



BOARD OF COMMISSIONERS

Agenda Item Summary

Agenda Category: Contracts Item No:

Meeting Date: 9/5/23

Department: Human Resources

Issue: In the matter of approving the contract with Care Validate.

Background: Care Validate is a leaving tracking software that will allow employees to submit FMLA/OFLA/PLO paperwork digitally. Additionally, it will also allow employees to submit request for ADA accommodations and will track the required interactive process. The software will also help HR staff track all leaves and accommodations.

Recommended Motion: Motion to approve and authorize the HR Director to sign the contract with Care Validate. **Fiscal Impact: \$11,500 (\$5,500 in year one, \$3,000 in both years two and three) from the HR Computer Software budget.**

DONE AND DATED this _____ day of _____, 20____.

Chair
Approved
Denied

Vice-Chair
Approved
Denied

Commissioner
Approved
Denied



Master Services Agreement

This Master Services Agreement (the “**Agreement**”) is made by and between CareValidate, Inc., a Delaware corporation, (“**CareValidate**”), and Klamath County, 305 Main Street, Klamath Falls, Oregon 97601 (“**Customer**”) as of August 21, 2023 (“**Effective Date**”). Customer and CareValidate may singularly be identified herein as “**Party**” and collectively as “**Parties**.”

The parties agree that:

1 The Product and Services

CareValidate, Inc., (“CareValidate”) provides AccommoCare, a software-as-a-service product (“SaaS”) for employers to manage job accommodation and leave requests (the “platform”). AccommoCare+ includes the platform plus the services of licensed legal and medical professionals for review, consultation and recommendation on an as needed basis. AccommoCareTPA includes the platform plus the third-party administration of all requests that includes licensed legal and medical professionals for review, consultation and recommendation on an as needed basis. AccommoCare+ and AccommoCareTPA involves the collaboration of CareValidate and the customer to review job requests in compliance with all applicable law and regulations.

2 Term; Termination; Suspension of Services; Survival

- 2.1 Term.** This Agreement shall be effective as of the Effective Date and shall continue in full force and effect through the initial subscription term of two (2) years unless otherwise specified in the Quote (“**Initial Term**”), and/or unless otherwise terminated as provided in the Agreement. To ensure continuity of service, the Agreement and any Quote will automatically renew for additional one-year terms (each a “**Renewal Term**”) unless either Party gives written notice of non-renewal to the other Party at least sixty (60) days before the end of the current term. With respect to any Software Services purchased, the Initial Term along with any Renewal Term(s) constitute the full Subscription Term. Additional subscriptions purchased on any subsequent order(s) will co-terminate with the Subscription Term.
- 2.2 Termination for Convenience.** CareValidate may terminate this Agreement for convenience upon sixty (60) days’ prior notice to the Customer. After the Initial Term, Customer may terminate this Agreement or any Quote for convenience upon sixty (60) days’ prior notice to CareValidate.
- 2.3 Termination for Insolvency.** Subject to Title 11 of the United States Code, CareValidate may terminate this Agreement if Customer seeks protection from its creditors under the bankruptcy laws, if a trustee or receiver is appointed over its assets or if an involuntary petition in bankruptcy is filed on behalf of Customer but not removed within 60 days.
- 2.4 Termination for Cause.** Either Party may terminate this Agreement upon written notice if the other Party materially breaches this Agreement and fails to correct the breach within (30) days following notice specifically identifying the breach; provided that the cure period with respect to Late Payments shall be ten(10) days.
- 2.5 Suspension of Access.** CareValidate may, directly or indirectly, and by use of a disabling device or any other lawful means, suspend, terminate or otherwise deny Customer’s or any Authorized User’s access to or use of all or any part of the Software Services without incurring any resulting obligation or liability, if: (i) CareValidate receives a judicial or other governmental demand or order or law enforcement request that expressly or by reasonable implication requires CareValidate to do so, in which case CareValidate shall provide Customer



prompt written notice where permitted by applicable law and such process; or (ii) CareValidate believes, in its reasonable discretion, that: (a) Customer or any Authorized User has accessed or used the Software Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (b) Customer or any Authorized User is or has been involved in any fraudulent or unlawful activities relating to or in connection with the Software Services; (c) Customer's use of the Software Services in violation of this Agreement, or the transmission of any Customer Data, poses any security or vulnerability risk to CareValidate, its Affiliates, other customers, authorized users or vendors, or the Software Services; or (d) this Agreement expires or is terminated. If CareValidate suspends Customer's right to access or use any portion or all of the Software Services, Customer remains responsible for all Fees and charges Customer has incurred through the date of suspension and during the period of any such suspension.

- 2.6 Survival.** The following provisions will survive the termination or expiration of this Agreement: Section 5 (Proprietary Rights), Section 9 (Confidentiality and Security), Section 10 (Indemnification), Section 11 (Limitation of Liability) and Section 12 (Additional Terms), and such other provisions that by their terms are intended to survive termination or expiration.

3 Software Services

- 3.1 License.** Subject to the terms and conditions of this Agreement, including Customer's payment of all relevant Fees, CareValidate grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable and limited license to access, use and display the Software Services, for the duration of the Subscription Term and solely for Customer's internal purposes.
- 3.2 Authorized Users.** Customer may grant access and use rights to its Authorized Users; provided that: (i) such Authorized User agrees in writing with Customer to be bound by and accepts all of the obligations imposed upon Customer under this Agreement (other than payment obligations for which Customer is solely responsible to CareValidate) and to any reasonable end user terms of use provided by CareValidate; (ii) Customer agrees to be responsible for the acts and omissions of such Authorized Users in relation to the Agreement; (iii) the Authorized User is not a CareValidate customer under separate contract, nor actively engaged with CareValidate in discussions for the purchase of the Software Services; (iv) the Authorized User or the entity they represent is not a direct competitor of CareValidate; and (v) all of Customer's obligations under the Agreement will remain in force and undiminished.
- 3.3 Restrictions.** Customer and its Authorized Users are prohibited from using the Software Services for any purpose which would violate any provision of this Agreement. Specifically, Customer and Authorized Users will not (i) copy, modify, or create a derivative work from, reverse engineer, disassemble, decompile, decode, adapt, reverse assemble or otherwise attempt to discover any source code in part or in full; (ii) rent, lease, lend, sell, assign, sublicense, distribute, publish, or otherwise transfer any right in the Software Services; (iii) re-sell the Software Services or its contents, or permit collection (including but not limited to collection via web-scraping); (iv) use any device, software, or routine to bypass any code of the Software Services or to interfere or attempt to interfere with the proper working of the Software Services; (v) take any action that imposes an unreasonable or disproportionately large load on the products or services or its host infrastructure; (vi) engage in any automated system or method of data collection from the Software Services; (vii) disclose, disseminate, reproduce, or publish any portion of the Software Services in any manner or permit the same; (viii) use the Software Services to create derivative products or other derivative works; (ix) disassemble, decompile, manipulate, or reverse engineer any portion of the Software Services; or (x) introduce to the Software Services or use the Software Services to disseminate any viruses or other computer code, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware.



3.4 User Credentials. Each Authorized User may be assigned a unique identification name and password for access to and use of the Software Services (“**User ID**”). Customer will be responsible for ensuring the security and confidentiality of any User IDs. Customer acknowledges that it will be fully responsible for all liabilities incurred through use of any User ID (whether lawful or unlawful) and that any transactions completed under a User ID will be deemed to have been lawfully completed by Customer. Customer agrees to maintain a current list of all Authorized Users authorized to access the Software Services on behalf of Customer. In no event will CareValidate be liable for the foregoing obligations or the failure by Customer to fulfill such obligations.

3.5 Updates. CareValidate reserves the right to upgrade, maintain, tune, backup, amend, add or remove features or functionality, redesign, improve or otherwise alter the Software Services at any time.

4 Professional Services

4.1 Description. In connection with this Agreement, CareValidate may provide installation and implementation, training, project management, third-party administration, consulting and other services offered by CareValidate (“**Professional Services**”). Professional Services specific to the provision of employee job accommodation requests will be performed as follows in this Section 4.

4.2 CareValidate will provide the services for Accommodation determinations (the “**Services**”) set out in the Quote.

4.3 Customer requires resources from CareValidate to address the following:

4.3.1 Provide a secure platform for the collection and secure storage related to requests for accommodations and leave.

4.3.2 Conduct disability accommodation determinations by legal and medical professionals on behalf of Customer and in compliance with applicable federal, state, and local laws, regulations and guidelines (“**determinations**”).

4.3.3 Engage, as needed, on behalf of Customer with Customer’s employees and their health care providers to elicit information necessary to fully evaluate accommodation requests.

4.3.4 Transmit or provide access to the determination recommendations and underlying documentation to Customer for Customer’s review and consideration of its undue hardship related to each accommodation and to render a final determination.

4.3.5 Maintain and retain, subject to Customer’s direction, individual records of the request and determination in a secure platform that is compliant with applicable health data, document retention and privacy requirements; provide such reports/records/results to Customer upon its request and/or as needed for compliance with federal/state/local laws, regulations and guidelines.

4.4 Customer Obligations. Customer will:

4.4.1 Designate one of its employees or agents to serve as its primary contact and to act as its authorized representative with respect to matters pertaining to this service (“**Customer POC**”).

4.4.2 Require that the Customer POC respond promptly to any reasonable requests from CareValidate for instructions, information, or approvals required by CareValidate to provide the Services.



- 4.4.3 Cooperate with CareValidate in its performance of the Services and provide access to Customer's employees, contractors and advisors, as required to enable CareValidate to provide the Services.
- 4.4.4 Secure any needed authorizations or consents to obtain employee's accommodation requests and records and share with CareValidate.
- 4.4.5 In all communications with legal professionals working for CareValidate on behalf of Customer, take all reasonable steps to treat and maintain such information as privileged attorney-client communications and as protected attorney work product. Such steps must include, but are not limited to: (1) limiting access to such communications to the Customer POC and/or the management of Customer; (2) ensuring that the IT networks and systems used by Customer are secure and that access is limited to authorized users; (3) refraining from disclosing the contents of such communications to the subject of the accommodation request or to other third-parties; and (4) unless otherwise authorized or directed by CareValidate, engaging in all such communications within or via the CareValidate platform, and refraining from engaging in such communications through other means. Any questions regarding the interpretation of this subsection or regarding the appropriate procedure for receiving and storing legal communications should be directed to CareValidate.
- 4.5 CareValidate's Obligations.** CareValidate will perform the Services:
- 4.5.1 In accordance with the terms and subject to the conditions set out in the Agreement.
- 4.5.2 Using personnel with appropriate experience to perform the Services with commercially reasonable skill, experience and qualifications.
- 4.5.3 In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.
- 4.6** The parties acknowledge that CareValidate has **no obligation** to provide legal advice, counsel or assistance. CareValidate is a corporation and does not and cannot practice law or medicine. The final determination regarding accommodations is the sole responsibility of Customer and its legal team.
- 4.7 Change Orders.** Any changes to the Professional Services shall be made pursuant to a change order mutually agreed upon by the Parties, which shall be considered part of the applicable Quote (a "**Change Order**").
- 4.8 Customer Responsibility.** Customer acknowledges and agrees that Professional Services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, Customer. CareValidate will not perform management functions or make management decisions for Customer. Customer acknowledges and agrees that any advice, recommendations, information, Deliverables or other work product ("Advice") provided by CareValidate in connection with the services under the Agreement is intended for Customer's sole benefit, and CareValidate does not authorize any party other than Customer to benefit from the Advice or make any claims against CareValidate relating thereto. Any such benefit or reliance by another party shall be at such party's sole risk. CareValidate may, in its sole discretion, mark such Advice to reflect the foregoing. Except for disclosures that are required by law or that are expressly permitted by this Agreement, Customer will not disclose, or permit access to such Advice to any third party without CareValidate's prior written consent. Customer will indemnify, defend, and hold harmless CareValidate, its Affiliates and each of its/their respective officers, shareholders, directors, employees and agents from and against any and all damages, losses, liabilities, judgments, awards, costs and expenses (including, without limitation, reasonable attorneys' fees



and court costs) brought by a third party and in each case regardless of character or form arising out of or resulting from Customer's management decisions with respect to or a third party's reliance on such Advice.

5 Proprietary Rights

5.1 CareValidate Materials; Software Services. As between the Parties, Customer acknowledges that CareValidate is the exclusive owner of all right, title and interest in and to (i) the Software Services; (ii) Prior Inventions; (iii) all Intellectual Property developed and/or owned by CareValidate, its Agents, or third parties on or after the Effective Date of this Agreement, including, without limitation, all Marks; (iv) research, benchmarking methodologies, tools, and other confidential materials relating to the Software Services (including, without limitation, any such materials based on aggregated and de-identified Customer Data); configurations, workflows, interfaces, modifications and any enhancements of the Software Services developed or customized for Customer hereunder; and (v) any derivative works of any of the foregoing ("CareValidate Materials"). Nothing in this Agreement will confer on Customer or any Authorized User any right of ownership or interest in the Software Services, improvements thereto, or intellectual property rights therein. Customer is hereby granted a worldwide, royalty-free right to distribute to its Authorized Users all reports and analyses provided as part of the Software Services.

5.2 Deliverables. Upon full and final payment to CareValidate, CareValidate assigns and grants to Customer title in the tangible items specified as deliverables in the Quote, produced as a result of Professional Services, (the "Deliverables") and any copyright interest in the Deliverables (not including any CareValidate materials contained in such Deliverables). If and to the extent that any CareValidate Materials are contained in any of the Deliverables, CareValidate hereby grants Customer a royalty-free, non-exclusive, non-transferable, perpetual license to use such CareValidate Materials solely in connection with Customer's use of the Deliverables that do not constitute CareValidate Materials. Customer acknowledges and agrees that CareValidate shall have the right to retain for its files copies of each of the Deliverables and all information necessary to comply with its contractual obligations, laws and regulations and applicable professional standards.

5.3 Customer Data As between CareValidate and Customer, Customer grants CareValidate a non-exclusive, royalty-free, fully-paid, transferable, irrevocable, perpetual, and sub-licensable right to host, transmit, collect, distribute, modify, reproduce, display, archive, analyze, use, execute, collect information regarding, create derivative works of, and otherwise perform all operations on or in connection with any Customer Data that is necessary for the proper execution of the Software Services. Customer acknowledges that this includes, without limitation, reformatting, editing, resizing, analyzing, and distributing the Customer Data through third party services, such as its hosting provider. The Customer Data and all intellectual property rights therein or relating thereto, are and shall remain the exclusive property of Customer or its licensors.

5.4 Derivative Data. Subject to the provisions of Section 5.3, CareValidate shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Software Services and related systems and technologies (including, without limitation, anonymous and aggregated information concerning use of Customer Data in the Software Services) (collectively "Derivative Data"). CareValidate will have a perpetual, irrevocable, royalty-free license to (i) use such Derivative Data to improve and enhance the Software Services and for other development, diagnostic and corrective purposes in connection with the Services and other CareValidate offerings, and (ii) disclose and sell such Derivative Data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted in the Customer Data except as expressly set forth herein.

5.5 Feedback. Providing any suggestions, enhancement requests, recommendations, corrections or other feedback (collectively, "Feedback") is strictly voluntary. If Customer provides any Feedback to CareValidate,



orally or in writing, CareValidate shall: (i) own, exclusively, all now known or later discovered rights to the Feedback; (ii) not be subject to any obligation of confidentiality and shall not be liable for any use or disclosure of any Feedback; and (iii) be entitled to unrestricted use of the Feedback for any purpose whatsoever, commercial or otherwise, without compensation to Customer or any other person.

6 Fees; Suspension of Service

- 6.1 Fees.** In consideration for CareValidate providing the Software Services and any Professional Services, Customer shall pay to CareValidate the Fees within thirty (30) days from the date of the applicable invoice. All amounts stated in the Quote as due upon signing are due immediately upon signing. Except as provided in Sections 7.4 and 10.2, the payment obligations hereunder are non-cancelable and fees paid are non-refundable.
- 6.2 PEPM Pricing.** All fees charged on a per employee per month basis ("PEPM") are calculated based on the employee count provided by Customer in the Quote ("Minimum Employee Count"). If the number of users increases by ten percent (10%) or more in a given month, CareValidate reserves the right to increase the Minimum Employee Count going forward for billing purposes to the actual number of employees on the platform. Decreases to the Minimum Employee Count will only be accepted upon renewal with at least thirty (30) days written notice before the end of the then current term.
- 6.3 Taxes.** All amounts and fees stated or referred to in this Agreement are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT, sales tax, and use tax) (collectively, "Taxes"). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on CareValidate's net income. Customer will reimburse CareValidate for any Taxes that CareValidate pays as a result of Customer's use of the Software Services.
- 6.4 Suspension of Service and Acceleration.** If CareValidate has not received payment within ten (10) business days after the due date of any applicable invoice, the payment shall be deemed late ("**Late Payment**"). For any Late Payment, CareValidate may, without limiting its other rights and remedies: (a) immediately suspend Customer's account which may include, with respect to the Software Services, revoking Authorized Users' access; and (b) accelerate Customer's unpaid fee obligations so that all such obligations become immediately due and payable. In addition, interest on any Late Payment shall accrue at the lesser of one and one half percent (1.5%) per month or the highest rate of interest allowed by law, calculated from the date such amount was due until the date that payment is received by CareValidate. Customer shall reimburse CareValidate for the reasonable costs of collection, including reasonable fees and expenses of attorneys.

7 CareValidate Warranties

- 7.1 General.** CareValidate represents and warrants that CareValidate: (i) is a properly organized business entity, in good standing in the locations where it operates or conducts business, and has the corporate power and authority to enter and perform its obligations under this Agreement, in accordance with Applicable Law and its articles of incorporation, bylaws, and/or other governance documents; (ii) has obtained all required consents, licenses, approvals, and/or permissions to authorize it to enter and perform its obligations under this Agreement.
- 7.2 Software Services Warranty.** Subject to Section 7.4 below, CareValidate warrants that during the Term, the Software Services, as updated from time to time by CareValidate and used in accordance with the



Documentation and the Agreement by Customer, will operate in substantial conformance with the Documentation under normal use.

- 7.3 Professional Services Warranty.** CareValidate warrants that Professional Services will provided in a professional and workmanlike manner.
- 7.4 Warranty Procedure.** Customer must promptly notify CareValidate in writing of a warranty claim under Sections 7.2 and 7.3. Provided that such claim is reasonably determined by CareValidate to be CareValidate's responsibility, CareValidate shall, within sixty (60) days of its receipt of Customer's written notice, (i) correct the issue or provide a workaround, (ii) provide Customer with a plan reasonably acceptable to Customer for correcting the issue, or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from CareValidate at CareValidate's discretion, then CareValidate may terminate the affected Software Services and/or Professional Services and Customer will be entitled to a refund of the unused Fees paid for the affected product applicable to the balance of the then-current Term. This warranty is void, and CareValidate is not obligated to provide support, if a claimed breach of the warranty is caused by, (a) the combination or use of the Services or Deliverables with a product, item, or material not provided by CareValidate, (b) any unauthorized modification of the Services or Deliverables or tampering with the Services or Deliverables, (c) use of the Services or Deliverables inconsistent with the accompanying Documentation, (d) Customer's failure to use any new or corrected versions of the Services or Deliverables made available by CareValidate, or (e) material breach of the Agreement by Customer or its contractors, developers, or third parties.
- 7.5** This Section 7 sets forth Customer's sole and exclusive remedy and CareValidate's entire liability for any breach of warranty or other duty related to the Services.
- 7.6** EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 7.1 THROUGH 7.3 ABOVE, CAREVALIDATE MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING REGARDING THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE, LOSS OF DATA OR RESULTS OF USE OF THE SERVICES, HARDWARE, OR DELIVERABLES. WITHOUT LIMITING THE FOREGOING, CAREVALIDATE DISCLAIMS ANY WARRANTY THAT THE SERVICES, HARDWARE, OR DELIVERABLES WILL BE ACCURATE, ERROR-FREE, OR UNINTERRUPTED. CAREVALIDATE MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, NONINFRINGEMENT, COURSE OF DEALING OR COURSE OF PERFORMANCE.

8 Customer Representations & Warranties

- 8.1** Customer represents and warrants that Customer: (i) is a properly organized business entity, in good standing in the locations where it operates or conducts business, and has the corporate power and authority to enter and perform its obligations under this Agreement, in accordance with Applicable Law and its articles of incorporation, bylaws, and/or other governance documents; (ii) has obtained all required consents, licenses, approvals, and/or permissions to authorize it to enter and perform its obligations under this Agreement; (iii) performance of its duties under this Agreement will in no way conflict with or violate any Applicable Law; (iv) it has read and understood this Agreement and the services to be provided by CareValidate; (v) it has the ability and right to provide any data it provides to CareValidate; and (vi) will not introduce to the Software Services or use the Software Services in such a way as to disseminate any viruses or other computer code, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware.



9 Confidentiality & Security

- 9.1 Confidentiality.** During the course of this Agreement, each Party may obtain or gain access to nonpublic information from the other Party or its Affiliates that is confidential and proprietary in nature. “**Confidential Information**” means any information a Party or its Affiliates receives or has access to in connection with this Agreement, whether or not disclosed by a Party or its Affiliates, and whether or not labeled as being confidential, which is not publicly known, including, but not limited to: software, financial information, schematics, requirements, configuration information, research papers, projections, routines, processes, formulas, trade secrets, innovations, inventions, discoveries, improvements, research or development and test results, specifications, know-how, formats, plans, sketches, drawings, models, customer lists, customer and supplier identities and characteristics, agreements, marketing knowledge and information, sales figures, pricing information, marketing plans and business plans, organizational structure and operations, strategies, forecasts, analyses, financial information, budgets, system flow charts, process flow diagrams, data dictionaries, data models, entity relationship diagrams, object models, screen layouts, and any other information of a Party or its Affiliates stored or created on any media or in any form and received, processed, stored, archived or maintained by a Party or its Affiliates. “Confidential Information” will not include information that a Party can demonstrate through written documentation: (i) was publicly known through no wrongful act of a Party; (ii) was in a Party’s lawful possession prior to disclosure under this Agreement and was not received as a breach of any confidentiality obligations; (iii) was independently developed by a Party outside the scope of this Agreement; or (iv) was lawfully obtained from a third party without confidentiality restrictions. The Parties agree that at all times, and notwithstanding the termination or expiration of this Agreement, they will: (i) retain all ownership rights in and to their Confidential Information; and (ii) use the same standard of care that a Party uses to protect its own Confidential Information of a like nature and, in any event, no less than a reasonable standard of care; and (iii) not use the Confidential Information for any reason other than to fulfill its obligations pursuant to this Agreement; and (iv) not use, reproduce, or disclose the Confidential Information to any third party, in each case, without prior express written consent of the other Party other than to those of its employees, agents, and consultants who require it in connection with their duties in performing its obligations under this Agreement. A Party will, and will ensure that its Agents, employees, and consultants comply with all of confidentiality and non-disclosure and non-use obligations hereunder. A Party will promptly notify the other Party in the event that a Party learns of any unauthorized release or use of Confidential Information. In the event a Party is required to disclose any Confidential Information by law, court order, or regulatory agency action, a Party will provide the other Party: (i) immediate written notice thereof, if legally permitted; (ii) the opportunity to oppose such request for disclosure; and (iii) any cooperation that is reasonably requested by a Party to oppose such request for disclosure. A Party agrees to limit the disclosure to only the Confidential Information specifically required to be disclosed.
- 9.2 Security.** CareValidate will use commercially reasonable efforts to maintain industry standard safeguards reasonably designed to protect the confidentiality and integrity of, and to prevent unauthorized access to or use of Customer Data as set forth in CareValidate’s Operating and Security Policy, as may be amended from time to time.
- 9.3 Data Retention.** Unless otherwise directed by Customer in writing, CareValidate will retain Customer Data for three (3) months after Customer’s Termination Date, after which time all Customer Data will be destroyed.

10 Indemnification

- 10.1** Customer will defend, indemnify and hold harmless CareValidate, its Affiliates and each of their respective officers, shareholders, directors, employees and agents (collectively, “**Indemnitees**”) from and against any and all damages, losses, liabilities, judgements, awards, costs and expenses (including, without limitation, reasonable attorneys’ fees and court costs), and in each case regardless of character or form (collectively,



“Damages”) related to any claim, investigation, audit, regulatory action or other cause of action asserted by a third party against any Indemnitee arising out of or relating to: (i) breach by Customer of and/or its Authorized Users of this Agreement; (ii) violation by Customer and/or its Authorized Users of Applicable Law; (iii) acts or omissions by Customer and/or its Authorized Users; (iv) bodily injury, death or personal property damage caused by Customer and/or its Authorized Users; (v) Customer Data; and (vi) use of the Services.

10.2 CareValidate will defend, indemnify, and hold harmless Customer from and against, any Damages arising from an allegation brought by a third party that the Services or Deliverables infringe on or misappropriate any third party intellectual property right. CareValidate shall have no obligation under this Subsection 10.2 if any claim of infringement or misappropriation results from (a) the unauthorized combination or use of the Services or Deliverables with of a product, item, or material not provided by CareValidate (b) any unauthorized modification of the Services or Deliverables or tampering with the Services or Deliverables, (c) use of the Services or Deliverables inconsistent with the accompanying Documentation; (d) Customer’s failure to use any new or corrected versions of the Services or Deliverables made available by CareValidate, or (e) CareValidate’s compliance with Customer’s designs, specifications, requests, or instructions. If Customer’s right to use the Services or Deliverables is enjoined or, if CareValidate determines, in its sole discretion, appears likely to be enjoined, CareValidate may, at its sole option, use reasonable efforts to: (i) obtain for Customer the right to continue using the Services or Deliverables; (ii) modify the Services or Deliverables so they no longer infringe or misappropriate, or (iii) if CareValidate determines, in its sole discretion, that neither (i) and (ii) are commercially reasonable, terminate this Agreement and any Quote and/or Quote and refund Customer for any prepaid fees for Services not received. This paragraph states CareValidate’s entire liability and Customer’s exclusive remedy for any infringement or misappropriation of a third party’s intellectual property rights.

11 Limitation of Liability

11.1 IN NO EVENT WILL CAREVALIDATE BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN ANY ACTION ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT, INTENDED CONDUCT OR OTHERWISE, INCLUDING WITHOUT LIMITATION, DAMAGES RELATING TO THE LOSS OF PROFITS, INCOME OR GOODWILL, REGARDLESS OF WHETHER CAREVALIDATE HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IN NO EVENT WILL CAREVALIDATE OR ITS AGENTS’ LIABILITY FOR DAMAGES UNDER THIS AGREEMENT EXCEED THE FEES PAID TO CAREVALIDATE BY CUSTOMER FOR THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURS.

12 Additional Terms

12.1 Trademarks. Customer agrees CareValidate may use Customer’s company name, logo and trademarks in a general list of CareValidate customers.

12.2 Force Majeure. Neither Party shall be responsible for any delay in its performance to the extent caused by events beyond its reasonable control, such as acts of God, industry-wide labor disputes not specific to a party hereunder, systemic utility failures, earthquake, acts or omissions of suppliers and other third parties, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, war, global or local health emergencies or disease outbreaks, including COVID-19 or such similar diseases, delays in transportation, government restrictions or embargoes, or difficulties in obtaining necessary labor, materials, manufacturing facilities or transportation due to such causes. CareValidate further reserves the right to allocate inventories and to substitute suitable materials when, in its opinion, circumstances warrant such allocation or substitution.



- 12.3 Complete Agreement; Amendment.** This Agreement is the complete agreement between Customer and CareValidate and supersedes any prior or contemporaneous oral or written communications between Customer and CareValidate concerning the subject matter of this Agreement. There are no conditions, understandings, agreements, representations or warranties, express or implied, which are not specified herein. This Agreement may only be modified by a written document expressly stated for such purpose and executed by the Parties. In the event of a conflict between this Agreement and any Quote, this Agreement shall control.
- 12.4 Assignment.** Customer will not transfer this Agreement (whether by direct assignment, change of control, operation of law or otherwise), or assign or subcontract any of its rights or obligations under this Agreement (“**Transfer**”) without the prior written consent of CareValidate. This Agreement will inure to the benefit of and bind permitted successors and assigns of Customer. Any Transfer made in violation of this section will be voidable and made null at CareValidate’s sole discretion and will be effective as of the date such impermissible Transfer occurred.
- 12.5 Notices.** All notices under this Agreement will be in writing and delivered via express mail or certified mail (return receipt requested), or in person to CareValidate and to Customer at their respective addresses set forth in the Signature Section below, or to such other address as either Party may designate subsequently in writing and will be deemed effective upon receipt.
- 12.6 Governing Law.** This Agreement will be governed by the laws of the State of Oregon, without reference to its conflicts of law principles. Jurisdiction and venue for any dispute arising out of this Agreement will exclusively rest within the state and federal courts of Oregon, and each Party hereby waives all defenses of lack of personal jurisdiction and forum *non conveniens* related thereto. Except as otherwise stated herein, in the event suit or action is instituted to enforce any of the terms of this Contract, each party shall be responsible for its own attorney fees, costs and related expenses.
- 12.7 Severability.** Each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law and any invalid, illegal, or unenforceable term or provision will be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid, illegal, or unenforceable term or provision.
- 12.8 Waiver; Modification.** The failure or delay of either Party to exercise any right, remedy or power provided hereunder will not be deemed a waiver of such right, remedy or power. Any modification of the terms of this Agreement will not be effective unless in writing and signed by both Parties. Unless explicitly stated, no use of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.
- 12.9 Independent Contractor.** CareValidate, in performance of this Agreement, is acting as an independent contractor of Customer. CareValidate assumes full responsibility for its Agents’ actions or inactions and compliance with any Applicable Laws (including, without limitation, employment, and tax laws) with respect to such Agents. This Agreement does not create a joint venture or partnership between the Parties.
- 12.10 Counterparts.** This Agreement may be executed in one or more counterparts, including by email, pdf, or other electronic means, that preserves the original graphic and pictorial appearance of the document, each of which will be deemed an original, but all of which together will constitute one and the same document. In making proof of this Agreement, it will not be necessary to produce or account for more than one counterpart executed by the Party against whom enforcement of this Agreement is sought.



12.11 Construction. Section headings of this Agreement have been added solely for convenience of reference and will have no effect upon construction or interpretation of this Agreement. Unless the context otherwise requires, words importing the singular will include the plural and vice-versa. The words “include,” “includes” and “including” will mean “include without limitation,” “includes without limitation” and “including without limitation,” it being the intention of the Parties that any listing following thereafter is illustrative and not exclusive or exhaustive. All references to “days” will mean calendar days, unless otherwise specified. The Parties acknowledge that this Agreement was prepared by both Parties jointly, and any uncertainty or ambiguity will not be interpreted against any one Party.

12.12 Equitable Relief; Injunction. Each Party acknowledges that the Intellectual Property, and Confidential Information of the other Party are valuable commercial products, the development of which involved the expenditure of substantial time and money. Any violation of obligations surrounding them will be deemed a material breach of the Agreement, for which the non-breaching Party may not have adequate remedy in money or damages, and the non-breaching Party may be entitled to seek injunctive or other equitable relief, in addition to (and not in lieu of) such further relief as may be granted by a court of competent jurisdiction, without the requirement of posting a bond or providing an undertaking.

[Signature Page Below]

The parties have caused this Agreement to be signed by their duly authorized representatives.

CareValidate:

Customer:

CareValidate, Inc.

Klamath County

John Hayde

EF605C43C4FA489...

Authorized Signature

Authorized Signature

John Hayde

Printed Name

Amanda Van Riper

Printed Name

CEO

Title

HR Director

Title

4575 Webb Bridge Rd., Suite 4345

Alpharetta, GA 30023

305 Main St., Klamath Falls, OR 97601

Email: john@carevalidate.com

Email: alvanriper@klamathcounty.org

8/23/2023

Date

Date

Billing Address (if different) _____



EXHIBIT 1
QUOTE

The Quote is incorporated into the Master Services Agreement by and between CareValidate, Inc., and Customer.



Klamath County

Klamath County

305 Main Street
Klamath Falls, OR 97601
United States

Reference: 20230728-164541428

Quote created: July 28, 2023

Quote expires: October 26, 2023

Quote created by: Barrett Davis

barrett@carevalidate.com

Andrea Lassett

alassett@klamathcounty.org
5418834296

Comments from Barrett Davis

We're excited to have you use AccommoCare+

Products & Services

Item & Description	Quantity	Unit Price	Total
AccommoCare - PEPM Full Access to AccommoCare	500	\$0.50 / month	\$250.00 / month for 3 years
<ul style="list-style-type: none">- Digital Employee Forms- Enterprise ADA Case-Management Platform- Automation & Workflows- Onboarding & Support			

Item & Description	Quantity	Unit Price	Total
AccommoCare+ 10 bundle Full Access to AccommoCare & On-demand medical & legal committees	10	\$250.00	\$2,500.00 for 3 years
- Digital Employee Forms			
- Enterprise ADA Case-Management Platform			
- Escalation available to our on-demand legal & medical committees			
- Automation & Workflows			
- Onboarding & Support			
	Monthly subtotal		\$250.00
	One-time subtotal		\$2,500.00
	Total		\$2,750.00

Purchase terms

Signature

Before you sign this quote, an email must be sent to you to verify your identity. Find your profile below to request a verification email.

Andrea Lassett

alassett@klamathcounty.org

[sig|req|signer1]

Questions? Contact me



Barrett Davis

barrett@carevalidate.com

CareValidate Inc.
4575 Webb Bridge Road
Alpharetta, GA 30005
United States