident, misuse, or modification (other than by MedHub), and only if the nonconformance can be demonstrated on an unmodified version of the System.

12.2. **Warranty Disclaimers.** EXCEPT TO THE EXTENT SET FORTH IN SECTION 12.1 ABOVE, CLIENT ACCEPTS THE SYSTEM "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. MEDHUB DOES NOT GUARANTEE THAT THE SYSTEM WILL MEET CLIENT'S SPECIFIC REQUIREMENTS OR THAT THE SYSTEM WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTION, NOR SHALL MEDHUB BE LIABLE FOR UNAUTHORIZED ALTERATION, THEFT OR DESTRUCTION OF CLIENT DATA, FILES, OR PROGRAMS. WHEN MEDHUB MAKES THE SYSTEM AVAILABLE FOR INSTITUTION USE, CLIENT UNDERSTANDS AND ACKNOWLEDGES THAT THE SYSTEM IS NOT INTENDED TO SUGGEST OR REPLACE ANY PROFESSIONAL MEDICAL JUDGMENT, DECISIONS OR ACTIONS WITH RESPECT TO A PATIENT'S MEDICAL CARE, AND THAT CLIENT IS SOLELY AND EXCLUSIVELY RESPONSIBLE FOR MONITORING AND VERIFYING THE INPUT TO THE SYSTEM, AND FOR DETERMINING THE ACCURACY, COMPLETENESS OR APPROPRIATENESS OF ANY FINANCIAL, CLINICAL OR MEDICAL INFORMATION, OR OTHER OUTPUT PROVIDED BY THE SYSTEM.

### 13. **INDEMNIFICATION.**

13.1. **Indemnification by MedHub.** If a third party makes a claim against Client (i) that the System infringes any patent, copyright or trademark, or misappropriates any trade secret, (ii) that MedHub's negligence or willful misconduct has caused bodily injury or death, or (iii) arising from or related to any unauthorized use or disclosure of Client Confidential Information by MedHub, its employees or any other authorized person to whom MedHub has disclosed the Client Confidential Information, MedHub shall defend Client and its directors, officers and employees against the claim at MedHub's expense and MedHub shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed by MedHub, to the extent arising from the claim. MedHub shall have no liability for any claim based on (a) Client Data, (b) modification of the System not authorized by MedHub, or (c) use of the System other than in accordance with the Documentation and this Agreement. With respect to a claim under (i), MedHub may, at its sole option and expense, procure for Client the right to continue use of the System, modify the System in a manner that does not materially impair the functionality, or terminate the Agreement and repay to Client any amount paid by Client with respect to the Term following the termination date.

13.2. **Indemnification by Client.** If a third party makes a claim against MedHub (i) that the Client



Data infringes any patent, copyright or trademark, or misappropriates any trade secret or (ii) arising from or related to any unauthorized use or disclosure of MedHub Confidential Information by Client, its employees or any other authorized person to whom Client has disclosed the MedHub Confidential Information, Client shall defend MedHub and its directors, officers and employees against the claim at Client's expense and Client shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Client, to the extent arising from the claim.

13.3. **Conditions for Indemnification.** A party seeking indemnification under this section shall (a) promptly notify the other party of the claim, (b) give the other party sole control of the defense and settlement of the claim, and (c) provide, at the other party's expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defense and settlement of the claim.

14. **LIMITATION OF LIABILITY.** NEITHER PARTY (NOR ANY LICENSOR OR OTHER SUPPLIER OF MEDHUB) SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST BUSINESS, PROFITS, DATA OR USE OF ANY SERVICE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), EVEN IF FORESEEABLE OR THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY'S (NOR ANY LICENSOR'S OR OTHER SUPPLIER'S OF MEDHUB) AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), SHALL EXCEED THE FEES PAID OR PAYABLE BY CLIENT UNDER THIS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE.

15. **INSURANCE.** During the Term of this Agreement, MedHub will maintain in effect the following minimum levels of insurance coverage:

15.1. **Commercial General Liability.** Standard Commercial General Liability or equivalent form providing combined bodily injury and property damage limits of liability coverage of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate.

15.2. **Professional Liability.** Professional or Errors & Omissions Liability coverage with limits of at least \$1,000,000 per claim and \$3,000,000 aggregate.

15.3. **Commercial Umbrella Liability.** Umbrella Liability coverage providing for a combined bodily injury and property damage limit of at least \$5,000,000 each occurrence and \$5,000,000 general aggregate.

15.4. **Network Security and Privacy Liability.** Coverage with limits of at least \$5,000,000 per claim and \$5,000,000 aggregate.

16. **MISCELLANEOUS.**

16.1. **Non-Exclusive Service.** Client acknowledges that the System is provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict MedHub's ability to provide the System or

other technology, including any features or functionality first developed for Client, to other parties.

16.2. **Independent Contractors.** The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no MedHub employee or contractor will be an employee of Client.

16.3. **Notices.** Except as otherwise permitted in this Agreement, notices under this Agreement shall be in writing and shall be deemed to have been given (a) five (5) business days after mailing if sent by registered or certified U.S. mail, (b) when transmitted if sent by facsimile, provided that a copy of the notice is promptly sent by another means specified in this section, or (c) when delivered if delivered personally or sent by express courier service. All notices shall be sent to the other party at the address set forth on the cover page of this Agreement, to the attention of the individual who executed this Agreement.

16.4. **Force Majeure.** No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.

16.5. **Assignment & Successors.** Neither party may assign this Agreement or any right under this Agreement, without the consent of the other party, which consent shall not be unreasonably withheld or delayed; provided however, that either party may assign this Agreement to an acquirer of all or substantially all of the business of such party to which this Agreement relates, whether by merger, change of control, asset sale or otherwise. This Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns.

16.6. **Severability.** To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

16.7. **No Waiver.** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

16.8. **Choice of Law & Jurisdiction:** This Agreement will be governed solely by the internal laws of the State of Massachusetts, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Boston, Massachusetts.

16.9. **Construction**. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

16.10. **Technology Export**. Client shall not: (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export any software provided by MedHub or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Client shall not permit any third party to access or use the System in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Crimea Region of the Ukraine, Cuba, Iran, North Korea, Sudan, and Syria).

16.11. **Customer Reference**. Neither party may advertise or promote itself using the name, mark or description of the other party, without the written consent of the other party in the case of each such use. Notwithstanding the foregoing, Client agrees that MedHub may identify Client as a recipient of services in sales presentations, marketing materials and its website, including through use of Client's mark and logo, provided that this Agreement is then in effect and that Client's identification is not given more prominence than any other client on that list or material.

16.12. **Entire Agreement**. This Agreement (including all appendices and exhibits) contains the entire agreement of the parties and supersedes all previous oral and written communications by the parties concerning the subject matter of this Agreement. This Agreement may be amended solely in a writing signed by both parties. Standard or printed terms contained in any purchase order or sales confirmation are deemed rejected and shall be void unless specifically accepted in writing by the party against whom their enforcement is sought; mere commencement of work or payment against such forms shall not be deemed acceptance of the terms. In the event of any conflict between this Agreement and any MedHub policy posted online, the terms of this Agreement will govern.

*[Signature Page Follows]*

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

**MARSHALL UNIVERSITY**

By: Angela White Negley  
(signature)

Name: Angela White Negley  
(print)

Title: Director / Chief Procurement Officer

Date: 4/8/20

**MEDHUB, LLC**

By: [Signature]  
(signature)

Name: M. BURICA  
(print)

Title: VP SALES

Date: 3.9.20

## **Appendix A**

### **Implementation Services and Project Management Approach**

This Appendix A, effective upon the Effective Date, documents the implementation services and project management responsibilities of the parties under the Agreement. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

#### **1. Implementation Services.**

MedHub will provide initial coordinator training for the System using a “train the trainer” approach. Client will pay the regular daily training rate per trainer, per day, per trainer as set forth in the Order Form. In the event that such training occurs at Client’s location, Client shall reimburse MedHub for any travel related expenses (travel, lodging & meals).

#### **2. Project Management Approach.**

Upon execution of this Agreement, the parties shall each designate an employee to serve as that party’s point of contact for implementation services and/or professional services under this Agreement (each, a “Project Manager”). Each party will provide written notice of any change of its designated Project Manager. Each Project Manager will follow a structured methodology to assist with the coordination, communication, and Project progress, status and control activities across the project.

##### *Status Reporting*

- Each party’s Project Manager will support and participate in the following activities:
  - Participate in periodic Project review meetings by teleconference.
  - Provide status reports if appropriate.
  - Define any issues/risks associated with project deployment relating to resource availability, information availability, etc.
- Each party must notify the other when deliverables or critical Project milestones are risk or will be missed no later than a week prior to the estimated completion date.

##### *Change Order Process*

- Both parties agree to follow a Change Order Process as it exists on the date of this Agreement to formally manage and control responses to proposed Changes and Changes that have occurred.
  - Will utilize a mutually agreed upon Change Control form and process
  - Will identify the impact of the change including estimated cost, delivery schedule and benefit
  - Approved changes shall be agreed to in writing before work begins.
- Change Orders will be agreed and approved by the party initiating the Change

## Confidential and Proprietary Information

- Provide written acknowledgement that a change is proposed
- Will approve a change order scope document which will include nature of change and costs.

### *Issue/Risk Management Process*

- Both parties agree to follow an Issue/Risk management process.
  - Both parties' Project Managers are responsible for identifying issues and risks
  - Issues will be prioritized (Critical, High, Medium & Low) and should take the following considerations when setting priority:
    - Cost of the impact
    - Number of people impacted
    - Breadth of the functional or technical scope
    - Immediacy of the issue
    - Amount of lead-time required for issue resolution
    - Impact on other Project efforts

### *Client Project Manager Responsibilities*

- Be the primary point of contact for all internal users and the project team
- Schedule, organize and direct internal resources to provide vital data, be present at and prepared for all training all sessions
- Document issues, risks, concerns and requests and bring them to the project team
- Handle all internal training of new users after the go-live phase or appoint an institutional trainer and transfer knowledge to this user
- Maintain the internal institutional requests for enhancements list
- Communicate to internal users the fact that MedHub Support cannot:
  - Populate, modify, delete or otherwise manage Client Data
  - Grant or rescind user profiles in MedHub
  - Instruct, interpret or train users around internal institution-specific requirements, process and regulations
  - Configure settings for any user other than the project sponsor. MedHub will describe the purpose and impact of any setting but will not actually configure that setting.

**Confidential and Proprietary Information****Appendix B**

In the event that Client and MedHub mutually agree that MedHub shall provide professional services under this Agreement, the parties shall collaborate on a written statement of work which shall contain a description of one or more of the following, as applicable:

- Any and all documents, summaries, reports, analysis, studies or other written materials to be created and/or delivered by MedHub ("Written Materials");
- All services to be provided by MedHub;
- The functional specifications ("Specifications") for custom computer software to be created and delivered by MedHub ("Custom Software");
- Milestone and completion dates for each Written Material, service and/or Custom Software;
- The amount and timing of fees and expenses to be paid by Client to MedHub for each Written Material, Service and/or Custom Software; and
- All information and materials to be provided by Client as necessary for MedHub to complete each Written Material, service and/or Custom Software.

All services will be billed at MedHub's then current rates.

## Confidential and Proprietary Information

### Appendix C

This Appendix addresses MedHub's responsibility for safeguarding Client Confidential Information. During the Term, MedHub agrees to maintain the following security and data protocols:

- a. MedHub shall maintain a formal written information security program, with a named individual responsible for its overall execution. Such program shall include documented security plans, policies and procedures designed to protect the confidentiality, integrity and availability of its information assets. MedHub shall provide formal security training to all employees on its security program annually.
- b. MedHub shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Client Data received from, or on behalf of Client or its Authorized Users.
- c. MedHub agrees that it will protect the data according to commercially acceptable standards and no less rigorously than it protects the MedHub Confidential Information, but in no case less than reasonable care.
- d. All access to Client Confidential Information electronically shall be via a unique user ID and unique password that is not shared with others.
- e. MedHub agrees that any transfer of data between Client and MedHub will take place using encrypted protocols (AES\_128\_CBC encryption).
- f. MedHub shall backup systems or media stored at a separate location with incremental back-ups at least daily and full back-ups at least weekly. MedHub certifies that all data backups of the Client's data sent to third parties will be stored and maintained in an encrypted format using at least a 128 bit key.
- g. MedHub will use only secure methods to access and electronically transfer Client Data files such as or comparable to Secure File Transfer (STP) to or from the Client location and/or the MedHub location.
- h. MedHub servers shall be housed in secure areas that have adequate walls and entry control such as card controlled entry or staffed reception desk. Only authorized personnel shall be allowed to enter and visitor entry will be strictly controlled.
- i. MedHub's servers are located in a secure network zone with network and/or host-based and firewalls. System hardening procedures are used to disable or remove unnecessary network services, applications, and data.



**Confidential and Proprietary Information**

- j. MedHub will maintain formally documented security patch management procedures and will evaluate security patches for applicability and impact within 15 calendar days of release. MedHub will test and implement critical, high, and/or important patches within 60 to 90 calendar days unless an emergency hotfix patched immediately.**
- k. MedHub shall maintain a documented business continuity plan to address disaster recovery of Client Data and emergency mode operation.**
- l. MedHub will regularly engage an independent, qualified third-party to perform attest services resulting in a SOC-2 attestation report completed for its third party data center provider.**
- m. MedHub will promptly notify Client of any breach of security resulting in the unauthorized disclosure, misappropriation, or unauthorized access of Client Confidential Information that comes to MedHub's attention. MedHub will promptly investigate any such breach and will take reasonable measures to identify the breach's root cause and mitigate its effects. Unless prohibited by law, MedHub will provide Client with a detailed description of the breach, the type of data that was involved, and the identity of each affected person. The parties shall coordinate in good faith regarding developing the content of any required notices to affected persons.**
- n. To the extent any educational records are received from Client, MedHub agrees to comply with all applicable provisions of The Family Educational Rights and Privacy Act (FERPA) with respect to such information.**

## MARSHALL UNIVERSITY

### GENERAL TERMS AND CONDITIONS

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document constitutes acceptance of this contract (the Contract) made by and between Marshall University (University or Marshall) and the Vendor. Vendor's signature to the Contract signifies Vendor's agreement to be bound by and accept the terms and conditions contained in the Contract. Therefore, the parties agree that the following contractual terms and conditions are dominant over any competing terms made a part of the Contract. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THESE GENERAL TERMS AND CONDITIONS, THESE GENERAL TERMS AND CONDITIONS SHALL CONTROL**

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications, if applicable, included with the Solicitation/Contract.

**21 "Award Document"** means the document that identifies the Vendor as the Contract holder when signed by the Vendor and Marshall University's Office of Purchasing and, when necessary, approved as to form by the Attorney General.

**22 "Bid" or "Proposal"** means the Vendor's verbal bid or written bid provided in response to a solicitation by the University.

**23 "Board"** means the Governing Board of Marshall University.

**24 "Buyer"** means an individual designated by a Chief Procurement Officer to perform designated purchasing and acquisition functions as authorized by the Chief Procurement Officer.

**25 "Chief Procurement Officer"** means the individual designated by the President of Marshall University to manage, oversee and direct the purchasing and acquisition of supplies, equipment, services, and printing for the University.

**26 "Contract"** means the binding agreement that is entered between the University and the Vendor to provide requested goods and/or services requested in the Solicitation.

**27 "Governing Board"** means the Marshall University Board of Governors as provided for in the West Virginia state code.

**28 "Higher Education Institution"** means an institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended.

**29 "Office of Purchasing"** means the section within Marshall University headed by the Chief Procurement Officer and its personnel.

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**210 “Purchasing Card” or “P-Card”** means The State of West Virginia’s Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.

**211 “Responsible Bidder” and “Responsible Vendor”** mean a person and/or vendor who have the capability in all respects to perform contract requirements, and the integrity and reliability which will assure good faith performance.

**212 “Responsive Bidder” and “Responsive Vendor”** mean a person and/or a vendor who has submitted a bid which conforms in all material respects to the invitation to bid.

**213 “Representative(s)”** mean the employees, engaged workers and agents of Vendor or its affiliates who (a) are essential to Vendor’s fulfillment of its obligations; (b) have been directed to keep the the confidential information of University confidential; and (c) have entered into a nondisclosure agreement with Vendor that will protect such confidential Information consistent with the terms in this Agreement.

**214 “Solicitation”** means the notice of an opportunity to supply the University with goods and services.

**215 “State”** means the State of West Virginia and/or any of its agencies, commissions, boards, departments or divisions as context requires.

**216 “University”** means Marshall University or Marshall.

**217 “Vendor” or “Vendors”** means any entity providing either a verbal or written bid in response to the solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**218 “Will”, “Shall” and “Must”** identifies a mandatory item or requirement that concludes the duty, obligation or requirement imposed is mandatory, as opposed to being directory or permissive.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of the Contract shall be determined in accordance with the category that has been identified as applicable to the Contract below:

**Term Contract**

**Initial Contract Term:** The Contract becomes effective on April 1, 2020 and extends for a period of 39 months

\*This time frame will include software implementation which must be completed no later than May 15, 2020, with the system available for faculty and administrator use by that date. First productive use by students will be July 1, 2020, and recurring, annual per-student fees will commence on that date.

**Renewal Term:** The Contract may be renewed upon the mutual written consent of the University and the Vendor. Any request for renewal should be submitted to the University thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of the Contract is limited to three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed 39 months in total. Automatic renewal of the Contract is prohibited.

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**Marshall University General Terms and Conditions**

Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.

**Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor and Agency.

**Fixed Period Contract:** The Contract becomes effective upon Vendor’s receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

**Fixed Period Contract with Renewals:** The Contract becomes effective upon Vendor’s receipt of the notice to proceed and part of the Contract must be completed within \_\_\_\_\_ days. Upon completion, the Vendor agrees that maintenance, monitoring, or warranty services will be provided for \_\_\_\_\_ successive one-year periods or multiple periods of less than one year provided that the multiple renewal periods do not exceed \_\_\_\_\_ months in total.

**One-Time Purchase:** The term of the Contract shall run from the issuance of the Award Document until all the goods contracted for have been delivered, but in no event, will the Contract extend for more than one fiscal year.

**Other:** See attached.

**4. NOTICE TO PROCEED:** Vendor shall begin performance of the Contract immediately upon receiving notice to proceed unless otherwise instructed by the University. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

**5. QUANTITIES:** The quantities required under the Contract shall be determined in accordance with the category that has been identified as applicable to the Contract below.

**Open End Contract:** Quantities stated in the solicitation are approximations only, based on estimates supplied by the University. It is understood and agreed that the Contract shall cover the quantities ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

**Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

**Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

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**One-Time Purchase:** The Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under the Contract without an appropriate change order approved by the Vendor, University, and/or when necessary, the Attorney General's office.

**6. EMERGENCY PURCHASES:** The Chief Procurement Officer may suspend the use of a university wide mandatory contract (the University's Office of Purchasing has created standard specifications that are establish University wide contracts for commonly used commodities and services that are needed on a repetitive basis), or the competitive bidding process to allow a Department to purchase goods or services in the open market if for immediate or expedited delivery in an emergency.

Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work, provided that a required University emergency purchase with another vendor does not cause a breach of contract.

**7. REQUIRED DOCUMENTS:** All the items checked below must be provided to the University by the Vendor as specified below.

**PERFORMANCE BOND:** The Vendor shall provide a performance bond in the amount of \_\_\_\_\_. The performance bond must be received by the University prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

**LABOR/MATERIAL PAYMENT BOND:** The Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Marshall University Office of Purchasing Office prior to Contract award.

**MAINTENANCE BOND:** The successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the University prior to Contract award.

**LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the University.

**INSERT ADDITIONAL CONDITIONS BELOW:**

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications prior to Contract award regardless whether that requirement is listed above.

**8. INSURANCE:** The Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. Subsequent to contract award, and prior to the insurance expiration date, Vendor shall provide the University with proof that the insurance mandated herein has been continued. Vendor must also provide with immediate notice of any changes in its insurance policies mandated herein, including but not limited to, policy cancelation, policy reduction, or change in insurers. The insurance coverages identified below must be maintained throughout the life of the contract. The Vendor shall also furnish proof of any additional insurance requirements prior to the Contract award regardless of whether that insurance requirement is listed in this section.

Any provisions requiring the University to maintain any type of insurance for either of its or the Vendors benefit is deleted.

Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of: \$1,000,000 per occurrence and an aggregate of \$2,000,000.

**Automobile Liability Insurance** in at least an amount of: \_\_\_\_\_ per occurrence and an aggregate of \_\_\_\_\_.

**Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \$1,000,000 per occurrence and an aggregate of \$3,000,000.

**Commercial Crime and Third-Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence and an aggregate of \_\_\_\_\_.

**Cyber Liability Insurance** in an amount of: \$5,000,000 per occurrence and an aggregate of \$5,000,000. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in performance of the Contract and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

**Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract. \_\_\_\_\_ per occurrence and an aggregate of \_\_\_\_\_.

**Commercial Umbrella Liability** in the amount of \$5,000,000 per occurrence for combined bodily injury and property damage and an aggregate of \$5,000,000.

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**9. WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the University's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

\_\_\_\_\_ for \_\_\_\_\_

**Liquidated Damages Contained in the Specifications**

**11. ACCEPTANCE:** Vendor's signature on the certification and signature page, constitutes an offer to the University that cannot be unilaterally withdrawn, signifies that the product or service proposed by Vendor meets the mandatory requirements for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions unless otherwise indicated.

**12. STATUTE OF LIMITATIONS -** Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.

**13. PRICING/BEST PRICE GUARANTEE:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation by the University. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the University and invoice at the lower of the contract price or the publicly advertised sale price.

**14. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

**15. PAYMENT METHODS:** The Vendor must accept payment by electronic funds transfer or P-Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's P-Card or by electronic funds transfer as payment for all goods and services for the reason(s) stated below:

\_\_\_\_\_  
\_\_\_\_\_

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**16. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract. Any references contained in the Contract, Vendor's bid, or in any American Institute of Architects documents obligating the University to pay to compensate Vendor, in whole or in part, for lost profit, pay a termination fee, pay liquidated damages if the Contract is terminated early, seeking to accelerate payments in the event of Contract termination, default, or non-funding, costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is hereby deleted. Any language imposing and interest or charges due to late payment is deleted.

**17. FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

**18. RISK SHIFTING:** Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

**19. LIMITING LIABILITY:** Any language limiting the Vendor's liability for direct damages is deleted.

**20. TAXES:** Provided that University has submitted to Vendor a tax-exempt certificate to confirm its tax exempt status, the Vendor shall pay any applicable sales, use, personal property or other taxes arising out of the Contract and the transactions contemplated hereby. The University is exempt from federal and state taxes and will not pay or reimburse such taxes. The University will, upon request, provide a tax-exempt certificate to confirm its tax-exempt status.

**21. FISCAL YEAR FUNDING:** The Contract shall continue for the term stated herein, contingent upon funds being appropriated by the WV Legislature or otherwise being made available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the University may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**22. CANCELLATION/RIGHT TO TERMINATE:** The University reserves the right to cancel/terminate the Contract immediately upon written notice to the Vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The University may also cancel any purchase or Contract upon one hundred eighty (180) days written notice to the Vendor. In the event of early cancellation, the University agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are delete that seek to require the State to (1) compensate Vendor, in whole or in part, for loss profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

In the event that a vendor fails to honor any contractual term or condition, the Chief Procurement Officer may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder in accordance with the Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, section 7.4.1

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Any language seeking to accelerate payments in the event of Contract termination, default or non-funding is hereby deleted.

**23. RIGHT OF FIRST REFUSAL** Any language seeking to give the Vendor a Right of First Refusal is hereby deleted.

**24. DISPUTES** – Any language binding the University to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the University shall be brought in the West Virginia Legislative Claims Commission. Other causes of action must be brought in the West Virginia Court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

**25. TIME:** Time is of the essence with regard to all matters of time and performance in the Contract.

**26. DELIVERY** -All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.

**27. APPLICABLE LAW:** The Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, W. Va. Code or Marshall University Board of Governors Policy No. FA-9 Purchasing Policy is void and of no effect. Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia

**28. COMPLIANCE WITH GOVERNING LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances. Vendor shall notify all subcontractors providing commodities or services related to this Contract that, as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances.

**29. ARBITRATION:** Any references made to arbitration contained in the Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to the Contract are hereby deleted, void, and of no effect.

**30. MODIFICATIONS:** Notwithstanding anything contained in the Contract to the contrary, no modification of the Contract shall be binding without mutual written consent of the University, and the Vendor.

**31. AMENDMENTS** - The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

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**32. NO WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of the Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

Any provisions requiring the University to waive any rights, claims or defenses is hereby deleted.

**33. SUBSEQUENT FORMS:** The terms and conditions contained in the Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the University such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**34. ASSIGNMENT:** Neither the Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the University and any other government or office that may be required to approve such assignments.

The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, provided, however, Vendor may assign the Contract to a party that has been debarred by the State of West Virginia (State) or otherwise barred from doing business with the State and is acquiring substantially all of the business of Vendor, where the assignee agrees in writing to be bound by all of the terms and conditions of the Contract. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract. Should Vendor assign the contract to any person or entity that has been debarred by the State or is otherwise barred from doing business with the State, then this Contract will automatically terminate.

**35. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by the Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the University; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**36. UNIVERSITY EMPLOYEES:** University employees are not permitted to utilize the Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**37. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the University to third-parties, excluding Vendor's Representatives, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the University's policies, procedures, and rules.

**Proposals are NOT to be marked as confidential or proprietary** Any Provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W.Va. Code §29B-1-1, et. seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the University's sole discretion. The University shall not be liable in any way for disclosure of any such records.

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Any provisions regarding confidentiality of or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

**38. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of W. Va. Code §18B-5-4 and the Freedom of Information Act in W.Va. Code Chapter 29B.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL,  
CONTAINING A TRADE SECRET(S), OR IS OTHERWISE NOT SUBJECT TO  
PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Marshall University Office of Purchasing constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document

**39. LICENSING:** Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local University of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state University or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the University to verify that the Vendor is licensed and in good standing with the above entities.

**40. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting an Award Document from Marshall University, the Vendor agrees to convey, sell, assign, or transfer to the University all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by Marshall University. Such assignment shall be made and become effective at the time the University tenders the initial payment to Vendor.

**41. THIRD-PARTY SOFTWARE:** If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.

**42. RIGHT TO REPOSSESSION NOTICE:** Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.

**43. VENDOR CERTIFICATIONS:** By signing its bid or entering into the Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that the Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity

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that could be considered a violation of law; and (4) that it has reviewed the Contract in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the University. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with the all State agencies as required.

**44. VENDOR RELATIONSHIP:** The relationship of the Vendor to the University shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the University for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing. Vendor shall hold harmless the State, and shall provide the State and University with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**45. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the University, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage, and hour laws.

**46. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code §18B-5-5 and §5A-3-18 the University is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Marshall University Office of Purchasing affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

**47. WEST VIRGINIA DRUG-FREE WORKPLACE CONFORMANCE AFFIDAVIT** West Virginia Alcohol and Drug-Free Workplace Act requires public improvement contractors to have and implement a drug-free workplace policy that requires drug and alcohol testing. This act is applicable to any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract for which the value of contract is over \$100,000. No public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the

December 2, 2019

contractor and its subcontractors to implement and maintain a written drug-free workplace policy and the contractor and its subcontractors provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy.

**48. DISCLOSURE OF INTERESTED PARTIES** A state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of \$1,000,000 or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract.

**49. CONFLICT OF INTEREST:** Vendor, its officers, members, or employees shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the University.

**50. MARSHALL UNIVERSITY'S INFORMATION TECHNOLOGY SERVICES AND SUPPORT DEPARTMENT (IT) FEES:** If a vendor requires services through the Marshall University's IT Department, they must reimburse the University at the IT Rate Schedule which is located at: <https://www.marshall.edu/it/rates/>.

**51. PUBLICITY:** Vendor shall not, in any way or in any form, publicize or advertise the fact that Vendor is supplying goods or services to the University without the express written consent of the Marshall University Communications Department. Requests should be sent to [ucomm@marshall.edu](mailto:ucomm@marshall.edu).

**52. UNIVERSITY MARKS:** Vendor shall not, in any way or in any form use the University's trademarks or other intellectual property without the express written consent of the Marshall University Communications Department. Requests should be sent to [ucomm@marshall.edu](mailto:ucomm@marshall.edu).

**53. INTELLECTUAL PROPERTY:** The University will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising out of the agreement, and Vendor will execute any assignments of other documents necessary for the University to perfect such rights, provided that, for research collaboration pursuant to subcontracts under sponsored research agreements, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such intellectual property terms to apply to subcontractors. Notwithstanding the foregoing, Vendor is the sole owner of its software, systems, content, products and services and all intellectual property associated with its software, systems, content, products and services and nothing in this Agreement or any other agreement transfers such ownership and rights to University, even if modifications are made to Vendor's software, systems, content, products and services to facility University's use of such.

**54. FERPA:** Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA). To the extent that Vendor receives personally identifiable information from education records as defined in (FERPA), Vendor agrees to abide by the limitations on re-disclosure set forth in which states that the officers, employees and agents of a party that receives education record information from Marshall may use the information, but only for the purposes for which the disclosure was made.



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**Marshall University General Terms and Conditions**

**55. REPORTS:** Vendor shall provide the University with the following reports identified by a checked box below:

- Such reports as the University may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by University, etc.
- Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by University.

**56. PREFERENCE FOR THE USE OF DOMESTIC STEEL PRODUCTS IN STATE CONTRACT PROJECTS:** Pursuant to W.Va. Code §5A-3-56, (a)(1) Except when authorized pursuant to the provisions of subsection (b) of this section, no contractor may use or supply steel products for a state contract project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W.Va. Code §5A-3-56. As used in this section (2):

(A) "State contract project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after the effective date of this section on or after June 6, 2001.

(B) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, the Director of the West Virginia Department of Administration, Purchasing Division ("Director of the Purchasing Division") may, in writing, authorize the use of foreign steel products if:

(1) The cost for each contract item used does not exceed one tenth of one percent of the total contract cost or \$2,500, whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

(2) The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**57. PREFERENCE FOR DOMESTIC ALUMINUM, GLASS AND STEEL PRODUCTS:**

In Accordance with W. Va. Code § 5-19-1 et seq.,

(a) Every state spending unit, as defined in chapter five-a, shall require that every contract or subcontract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works contain a provision that, if any aluminum, glass or steel products are to be supplied in the performance of the contract, or subcontract, only domestic aluminum, glass or steel products shall be supplied unless the spending officer, as defined in chapter five-a, determines, in writing, after the receipt of offers or bids, that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest or that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements: Provided,

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That this article applies to any public works contract awarded in an amount more than \$50,000, and with regard to steel only, this article applies to any public works contract awarded in an amount more than \$50,000 or requiring more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products.

This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

December 2, 2019

**DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to the Contract.**

**Brandee McGrain, Manager, Client Success**

(Name, Title)

Brandee McGrain, Manager, Client Success

(Printed Name and Title)

510 S Marquette Ave, Minneapolis, MN 55402

(Address)

612-310-6156

(Phone Number)

Brandee.McGrain@MedHub.com

(Fax Number)

(Email Address)

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through BONFIRE, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to Marshall University that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the Vendor in a contractual relationship; and that to the best of my knowledge, the Vendor will properly register with the WV Purchasing Division and Marshall University.

MEDHUB

(Company)

*[Handwritten Signature]*

(Authorized Signature)

M. BURICA / VP SALES

(Printed Name and Title of Authorized Representative)

3.9.20

(Date)

6128774573

(Phone Number)

(Fax Number)

December 2, 2019

## **Marshall University Cloud Computing Contract Addendum**

“**Institution**” as used herein means Marshall University, its Board of Governors, Colleges, Schools, and Departments.

“**Vendor**” as used herein means MedHub, LLC.

*(Insert Vendor Name Here)*

### **Definitions**

“**Confidential Information**” is defined as any and all information whose collection, disclosure, protection, and disposition is governed by state or federal law or regulation, particularly information subject to the Family Educational Rights and Privacy Act (FERPA), the Gramm-Leach-Bliley Act (GLBA), or Marshall University Policy [<http://www.marshall.edu/board/board-of-governors-policies/>]. This information includes, but is not limited to, Social Security numbers, student records, financial records regarding students (or their parents or sponsors), financial and personal information regarding Marshall University employees, and other personally identifiable information identified by law.

“**Covered Data**” includes any institutional data defined as “confidential information”.

“**Institution Data**” includes data uploaded by users of the service and communications between the user, the Institution, and Vendor.

“**Notification Event**” includes Vendor system that may access, process or store University data is subject to unintended access. Unintended access includes compromise by a computer worm, search engine web crawler, password compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.

“**Vendor User**” includes the Vendor and its employees, agents, contractors, and other persons associated with Vendor.

### **Use of the Data**

The Vendor agrees that data provided to them during the provision of service shall be used only and exclusively to support the service and service execution, and not for any other purpose. Unless expressly permitted by the written consent of an Institution official authorized to give such consent, Vendor and its employees, agents, contractors, and other persons associated with Vendor (collectively, the "Vendor Users") are only permitted to use, reuse, distribute, transmit, manipulate, copy, modify, access, or disclose the Institution Data to the extent necessary for Vendor to implement and maintain the information as set forth in this Addendum. Except as otherwise specifically provided for in this Agreement, the Vendor agrees that Institution Data will not be shared, sold, or licensed with any third-

party, except approved sub-contractors, without the express written approval of the Institution and the Senior Vice President for Information Technology.

Vendor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of Institution data and any non-compliance with the data privacy and security requirements by Vendor Users.

### **Data Protection**

Upon termination, cancelation, expiration or other conclusion of the Agreement, (a) upon written request of the Institution, Vendor shall provide a copy of the Covered Data in the form of a Microsoft SQL Server backup file (.bak) to Institution through a mutually agreed upon secured delivery method, and (b) upon written request, subsequently destroy the Covered Data in Vendor's possession. This provision shall also apply to all Covered Data that is in the possession of subcontractors or agents of Vendor. Vendor shall complete such destruction not less than thirty (30) days after the conclusion of this Agreement. Within such thirty (30) day period, Vendor shall certify in writing to Institution that such destruction has been completed.

Compliance with Federal, State, and Local Laws and Regulatory Requirements; Vendor's product must be compliant with any Federal, State, and Local privacy laws or regulations applicable to the Institution and the Confidential Data provided by the Institution, including but not limited to: the Family Educational Rights and Privacy Act (FERPA) (Pub.L. No. 93-380 (1974), codified at 20 U.S.C. § 1232g); the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. No. 104-191, § 264 (1996), codified at 42 U.S.C. § 1320d; Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. § 160 (2002), 45 C.F.R. § 164 subpts. A, E (2002); the Gramm-Leach-Bliley Act (GLBA) (Pub. L. No. 106-102 (1999), privacy protections are codified at 15 USC § 6801 et seq.).

Vendor agrees that it may create, have access to, or receive from or on behalf of Institution or students, or have access to, records or record systems that are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. Section 1232g (collectively, the "FERPA Records"). Vendor represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by Institution in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Vendor protects its own Confidential Information; and (3) continually monitor its operations and take any action necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this Agreement. At the request of Institution, Vendor agrees to provide Institution with a written summary of the procedures Vendor uses to safeguard the FERPA Records.

Vendor agrees to adhere to the additional FERPA requirements listed at the following web address: [\[http://ptac.ed.gov/sites/default/files/data-sharing-agreement-checklist.pdf\]](http://ptac.ed.gov/sites/default/files/data-sharing-agreement-checklist.pdf) if any of the data is used for research or a longitudinal study.

**Notification of Security Incidents**

Unless prohibited from doing so by law enforcement, Vendor promptly, and in no more than 48 hours, shall report to Institution any use or disclosure of Institution’s Confidential Information not authorized by this Addendum or in writing by Institution. Vendor's report shall identify, to the extent then known: (i) the nature of the unauthorized use or disclosure, (ii) Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, as reasonably requested by Institution. Vendor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of Vendor's security obligations or other event requiring notification under applicable law ("Notification Event"), Vendor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the Institution and its Board of Governors, officers, employees, agents and representatives from and against any claims, damages, or other harm related to such Notification Event.

**Institutional Marks Protection**

Use of Institution name, marks, or logos: All use by Vendor of Institution name, marks, and content must be approved in writing by Institution and the Senior Vice President of Communications. Institution reserves the right to review all uses of it name, marks or logos prior to their use by Vendor.

**ACCEPTED BY:**

**MARSHALL UNIVERSITY**

By: Angela White Negff  
Title: Director/Chief Procurement Officer  
Date: 4/8/20

**VENDOR**

Company Name: MedHub  
By: Mike Burica  
Title: VP of Field Ops  
Date: Apr 3, 2020

# Marshall MedHub CC\_Addendum2 (Final)

Final Audit Report

2020-04-03

Created:	2020-04-03
By:	Daniel Murphy (daniel.murphy@medhub.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAsCY1sWX4flkRNcihuTLsQv-YOmBumKQq

## "Marshall MedHub CC\_Addendum2 (Final)" History

-  Document created by Daniel Murphy (daniel.murphy@medhub.com)  
2020-04-03 - 4:32:24 PM GMT- IP address: 165.225.61.70
-  Document emailed to Mike Burica (mike.burica@medhub.com) for signature  
2020-04-03 - 4:33:17 PM GMT
-  Email viewed by Mike Burica (mike.burica@medhub.com)  
2020-04-03 - 6:38:59 PM GMT- IP address: 45.41.142.199
-  Document e-signed by Mike Burica (mike.burica@medhub.com)  
Signature Date: 2020-04-03 - 6:39:27 PM GMT - Time Source: server- IP address: 165.225.61.74
-  Signed document emailed to Daniel Murphy (daniel.murphy@medhub.com) and Mike Burica (mike.burica@medhub.com)  
2020-04-03 - 6:39:27 PM GMT



STATE OF WEST VIRGINIA  
Purchasing Division

# PURCHASING AFFIDAVIT

**CONSTRUCTION CONTRACTS:** Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

**ALL CONTRACTS:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**DEFINITIONS:**

**"Debt"** means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

**"Related party"** means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: MED HUB

Authorized Signature: [Signature] Date: 4.3.20

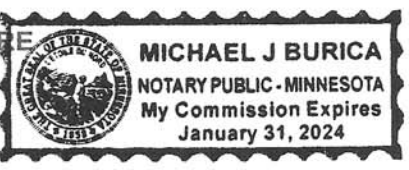
State of MINNESOTA

County of BERNARDIN, to-wit:

Taken, subscribed, and sworn to before me this 3 day of APRIL, 2020

My Commission expires JANUARY 31, 2024

AFFIX SEAL HERE



NOTARY PUBLIC [Signature]



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
02/20/2020

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Marsh USA Inc. 2405 Grand Boulevard, #900 Kansas City, MO 64108 Attn: kansascity.certrequest@marsh.com, fax:212-948-0015  CN108751143--GAXWP-19-20	<b>CONTACT NAME:</b> <b>PHONE (A/C, No., Ext):</b> _____ <b>FAX (A/C, No):</b> _____ <b>E-MAIL ADDRESS:</b> _____  <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> </thead> <tbody> <tr> <td><b>INSURER A :</b> Hartford Fire Insurance Co</td> <td style="text-align: center;">19682</td> </tr> <tr> <td><b>INSURER B :</b> N/A</td> <td style="text-align: center;">N/A</td> </tr> <tr> <td><b>INSURER C :</b> Hartford Casualty Insurance Company</td> <td style="text-align: center;">29424</td> </tr> <tr> <td><b>INSURER D :</b> National Union Fire Insurance Company of Pittsburgh,</td> <td style="text-align: center;">19445</td> </tr> <tr> <td><b>INSURER E :</b> N/A</td> <td style="text-align: center;">N/A</td> </tr> <tr> <td><b>INSURER F :</b></td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	<b>INSURER A :</b> Hartford Fire Insurance Co	19682	<b>INSURER B :</b> N/A	N/A	<b>INSURER C :</b> Hartford Casualty Insurance Company	29424	<b>INSURER D :</b> National Union Fire Insurance Company of Pittsburgh,	19445	<b>INSURER E :</b> N/A	N/A	<b>INSURER F :</b>	
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<b>INSURER F :</b>															

**COVERAGES:** \_\_\_\_\_ **CERTIFICATE NUMBER:** CHI-009456538-01 **REVISION NUMBER:** 8

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			10UENHF3543	11/30/2019	11/30/2020	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$ 10,000</td></tr> <tr><td>PERSONAL &amp; ADV INJURY</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	MED EXP (Any one person)	\$ 10,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COMP/OP AGG	\$ 2,000,000		\$		
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PRODUCTS - COMP/OP AGG	\$ 2,000,000																						
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	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY						<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td style="text-align: right;">\$</td></tr> <tr><td>BODILY INJURY (Per person)</td><td style="text-align: right;">\$</td></tr> <tr><td>BODILY INJURY (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td>PROPERTY DAMAGE (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	COMBINED SINGLE LIMIT (Ea accident)	\$	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$						
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BODILY INJURY (Per accident)	\$																						
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	\$																						
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			10RHUHF3955	11/30/2019	11/30/2020	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 5,000,000</td></tr> <tr><td>AGGREGATE</td><td style="text-align: right;">\$ 5,000,000</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 5,000,000	AGGREGATE	\$ 5,000,000		\$										
EACH OCCURRENCE	\$ 5,000,000																						
AGGREGATE	\$ 5,000,000																						
	\$																						
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A						<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>PER STATUTE</td><td></td><td>OTH-ER</td><td></td></tr> <tr><td>E.L. EACH ACCIDENT</td><td style="text-align: right;">\$</td><td></td><td></td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td style="text-align: right;">\$</td><td></td><td></td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td style="text-align: right;">\$</td><td></td><td></td></tr> </table>	PER STATUTE		OTH-ER		E.L. EACH ACCIDENT	\$			E.L. DISEASE - EA EMPLOYEE	\$			E.L. DISEASE - POLICY LIMIT	\$		
PER STATUTE		OTH-ER																					
E.L. EACH ACCIDENT	\$																						
E.L. DISEASE - EA EMPLOYEE	\$																						
E.L. DISEASE - POLICY LIMIT	\$																						
D	Professional / Cyber Liability			039794446	11/30/2019	11/30/2020	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Limit</td><td style="text-align: right;">1,000,000</td></tr> <tr><td>SIR Value</td><td style="text-align: right;">250,000</td></tr> </table>	Limit	1,000,000	SIR Value	250,000												
Limit	1,000,000																						
SIR Value	250,000																						

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Evidence of Coverage

<b>CERTIFICATE HOLDER</b>  Marshall University 1600 Medical Center Drive Huntington, WV 25701	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Keith A. Stiles
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**medhub | Value**  
 510 Marquette Avenue S. 3rd Floor  
 Minneapolis, MN 55402  
 Voice: (734) 580-2000

**Software Order Form**

**Sales Rep** Kareem Hasan  
**Phone** 612-205-2111  
**Email** Kareem.Hasan@MedHub.com

<b>Organization Name</b>	Marshall University Joan C. Edwards School of Medicine	<b>Service Start Date</b>	April 1, 2020
<b>Contact</b>	Michael McCarthy	<b>Service End Date</b>	June 30, 2023
<b>Email</b>	mccarthym@marshall.edu	<b>Service Term</b>	39 month
<b>Billing Address</b>	1600 Medical Center Drive	<b>Billing Method</b>	Net 30
<b>City, State, ZIP</b>	Huntington, WV 25701	<b>Billing Type</b>	Annually
<b>Phone</b>	304-691-1765	<b>PO required</b>	
<b>Tax ID #</b>		<b>PO Number</b>	

Projected Qty	Type of Program	Product	Type of User	Description	Additional Notes	Per Unit Cost	First Year Subscription Fee
320	UME	MedHub	Student	Annual Subscription Fee Per Authorized User		\$160.00	\$51,200.00
1	UME	MedHub	Other	Premium Implementation Package	See Implementation Packages Attachment for details	\$8,650.00	\$8,650.00
						<b>Subtotal</b>	<b>\$59,850.00</b>
Projected Qty	Type of Program	Product	Type of User	Description	Additional Notes	Per Unit Cost	Second Year Subscription Fee
320	UME	MedHub	Student	Annual Subscription Fee Per Authorized User		\$160.00	\$51,200.00
						<b>Subtotal</b>	<b>\$51,200.00</b>
Projected Qty	Type of Program	Product	Type of User	Description	Additional Notes	Per Unit Cost	Third Year Subscription Fee
320	UME	MedHub	Student	Annual Subscription Fee Per Authorized User		\$160.00	\$51,200.00
						<b>Subtotal</b>	<b>\$51,200.00</b>

*Subscription Fees for Faculty/Physician, Administrator and/or Preceptors are included.*

*MedHub Platform Only: Billable trainee counts for the term listed above are based upon a calculated census of trainees with an active appointment or enrollment record in the most recent full academic year completed. Any census increase in subsequent years of the term will be calculated using the same method*

Qty	Qty Type	# of Trainers	Product	Additional Services Description	Additional Notes	Per Unit Cost	Annual Fee
				Other Annual Fees			\$0.00
				Other Annual Fees			\$0.00
				Professional Services Description			\$0.00
				Onsite Training Per Day	Travel Paid By Client	\$1,250.00	\$0.00
						<b>Subtotal</b>	<b>\$0.00</b>

**Important Terms:**

The Services provided under this Software as a Service Agreement Order are governed solely by the terms of the MedHub Software as a Service Agreement (or MedHub Contract Package) executed between the parties. This offer expires 90 days from the proposal date noted above. This Software Order Form, once signed by you, below, and submitted to MedHub is non-cancellable.

Payment: All MedHub invoices are due and payable based on the billing method described above. The Annual Subscription Fees per Authorized User may be increased upon 30 days advance notice; provided, however, that such fees may not be increased by more than 5% per contract year. MedHub reserves the right to suspend online access in the event that any payment in more than 90 days overdue. Any tax owed by you will be added to the purchase amount. If you are tax-exempt, please provide your tax-exempt certificate prior to invoicing to MedHub. Please refer to section 5.4 in the MedHub Software as a Service Agreement for reimbursable expenses.

<b>Total First Year Fee</b>	<b>\$59,850.00</b>
<b>Total Second Year Fee</b>	<b>\$51,200.00</b>
<b>Total Third Year Fee</b>	<b>\$51,200.00</b>
<b>Total Contract Value</b>	<b>\$162,250.00</b>

The "Credentials Monitoring" module provides output files regarding health care professional licensure status from software monitoring of online licensure status data from various state and federal agencies. Client acknowledges and agrees that MedHub does not verify, error check or warrant the accuracy, availability, or fitness of the output files or any information contained therein or inputted for purposes of the output files. The "PLA Generator" assists with the creation and management of the Program Letter of Agreement (PLA) approval and signature workflow processes. Client acknowledges and agrees that MedHub does not provide legal advice and no attorney-client relationship exists between MedHub and Client. MedHub does not review the PLA generated or any content contained therein, and MedHub does not warrant that the PLA or workflow process will be error-free, meet Client's requirements or comply with any applicable law, regulation or accreditation requirement. The PLA Generator shall not be used as a substitute for obtaining legal advice from a licensed lawyer. MedHub does not assume, and hereby expressly disclaims, any responsibility for, or warranty regarding, Client's ability to satisfy or meet any accreditation requirements. The System, including the "Credentials Monitoring" module and the "PLA Generator," is provided "as is" without warranty of any kind, and MedHub disclaims any warranties, express or implied, related to the System, the output files, the PLA or any other information or materials related thereto, including without limitation related to the reliability, correctness, accuracy, timeliness of the output files, the PLA or related data. In addition to, and not in limitation of, such limitations of liability provided in the Agreement, MedHub shall not have any liability for Client's use of or inability to use, or the accuracy of, the output files, the PLA or any information or content contained therein. Client agrees that the output files from the "Credentials Monitoring" module shall be used for internal business purposes only and not distributed outside of Client.

Name: Michael McCarthy  
 Signature: *Michael McCarthy*  
 Date: 4/8/20

Mike Burica  
*Mike Burica*  
 Mike Burica (Apr 8, 2020)  
 Apr 8, 2020

Please complete and send to: Kareem Hasan  
 Thank you for this opportunity!

# MU20MEDHUB

Final Audit Report

2020-04-08

Created:	2020-04-08
By:	Daniel Murphy (daniel.murphy@medhub.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAADn3CnNqL5Z5ci7RChCFJu-pb79DfzoMV

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-  Document created by Daniel Murphy (daniel.murphy@medhub.com)  
2020-04-08 - 6:49:39 PM GMT- IP address: 165.225.61.70
-  Document emailed to Mike Burica (mike.burica@medhub.com) for signature  
2020-04-08 - 6:50:36 PM GMT
-  Email viewed by Mike Burica (mike.burica@medhub.com)  
2020-04-08 - 6:54:23 PM GMT- IP address: 174.20.148.49
-  Document e-signed by Mike Burica (mike.burica@medhub.com)  
Signature Date: 2020-04-08 - 7:08:40 PM GMT - Time Source: server- IP address: 165.225.61.78
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