

**MANAGEMENT SERVICES AGREEMENT  
BETWEEN  
THE OHIO STATE UNIVERSITY  
AND  
VETERINARY SPECIALTY MANAGEMENT SERVICES, Inc.**

THIS MANAGEMENT SERVICES AGREEMENT ("Agreement") dated this 8<sup>th</sup> day of August, 2012 is by and between The Ohio State University through its College of Veterinary Medicine ("OSU"), an instrumentality of the State of Ohio located in Columbus, Ohio, Veterinary Specialty Management Services, Inc., ("VSMS"), an Ohio Corporation located at 6995 East Kemper Road Cincinnati, OH 45249 and Veterinary Specialty Management Services – Ohio, Inc. ("VSMS-O"), an Ohio Corporation located at 6995 East Kemper Road, Cincinnati, Ohio 45249

WHEREAS, OSU seeks to establish a Veterinary Medical Center ("VMC") in Dublin, Ohio to be named The Ohio State University Veterinary Medical Center at Dublin, and

WHEREAS, the parties agree to enter into this agreement in furtherance of OSU's educational and research missions through provision of advanced clinical electives for veterinary students and alternative instructional opportunities for residents in an efficient specialty practice setting, recruitment of patients into clinical trials and other related academic activities, and

WHEREAS, VSMS wishes to provide management services for that facility, either directly or through its subsidiary, VSMS-O.

NOW THEREFORE, in exchange for the mutual promises, covenants, and consideration, the sufficiency of which is hereby acknowledged, the parties agree to the following terms and conditions:

1) **TERM.** The term of this Agreement shall commence from the date of execution by both parties, and shall continue in effect for ten (10) years), unless terminated early pursuant to Section 4 of this Agreement ("Initial Term"). The Agreement may be extended for additional periods of one or more years upon the mutual written agreement of the parties. Either party should provide the other with at least ninety (90) days written notice, if it wishes to extend the Agreement.

2) **SCOPE OF SERVICES.** Management Services (collectively "Services") provided by VSMS for the fees noted in Section 3 are as follows:

Human Resources. Recruit non-faculty staff, employ through VSMS-O, and manage all professional, paraprofessional, clerical and support staff necessary for the efficient and effective operation of the VMC AT DUBLIN. Clinical Staff hires will be made in consultation with Associate Dean, Clinical and Outreach Services and Department Chair, VCS prior to placement at OSU VMC - Dublin facility.

A) Day to Day Management.

- Manage day to day operations of the facility and coordinate transition of

cases with College

- Follow CVM Standards of Care as set forth in Appendix A, and as may be amended by CVM
- Follow the Standard Operating Procedures as set forth in Appendix B, and as may be amended by the Oversight Board
- Permits and Licenses
- VSMS shall acquire and maintain any and all business permits, certificates, and licenses (if any) necessary to carry out its Services under this Agreement.
- Set up and implementation of Practice Management Software.  
(Parties will discuss potential system integration in the future)
- All travel and lodging expenses of VSMS management employees.

B) Fiscal/Procurement

- Manage finances, including but not limited to, paying bills, payroll processing, benefits programs, and budget
- Assist in research for acquisition of equipment
- Coordinate accounts with vendors for drugs and supplies (for items that University does not elect to purchase)
- Inventory management
- Monthly Financial reporting to OSU

C) Marketing/Communications

- Implement marketing and advertising plan for new center; in coordination with CVM and consistent with OSU guidelines and standards.

D) Services Provided For Other Than Management Fee. Items not included in the Management Fee, and may be paid directly by OSU or via reimbursement to VSMS-O with prior written approval and supporting receipts/documentation:

- Day to day expenses of the business in accordance with business plan/budgets as approved by CVM.
- Costs of practice manager, administrative assistant for practice manager, technicians, assistants, front desk personnel, doctors, residents interns or janitorial or maintenance staff required including employment recruitment in accordance with business plan/budgets as approved by CVM.
- Any and all service contracts related to the business.
- Any and all leases or purchase of equipment for the business needs.
- Any consultant work desired by OSU outside of the scope of the VMC

AT DUBLIN.

- 3) **PAYMENT FOR SERVICES.** VSMS Fees for Services are based on two components; a Management Fee based upon a percentage of revenue (after refunds and returns) and a tiered Incentive Plan based upon Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA"). Payments to VSMS-O are based on billings for actual costs of services described in 2.D. above.

A) Management Fee. The Management Fee for VSMS is a fixed fee or percentage of the revenue (after refunds and returns) set forth as follows:

- Year 1 - fixed fee of \$403,164 divided over 14 months (\$28,797.42/month). Payments to commence two months before the projected opening.
- Year 2 the fee will be 8% of revenue
- Years 3 and 4 will be 7% of revenue
- Year 5 will be 6.8% of revenue
- Year 6-10 will be 6.3% of revenue

Invoiced Monthly (including backup for charges) – payment Net 15 days

B) Incentive Plan. The Incentive Plan for VSMS is based upon the EBITDA of the VMC at Dublin and is as follows:

i) Years 1-5. % of Incentive based upon EBITDA

- |                                   |     |
|-----------------------------------|-----|
| • Incentive - % > \$250k          | 5%  |
| • Additional % on EBITDA > \$500K | 8%  |
| • Additional % on EBITDA > \$750K | 14% |
| • Additional % on EBITDA > \$1M   | 18% |

ii) Years 6-10. % of Incentive based upon EBITDA

- |                                   |     |
|-----------------------------------|-----|
| • Incentive - % > \$250k          | 2%  |
| • Additional % on EBITDA > \$500K | 5%  |
| • Additional % on EBITDA > \$750K | 14% |
| • Additional % on EBITDA > \$1M   | 18% |

Incentives shall be paid within sixty (60) days of the determination of annual EBITDA and receipt of Invoice including backup documentation. VSMS will prepare the financial statements and calculate EBITDA and deliver such statements to OSU within thirty (30) days after the end of each agreement year. Any dispute will be submitted for resolution initially to the Oversight Board. If the dispute remains unresolved, it will be submitted to an independent public accounting firm chosen by the parties.

C) OSU shall be responsible for the operating expenses of the VMC at Dublin. Neither VSMS nor VSMS-O shall have any obligation to fund the operations of the VMC at Dublin. VSMS-O and OSU will jointly determine the mechanism for funding operations.

D) Taxes. VSMS shall pay all taxes incurred performing Services under this Agreement, including all applicable income taxes.

#### 4) **TERMINATION.**

A) Termination for Convenience. Either Party may terminate this Agreement, without cause, on one (1) year's written notice to the other party.

- i) Should VSMS determine to terminate the Agreement for Convenience more than five years into the Initial Term, then OSU has the sole responsibility to find a replacement for Management Services at the VMC. Should VSMS determine to terminate the Agreement less than five years into the Initial Term, then VSMS would assist OSU in finding a replacement for Management Services at the VMC
- ii) Should OSU determine to terminate the Agreement for Convenience, it shall pay VSMS a one-time payment. The payment will be (a) one year management fee equal to the average of previous years' management fees and (b) a lump sum incentive payment calculated on the average of the previous years' percentage of forecasted EBITDA achieved and applied to the forecasted incentive percentages listed in the remaining years of the contract. [Table 1 is an example calculation of (b) the lump sum incentive. ] VSMS acknowledges and agrees that it shall not be entitled to any additional or other payments from OSU resulting from a Termination for Convenience. OSU will also pay VSMS all costs of operation through the date of termination.
- iii) If the termination occurs within the first two years of operation of the VMC, the total payment for ii (a) and (b) above shall be the greater of \$1 Million or the calculation in section ii above.
- iv) Both parties are subject to the terms of the Orderly Transition provision set forth in this Section.

B) Termination by Mutual Agreement. The Parties may mutually agree to terminate this Agreement in whole or part under terms not stated herein upon written amendment to the Agreement.

C) Termination for Cause. Except as provided in this section, either Party may terminate this Agreement, for cause, on ninety (90) days written notice to the other party. Written notice shall detail the breach of the Agreement. The breaching party shall have ninety (90) days from receipt of the notice to cure any material breach to the satisfaction of the other party. Upon receipt, the party receiving written notice shall take all action necessary to minimize or eliminate any further costs, fees, or expenditures by the party providing notice.

Certain actions by the parties may result in immediate termination for cause, upon the election of the aggrieved party. Those are either Party's:

- i) Insolvency, bankruptcy, or assignment to creditors
- ii) Sale, assignment, or liquidation of the material assets, or dissolution
- iii) Abandonment of the services necessary under this Agreement
- iv) Non-payment of any undisputed fees
- v) Fraud, embezzlement, intentional financial misrepresentation by a VSMS Officer or Director
- vi) Indictment or conviction of a non-traffic related felony by a VSMS Officer or Director that materially harms the OSU brand

C) Orderly Transition. In the event that this Agreement is terminated pursuant to any of the other provisions noted herein, the parties agree to make all good faith efforts to work cooperatively toward the completion of active projects, promptly communicate and exchange information, and take other actions necessary to ensure an orderly and professional transition from this Agreement.

This orderly transition, under any shall include, but will not be limited to:

- i) VSMS-O employees would have the opportunity to transition to and may be hired at discretion of OSU.
- ii) VSMS, VSMS-O may not employ non-management employees after termination.

5) **NON-COMPETE**

VSMS, VSMS-O, or any affiliate of VSMS, or any of their respective owners, partners, or officers shall not engage in any business or commercial activity that is or may be, directly or indirectly, engaged in veterinary or animal care in Franklin County Ohio, or in any contiguous Ohio Counties during the term of the Agreement and for a period of five years after termination. This item shall have no application if VSMS or VSMS-O terminates for cause during the first three years of operation of VMC Dublin, or if OSU terminates for convenience during the first three years of operation of VMC Dublin.

6) **GOVERNANCE STRUCTURE**

A) Oversight Board. The function and purpose of the VMC at Dublin shall be controlled by its Oversight Board who shall determine its Strategic Planning and Direction. The function of the Oversight Board shall include but not be limited to evaluation of VMC's growth and new business opportunities, operational monitoring, determining standards of care, reviewing financial performance, monthly financial monitoring, setting the annual budget process, setting and annually review the Standard Operating Procedures (SOPs), determining critical issue resolution, risk management, audit, insurance, and academic integration. The composition of the Oversight Board shall consisting of the following:

- i) Dean, OSU College of Veterinary Medicine ("CVM"), Chair
- ii) Associate Dean, Clinical and Outreach Services, CVM Vice Chair
- iii) Chief Administrative Officer, CVM
- iv) VMC Director
- v) Faculty Representative
- vi) CEO – VSMS
- vii) CFO – VSMS
- viii) COO – VSMS

B) Meetings. The Oversight Board shall meet monthly, or as otherwise determined, at the VMC or another agreed location. VSMS shall develop the agenda and materials for the meetings in consultation with CVM.

- C) **Decision Making.** The Oversight Board shall seek to make decisions by reaching consensus. Final decisions shall be made by the Dean, CVM; the Associate Dean or the Dean's designee if the Dean is not available. If decision made without VSMS consensus creates financial impact to the VSMS incentive, the incentive will be calculated based on EBITDA before impact of the matter of the decision.

7) **CONFIDENTIAL INFORMATION.** VSMS recognizes that, during the term of this Agreement it may have access to and become familiar with confidential, proprietary, and/or trade secret information owned by OSU. VSMS agrees that during the term of this Agreement and any extensions, except as required to provide services under this Agreement, VSMS shall not directly or indirectly possess, use, convert, copy, duplicate, or misappropriate confidential, proprietary and/or trade secret information and shall not directly or indirectly disclose, communicate, transmit, or transfer any confidential, proprietary, and/or trade secret information to any person or entity. OSU shall designate which, if any, materials provided to VSMS that it considers confidential, proprietary, and/or trade secret information. The obligation of non-disclosure shall not apply to: (i) information that is or becomes publicly available through no fault of VSMS; (ii) information that is already independently known to VSMS as shown by its prior written records; (iii) information that it is disclosed to VSMS on a non-confidential basis by a third party with the legal right to do so; or (iv) information independently developed by VSMS personnel. All such confidential, proprietary, and/or trade secret information disclosed to VSMS during the term of this Agreement shall remain the property of OSU and, upon the termination of this Agreement, shall be returned to the University. The requirements of this Section shall survive the termination of this Agreement and any extensions for a period of five (5) years thereafter.

8) **PUBLIC INFORMATION.** The parties acknowledge that any documents, information, or data maintained or in control of OSU may be subject to disclosure pursuant to ORC chapter 149 et seq. Should OSU receive any Public Records requests for any VSMS documents or records in OSU's possession and control, prior to disclosing, OSU shall notify VSMS and cooperate with VSMS should it seek a protective order for the documents or materials.

9) **OWNERSHIP; USE OF MATERIALS.** Subject to any third party rights in licensed elements, OSU shall be sole owner of all rights in and to promotional, marketing and advertising materials developed and produced in the provision of Services for OSU, including such materials developed and produced prior to the execution of this Agreement. No unauthorized use of OSU materials is permitted by VSMS without the express written approval of OSU. OSU shall have or retain all rights, title, and interest in any and all patient/client information used or developed in the course of this Agreement. OSU shall have or retain all rights, title, and interest in any and all supplies/equipment purchased for or in the course of this Agreement whether paid for either directly by OSU or via reimbursement to VSMS. All information, ideas, concepts, systems, processes, methods and materials relating to the management of the VMC, its accounting, operations, personnel (collectively "Management Know-How"), including but

not limited to all pre-existing Management Know-How, shall be the sole property of VSMS and its affiliates.

10) **INVENTION AND PATENT RIGHTS.** It is recognized and understood that except as stated below, (i) all inventions and all patents, and patent applications, (ii) all copyrightable works (published or unpublished), all copyrights (registered or unregistered), and all applications and registrations, (iii) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, technical data, and specifications), (iv) all trademarks, service marks, trade dress, logos, and trade names, and all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, and (v) all copies and tangible embodiments thereof (in whatever form or medium) which VSMS creates as a result of VSMS' activities under this Agreement contract shall be owned solely by the OSU in accordance with University policy and the laws of the State of Ohio. All Management Know-How shall be and remain the sole property of VSMS and its affiliates. VSMS grants OSU an irrevocable royalty-free license to use any tools or practices that may be part of VSMS' Management Know-How, and are necessary for the continued operation of VMC at Dublin, and for no other purpose or location.

11) **PRIMARY CONTACTS / NOTICE.** For the purpose of formal notice or other communication, the primary contacts for the parties are:

For VSMS, Inc.:

CEO  
VSMS, Inc.  
6995 East Kemper Road  
Cincinnati, OH 45249

CEO  
VSMS-O, Inc.  
6995 East Kemper Road  
Cincinnati, OH 45249

For The Ohio State University:

Renne Komula  
Chief Administrative Officer  
The Ohio State University  
College of Veterinary Medicine  
1900 Coffey Road  
Columbus, Ohio 43210

12) **INDEPENDENT CONTRACTOR.** In performing services under this Agreement, VSMS acknowledges that it is an independent contractor and not an agent or employee of OSU, and except in connection of its management of the VMC at Dublin, VSMS shall not hold out, infer, or otherwise represent any part of its business as OSU.

13) **RIGHT OF AUDIT.** OSU reserves the right to audit all records regarding the performance of Services by VSMS-O ("Audit"). The Audit is solely for the purpose to ensure VSMS-O fiscal accuracy and compliance to state, federal laws and regulations and OSU and CVM policies. VSMS-O agrees to fully cooperate with any such Audit by OSU.

14) **INSURANCE.** VSMS shall procure and maintain for the term of this Agreement general liability insurance in a minimum amount of \$1,000,000/\$3,000,000 covering its activities under this Agreement, and shall furnish OSU policies or certificates evidencing such coverage. OSU shall be named as an additional insured on such policy. VSMS shall notify OSU of any cancellation or significant change in this policy. Each of the parties shall be responsible for any medical malpractice insurance for their respective employees.

15) **NEGLIGENT ACTS OR OMISSIONS.** Each party to this Agreement shall be responsible for any liability, claim, loss, damage or expenses, including without limitation, reasonable attorney fees, arising from its negligent acts or omissions in connection with its performance of the Agreement, or its failure to comply with the terms of this Agreement, as determined by a court of competent jurisdiction.

16) **FORCE MAJEURE.** No party shall not be liable for any delay or failure to carry or make timely Services available if such delay or failure is due to any cause beyond the control of the party, including without limitation restrictions of law or regulations, labor disputes, acts of God, acts of terrorism or war, telecommunications, network or power failures or interruptions, or mechanical or electronic breakdowns.

17) **ADVERTISEMENT.** VSMS shall not advertise the fact that it has contracted with OSU or appropriate or make use of OSU's name or registered marks, logos, or OSU property without the prior written consent of OSU's Office of Trademark and Licensing. Such consent shall be within the sole discretion of OSU.

18) **GOVERNING LAW / JURISDICTION.** This Agreement shall be governed by, construed, and enforced in accordance with, the laws of the State of Ohio.

19) **COMPLIANCE WITH LAWS.** VSMS shall comply with all applicable federal, state, and local laws and regulations in connection with providing the Services hereunder.

20) **ASSIGNMENT.** Neither party may assign this Agreement nor any of the obligations contained in this agreement to a third party without the express written permission of the other party. Such permission shall not be unreasonably withheld.



21) **DECLARATION REGARDING MATERIAL ASSISTANCE / NON-ASSISTANCE TO A TERRORIST ORGANIZATION.** VSMS hereby represents and warrants to OSU that it has not provided any material assistance, as that term is defined in O.R.C. § 2909.33(C), to any organization identified by and included on the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization" form ("Declaration," attached as Exhibit A) and as found on the Ohio Homeland Security website ([www.homelandsecurity.ohio.gov/dma](http://www.homelandsecurity.ohio.gov/dma)). VSMS further represents and warrants that it has provided a completed copy of such Declaration (Exhibit A) to OSU prior to execution of this Agreement and has attached it to this Agreement. **If these representations and warranties are found to be false, this Agreement is void *ab initio*.** Refusing to disclose knowingly provided material assistance or making false statements on the Declaration is a fifth degree felony. Provision of false disclosure may result in a permanent ban from conducting business with or seeking funding from OSU as well as any state of Ohio agency, instrumentality of the state, or political subdivision of the state.

22). **ENTIRE AGREEMENT.** This Agreement, including attachments hereto, and any subsequent addenda, contains the entire agreement between VSMS and the University. This Agreement may be modified or extended only by prior written agreement signed by the parties. In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect.


IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the dates set forth below.

**THE OHIO STATE UNIVERSITY**



Geoffrey S. Chatas  
Senior Vice President for Business and Finance, CFO


8/9/12  
Date



Lonnie King, DVM  
Dean, College of Veterinary Medicine

8/17/12  
Date


Veterinary Specialty Management Services, Inc.



Name: DOUGLAS J. HOFFMAN DVM  
Title: CEO

8/8/12  
Date

Veterinary Specialty Management Services of Ohio, Inc.

  
Name: DOUGLAS J. HOFFMAN DVM  
Title: CEO

8/8/12  
Date

OSU/CARE Center projections  
 Termination for  
 convenience incentive  
 fee schedule  
 Example R-2

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
EBITDA - Forecasted	\$10,000	\$20,000	\$30,000	\$40,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Incentive - Forecasted	\$0	\$2,000	\$3,000	\$4,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
<b>Example-1, Termination for convenience occurs at end of year 2</b>										
EBITDA - Actual	\$8,000	\$16,000								
EBITDA - Actual/EBITDA Forecasted	80.0%	80.0%								
EBITDA Avg Actual/Forecasted		80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
EBITDA incentive termination fee years 3 - 10		\$29,600	\$2,400	\$3,200	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000
<b>Example-2, Termination for convenience occurs at end of year 3</b>										
EBITDA - Actual	\$8,000	\$16,000	\$24,000							
EBITDA - Actual/EBITDA Forecasted	80.0%	80.0%	80.0%							
EBITDA Avg Actual/Forecasted			80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
EBITDA incentive termination fee years 4 - 10			\$27,200	\$3,200	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000