

**AGREEMENT BETWEEN
FACILITY
410 WEST 10th AVENUE, COLUMBUS, OHIO 43210
AND THE OHIO DEPARTMENT OF HEALTH (ODH),
STATE OF OHIO**

This Agreement is between:

Ohio Department of Health ("ODH")		The Ohio State University Wexner Medical Center ("Facility")
Name of Authorized Representative & Title:		Name of Authorized Representative & Title:
Street Address:		Street Address:
City, State, Zip Code:	AND	City, State, Zip Code:
Contact Telephone No.:		Contact Telephone No.:
Contact Email Address:		Contact Email Address:

ODH and The Ohio State University Wexner Medical Center, "Facility", hereby enter into this Agreement for a term beginning on the Beginning Date of Agreement and ending on the Ending Date of Agreement as those terms are defined at Section 2. ODH and Facility, in consideration of the mutual promises expressed below and intending to be legally bound, agree to the terms and conditions in this Agreement. For the purpose of this Agreement, the term "Parties" may be used to collectively refer to both ODH and Facility. In order to be valid, this Agreement must be signed by Facility and returned to ODH, ATTN: **[INSERT RECIPIENT]**.

- 1.0 **PURPOSE.** This Agreement establishes the terms, conditions, and responsibilities between the parties for use, management, sustainment/maintenance and actions during a potential deployment of the Bioquell BQ-EMS Suite; an Ohio Department of Health State owned asset.

The Bioquell BQ-EMS Suite is provided to Facility to be used in conjunction with local Emergency Management Services (EMS) to decontaminate, disinfect, and sterilize ambulances and designated hospital rooms against harmful infectious diseases and special pathogens (e.g., Ebola Virus Disease EVD).

This document is an Agreement between ODH and Facility and does not create or confer any right or benefit on any other person or party, private or public. Nothing in this Agreement is intended to restrict the authority of either signatory to act as provided by law or regulation, or to restrict any agency from enforcing any laws within its authority or jurisdiction.

2.0 **AGREEMENT TERM.** Subject to the terms and conditions specified in this Agreement:

- 2.1. "Beginning Date of Agreement" shall be defined as the date indicated here, or the date of Agreement execution by both Parties, whichever is later:

MM/DD/YYYY

- 2.2. "Ending Date of Agreement" shall be defined as the date indicated here, or the date of Agreement termination, whichever is first:

MM/DD/YYYY

- 2.3. "Agreement Period" shall be defined as the time between the Beginning Date of Agreement and Ending Date of Agreement unless prior to the Ending Date of Agreement, the Agreement is renewed, terminated, or cancelled in accordance with the terms and conditions.

3.0 **DEFINITIONS.**

3.1. **Bioquell System** means Bioquell BQ-EMS Suite consisting of the following components:

Bioquell BQ-EMS Suite	Manufacturers Part Number	Serial Number	ODH EDH Number
	TD091-001-120V		
Vaporizer (1each)	NA	201705VP5211	25383
Aeration Unit (2 each)	NA	201704AER5127 201704AER5131	25384 25385
Case Wireless Connectivity Control Unit (1each)	NA	201704CAS5139	25386
Transport System (1 each)	NA	NA	NA
Drager XAM-500 Hydrogen Peroxide Sensor (1 each)	NA	NA	NA

3.2. **Bioquell System Consumables (“Consumables”)** consists of/(means) the following:

Bioquell Chemical Indicators (TD078-5000-100-AM)
1000ml bottles of Bioquell Hydrogen Peroxide 35%w/w solution
Bioquell self-adhesive sealing tape

3.3. **Operation control** means the day to day/routine organizational use and management of the Bioquell System by authorized and trained personnel to decontaminate, sterilize, and disinfect Facility’s supporting Emergency Management System (EMS) ambulances and designated hospital locations/rooms.

3.4. **“Equipment”** is collectively Bioquell System and Bioquell System Consumables, unless otherwise stated.

4.0 COST.

- 4.1 Except where otherwise detailed in this Agreement, each party is responsible for its own costs beyond the initial product delivery agreement and training. ODH is not currently funded to replace any Consumables used in day-to-day or a routine operational basis beyond the initial Consumables provided. Subject to the availability of funds and at its sole discretion, ODH will continue to provide consumables and annual preventative maintenance to each Bioquell System once the initial preventative maintenance agreement concludes.
- 4.2 Replenishment of or providing funding for Consumables due to circumstances beyond the control of Facility, such as the deployment/transfer of the Bioquell System with on hand Consumables to another facility for use, will be negotiated between all the parties on a case-by-case basis.
- 4.3 The initial training on the Bioquell System is provided by Bioquell. Additional/further training beyond the initial training provided, including the associated costs, will be addressed by Facility or Emergency Management Services or other authorized user.

5.0 ODH AGREES.

- 5.1 Designate a single person to be the state-wide point of contact (POC) for the Bioquell System. Provide that individual’s contact numbers during normal business hours and after hours (office phone, cell phone, pager, email and fax). Also, designate an alternate POC to backup the usual Bioquell System POC, and provide corresponding contact information.
- 5.2 Provide the initial Bioquell System with the following Consumables and services to Facility.

Chemical Indicators	1 box (100each)
1000 ml X 4 bottles per case	2 cases (8 bottles)

1 box of self-adhesive sealing tape	36 roles

- 5.3 On an annual basis, account for the Bioquell System by verifying location of Bioquell System and Serial Number, and EDH number confirmation of various components through onsite inspection.
- 5.4 Consult and gain feedback on Bioquell System at any time but no less than annually with Facility on the metrics, including use, opinion and utility of the Bioquell System for future decontamination use.
- 5.5 Provide Facility any realized product deficiencies published by the manufacturer regarding the Bioquell immediately upon notification.
- 5.6 During an emergency, ODH will be responsible for restocking Consumables.

6.0 FACILITY AGREES.

- 6.1 Designate a single person to be the Facility's point of contact (POC) for the Bioquell System. Provide that individual's contact numbers during normal business hours and after hours (office phone, cell phone, pager, email and fax). Also, designate an alternate (AHPOC) to backup the Bioquell System POC, and provide corresponding contact information.
- 6.2 Ensure only specifically Bioquell System trained and qualified Hospital and EMS personnel are authorized access and use of Bioquell System. Facility's POC will maintain a roster of qualified personnel.
- 6.3 In the event of a special event/ emergency response, Facility agrees that ODH retains the right to direct deployment or transfer of the Bioquell System if another hospital or organization requires the Bioquell System for decontamination operations. To the extent possible reflected by the circumstances, ODH will notify Facility at least four (4) hours prior to transfer. Notification of transfer will be made telephonically or by email to the designated Facility POC. Determination of the return of Bioquell System to Facility will be negotiated by all parties involved at a later date.
- 6.4 Comply with Bioquell and ODH procedures for storage, transportation, and maintenance of the Equipment.
- 6.5 Comply with the requirements for Equipment management in compliance with this Agreement, all applicable licensing, registration, and certification requirements, and in compliance with all applicable federal, state and local laws. This includes, but not limited to:
 - 6.5.1 At any time but no less than on an annual basis, account for the Bioquell System by verifying location of Bioquell System and Serial Number, and EDH number confirmation of various components through regular and irregular onsite inspections. ODH may, at its sole discretion, allow a third-party hospital or organization to gain access to the Bioquell System.
 - 6.5.2 Consult and gain feedback on Bioquell System annually with Facility on the metrics, including use, opinion and utility of the Bioquell System for future decontamination use.
 - 6.5.3 Provide the Ohio Department of Health any realized product deficiencies either identified by stakeholder/partner use or published by the manufacturer regarding the Bioquell System, immediately upon notification.
- 6.6 Immediately, (within eight hours of initial awareness) Facility will notify ODH of the Bioquell System becoming non-operational, lost/misplaced, damaged or destroyed (including any component thereof) or if any consumable becomes exhausted. Facility will notify the ODH 24/7 Emergency Number and be prepared to provide the following information for the equipment affected: serial numbers, EDH numbers, time of awareness, general description of the problem, fault or situation.
- 6.7 Upon notification from ODH, Facility will ensure the Bioquell System is, in total, staged and located in preparation for pickup and transport. All components and available Consumables of the System will be collected, prepared (if needed, packaged appropriately), and staged for transfer, pickup, and transportation to

the gaining hospital or organization. Facility will prepare Bioquell Hand Receipt to document the transfer. The gaining hospital or organization and ODH will be responsible for organizing transportation of Equipment to its location.

- 6.8 Use the Equipment consistent with the Purpose defined herein and in accordance with the regulations, requirements, and conditions that may be imposed by the ODH. No rights of ownership are granted to Facility under this Agreement.
- 6.9 Use and store the Equipment in a safe and secure manner and in compliance with this Agreement, all applicable licensing, registration, and certification requirements, and in compliance with all applicable federal, state and local laws.
- 6.10 To ensure that the transfer of Equipment from ODH to Facility and from Facility to ODH is performed in a safe and secure manner, designed to eliminate the possibility of the occurrence of any harm, such as breakage or loss, to Equipment.
- 6.11 Obtain and maintain in force, at its own expense, throughout the term of this Agreement, general liability insurance whether such insurance is maintained through self-insurance or through third party insurance in an amount of at least the Approximate Value of Equipment in the event of loss or damage of Equipment, and an additional amount sufficient to cover against claims, regardless of when asserted, that may arise out of Facility's storage, maintenance and use of Equipment.
- 6.12 Comply throughout the duration of the Agreement with all applicable federal, state, local laws and Executive Orders while performing under this Agreement.
- 6.13 Comply with all state and federal laws and regulations regarding equal employment opportunity and fair labor and employment practices, including R.C. 125.111, and all related Executive Orders.
- 6.14 Comply with all applicable state and federal rules, regulations and statutes pertaining to a drug free workplace. Facility shall make a good faith effort to ensure that all employees of Facility do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way while working on state, county, or municipal property.
- 6.15 Hold ODH and the State of Ohio harmless from any and all liability, suits, losses, judgments, damages, or any other demands arising out of the loan of Equipment or other actions or omissions of the Facility, its employees and agents, while performing its duties under this Agreement. Each Party to this Agreement shall be responsible for its own acts and omissions and those of its officers, employees and agents. No Party to this Agreement shall be responsible for the acts or omissions of entities not a Party to this Agreement
- 6.16 Return the remaining Equipment to ODH in the same condition, less normal wear and tear or depletion within ten (10) days after Ending Date of Agreement, or at a time and place designated by ODH POC.
- 6.17 Not promise or give to any ODH employee anything of value that is of such a character as to manifest a substantial and improper influence upon the employee with respect to his or her duties; and not solicit an ODH employee to violate any ODH rule or policy relating to the conduct of contracting; and not violate R.C. 102.03, R.C. 102.04 or R.C. 2921.42. Maintain and make available all records for audit by the State of Ohio (including, but not limited to, ODH, the Auditor of the State of Ohio, the Ohio Inspector General or duly authorized law enforcement officials) and agencies of the United States government for a minimum of three years after termination of this Agreement. If an audit, litigation, or other action is initiated during this time period, Facility shall retain such records until the action is concluded and all issues resolved or the three years end, whichever is later.

7.0 PARTIES AGREE.

- 7.1 The Ohio Department of Health shall always retain ownership of the Bioquell System. Facility will have operational control and safekeeping of the Bioquell System. Subject to the terms of this MOA, ODH grants Facility permission to use the Bioquell System in its operational control, for decontamination and infectious disease control operations as mutually agreed by the Parties.
- 7.2 Facility acknowledges day to day operational control and use of the Bioquell System and ODH's ownership of the Bioquell System and agrees to refrain from any acts that would compromise or interfere with ODH

ownership. Facility agrees to refrain from any act(s) that would result in, compromise, or interfere with the availability, operational readiness, or value of the Bioquell System beyond normal wear and tear.

- 7.3 The Bioquell System and materials provided can only be operated by authorized personnel who have completed the Bioquell manufacturers provided training.
- 7.3.1 Facility is responsible for coordinating the training with Bioquell. As set forth in section VIII, the initial training cost is included in the initial purchase price. Additional training costs will be a user responsibility.
- 7.3.2 The length and content of the training program will be determined by Bioquell. The length of training license and option for license renewal will be determined by Bioquell.
- 7.4 Annual Bioquell System preventative maintenance (PM) has been included/provided as part of the initial Bioquell System contracted purchase. The PM period will commence upon completion of the Bioquell training set forth in item 7.3 supra. Upon the preventative maintenance service period expiration, subject to the availability of funds and at its sole discretion, ODH will be responsible for further annual preventive maintenance costs.
- 7.5 To the extent permitted by law (R.C. 149.433), the Parties agree that neither will disclose the nature of this effort and the terms of this agreement to any person or entity, except as may be necessary to fulfill its mission and statutory and regulatory responsibilities. The Parties agree to notify one another before releasing materials or information relating to the Bioquell System or this Agreement.
- 7.6 The Parties agree to good faith consultation with one another to resolve disagreements that may arise under or relating to this Agreement before referring the matter to any other person or entity for settlement.
- 7.7 No agency, employment, joint venture, or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Agreement.
- 7.8 The obligations of ODH are subject to R.C. 126.07.
- 7.9 Neither Party is responsible to the other Party for nonperformance or delay in performance of the terms of the Agreement due to acts of God, wars, riots, strikes, or other causes beyond the control of the Parties.
- 7.10 Either Party may cancel this Agreement at any time and for any reason upon thirty (30) days advance written notice sent to the other Party by regular mail or personal delivery. If Facility breaches any terms or conditions of this Agreement, ODH may cancel the Agreement immediately without a thirty (30)-day notice.
- 7.11 Upon mutual written agreement between the Parties, this Agreement may be renewed or extended past the Ending Date of Agreement, subject to the same terms and conditions of this Agreement and subject to any federal and state directives, regulations, and laws relating to the subject matter of this Agreement
- 7.12 This Agreement shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio.
- 7.13 Each paragraph of this Agreement is an independent paragraph. If a court finds any full or partial paragraph of this Agreement unconstitutional, void, or legally ineffective, the finding does not affect the validity or effectiveness of any other full or partial paragraph.
- 7.14 This Agreement contains all the terms and conditions agreed to by the Parties. The Parties must agree in writing, signed by both Parties, to add or modify a term or condition. When a new or different term or condition is added, additional consideration is not necessary to bind the Parties.

8.0 PARTIES RECOGNIZE.

ODH and Facility are required to comply with "State of Ohio Asset Management Handbook," as amended, currently able to be accessed at and incorporated herein by reference:

https://das.ohio.gov/Portals/0/DASDivisions/GeneralServices/AM/pdf/AMS%20Handbook%20%20Updated%20%2082018_2_9%29.pdf

9.0 FACILITY CERTIFIES, AFFIRMS, AND WARRANTS.

9.1 This Agreement shall become effective upon the signature of both Parties and shall remain in effect for Agreement term or until otherwise agreed to by the Parties. The terms of this Agreement may be modified upon the consent and signature of both Parties. This Agreement may be terminated by either Party at any time; however, the terminating Party shall provide written notice to the other Party at least thirty (30) days in advance of the effective date of termination unless there is a critical failure to perform. In the event of termination, all state-generated material and equipment, all Bioquell System equipment, related records, and/or other materiel generated by or for the in furtherance of this Agreement are property of the ODH and shall be returned to the ODH within fifteen calendar days (15) days of the termination date.

9.2 The persons executing this Agreement on behalf of their respective entities hereby represent and warrant that they have the right, power, legal capacity, and appropriate authority to enter into this agreement on behalf of the entity for which they sign.

9.3 Facility and all applicable parties are in full compliance with R.C. 3517.13.

9.4 Facility is not debarred or suspended from entering into state of Ohio contracts pursuant to R.C. 125.25 and will notify ODH immediately if Facility is debarred or suspended for any reason.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement by their authorized representatives on the date set forth below.

**THE OHIO STATE UNIVERSITY WEXNER
MEDICAL CENTER**

OHIO DEPARTMENT OF HEALTH

[Signature, Blue Ink Please]

[Signature, Blue Ink Please]

[Print Name & Title]

[Print Name & Title]

Date

Date

Appendix 1 Bioquell System Hand Receipt