

CONSIGNMENT AGREEMENT

This Agreement is made between _____ (“Supplier”) and The Board of Trustees of the University of Alabama, on behalf of University Hospital (the “Hospital”) this ____ day of _____.

1. Delivery

The Supplier shall, upon request made by the Hospital, deliver to the Hospital on consignment, at its premises, those products set forth in the attached schedule A, as the same is amended from time to time (collectively, the “Products on Consignment”).

2. Prices

The prices for the Products on Consignment shall be set forth in the attached schedule B.

3. Consignment

The Hospital shall store the Products on Consignment at its premises so as to be at all times segregated from all of the Hospital’s inventory (the “Exclusive Storage”) and shall clearly indicate that the Products on Consignment are the property of the Supplier.

It is the responsibility of Supplier’s Sales Representative to ensure that the product is up to date with current specifications, to rotate consigned inventory, to return to Supplier at Supplier’s sole expense any non-moving or short dated inventory, and that the products are still in a saleable condition. The product will therefore be checked on a monthly basis.

Supplier reserves the right to remove Products on Consignment from the Hospital upon reasonable notice in the event that the Products are needed elsewhere on an emergency basis.

4. Inventory of Products on Consignment

The Hospital shall have one of its representatives and allow one representative of the Supplier to take, once a month an inventory of the Products on Consignment in order to determine the Products on Consignment, which have been used, damaged, destroyed or otherwise removed from the Exclusive Storage.

5. Purchase

When used or otherwise removed from the Exclusive Storage, the Products on Consignment, shall be deemed to have been purchased by the Hospital.

6. Invoicing and Payment

Based upon the inventory, the Hospital shall, within 20 days, forward a purchase order to the Supplier for the Products on Consignment deemed purchased by the Hospital and the Supplier shall invoice the Hospital for such Products on Consignment. Payment by the Hospital shall be made within 60 days of receipt by it of each such invoice.

7. Return

Products on Consignment may be returned at Hospital’s request.

8. Title

Title to and property of the Products on Consignment shall remain with the Supplier until such time as the Products on Consignment are deemed purchased by the Hospital.

9. Supplier's Representations and Warranties

The Supplier represents and warrants to the Hospital as follows:

- a.) all Products on Consignment shall be new and unused and shall have received all applicable approvals;
- b.) the Supplier will comply with all federal, state and local laws, regulations and orders applicable to the manufacture, sale, packaging, labeling and delivery of the Products on Consignment;
- c.) title to all of the Products on Consignment shall pass to the Hospital in accordance with the terms hereof free and clear of all liens, claims and encumbrances whatsoever;
- d.) there is no proceeding in progress or pending or threatened against, related to or affecting the Supplier in connection with the Products on Consignment which might be expected to have a materially adverse effect on the Products on Consignment; and

10. Remedy of Breach of Representations and Warranties

Where the Hospital notifies the Supplier that it is in breach of any of its representations or warranties, the Supplier shall use its best efforts, at no expense to the Hospital, to remedy such breach as quickly as possible but not longer than 10 days following such notification, including providing additional or alternate Products on Consignment to the Hospital to ensure that the Hospital's operations are not disrupted by such breach.

Where the Supplier is unable to correct the breach within the said 10 day period, the Hospital, without restricting its recourse including the right to claim damages and legal fees, shall be entitled to return any or all affected Products on Consignment and to receive a full refund for all amounts paid.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT.

11. Nature of Warranties

The representations and warranties are in addition to any other warranties or service guarantees given by the Supplier to the Hospital, including Supplier's standard product warranty, and are separate and discrete from any other warranties specified in the warranty documentation relating to the Products on Consignment. Seller does not warrant either a good effect or against any ill effect following the use of Products on Consignment. THERE ARE NO WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. Insurance

Upon request by the Hospital, the Supplier will furnish the Hospital with a certificate of insurance demonstrating a liability insurance policy covering public liability, bodily injury and property damage, product liability and contractual liability in amounts satisfactory to, and with a company reasonably acceptable to the Hospital. Such certificate shall state that the policies will not be cancelled or allowed to expire without 30 days prior written notice to the Hospital.

13. Term

This Agreement shall commence on the _____ day of _____ and continue for a period of twelve (12) months, with the option to extend for additional twelve (12) month period upon mutual acceptance.

14. Termination

The Supplier may terminate this Agreement at any time by giving 30 days prior written notice in the event that the Hospital fails to fulfill any of its obligations hereunder. Upon termination by the Supplier, the Hospital shall deliver, at the Hospital's sole expense, in good condition, to the address and in the manner designated by the Supplier, all of the Products on Consignment then in its possession, which have not been deemed to have been purchased by the Hospital pursuant to this Agreement.

The Hospital may terminate the agreement at any time by giving 30 days prior written notice. Upon termination by the Hospital, the Hospital shall deliver at the Supplier's sole expense, in good condition, to the address and in the manner designated by the Supplier, all of the Products on Consignment then in its possession, which have not been deemed to have been purchased by the Hospital pursuant to this Agreement.

15. Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Alabama applicable therein.

16. Notice

Any notice or other documents to be given or sent to the other party hereunder shall be effectively given or sent, if delivered or sent by the prepaid registered mail, addressed to the party for which it is intended at its address or to such other address for such party as may be specified from time to time by written notice given by such party to the other. Notices shall be deemed given when delivered or transmitted by facsimile or, if mailed, within five business days after being deposited in the mail.

17. Medical Alerts and Safety Notifications

In the event of a medical alert issued by a recognized reporting agency involving any Products on Consignment at any time, the Supplier, at its expense, shall take all steps necessary to remedy the situation and communicate the changes by registered mail and by facsimile.

18. Confidentiality

Supplier and Hospital acknowledge that any information concerning the business and affairs the other party its agents, employees, clients and patients of which it becomes aware in the course performing its obligations under this Agreement, shall be treated as confidential. Each party agrees to take such measures to protect such information, as it would reasonably be expected to take to protect its own confidential information. This obligation of confidentiality does not apply to information that is or becomes publicly known without fault of the receiving party, or is or becomes lawfully available from another source; or was known to the receiving party before receipt from the disclosing party; or is independently developed by the receiving party as evidenced by contemporaneous written documentation; or is required by law to be disclosed, provided that the receiving party shall use reasonable efforts to notify the disclosing party of such requirement for disclosure in order to provide the disclosing party the opportunity to seek a protective order or other appropriate relief.

The Supplier agrees that the terms of any agreement it may have with Hospital is confidential. The Supplier may not in any of its advertising or otherwise, indicate that it has or may in the future supply products or services to Hospital without the express written consent of Hospital. No acquisition or use of Products on Consignment by Hospital shall be construed as an endorsement or approval of such Products on Consignment.

19. Resolution of Disputes

The parties agree that any and all claims, controversies of disputes between the parties which arise out of or relate in any way to this Agreement or a breach hereof and which the parties are unable to resolve informally shall be submitted to non-binding mediation in Birmingham, Alabama. UAB, as a division of The Board of Trustees of the University of Alabama, is a state agency and cannot waive immunity conferred on it by *Ala. Const. Art. I § 14*. The exclusive forum in which a claim can be asserted against UAB is the State of Alabama Board of Adjustment. (See Code of Alabama §§ 41-9-60 through 41-9-74).

20. Loss of Funding

Performance by Hospital under the Agreement may be dependent upon the appropriation and allotment of funds by the Alabama State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, then Hospital will issue written notice to Supplier and Hospital may terminate the Agreement without further duty or obligation hereunder. Supplier acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Hospital.

21. Representations by Supplier

If Supplier is a corporation or a limited liability company, Supplier warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Alabama, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Supplier has been duly authorized to act for and bind Supplier.

22. Federal Healthcare Participation Certification. Supplier represents and warrants that Supplier and any of its directors, officers, employees, or agents providing services under this Agreement: (a) are not "sanctioned persons" under any federal or state program or law; (b) have not been listed in the current Cumulative Sanction List of the Office of Inspector General for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities; (c) have not been listed on the General Services Administration's List of Parties Excluded individuals or entities; (d) have not been listed on the General Services Administration's List of Parties Excluded from Federal Programs; and (e) have not been convicted of a criminal offense related to health care. Company shall immediately notify Facility in the event that Supplier is no longer able to make such representations, and Facility may upon five (5) business day's written notice terminate this Agreement.

23. HIPAA Compliance

In the performance of the work provided under this Agreement, Supplier agrees to abide by all of the applicable provisions of the Health Insurance Portability and Accountability Act ("HIPAA"), 45 C.F.R. Parts 160, 162, and 164. Additionally, Supplier agrees to sign a business associate agreement in accordance with HIPAA in the event that one is required based upon the products and services provided to Hospital.

24. Alabama Tax Certification (Applicable to Agreements for the purchase or lease of tangible personal property).

In accordance with Section 41-4-116 of the Code of Alabama, by accepting this agreement, Supplier certifies that Supplier is appropriately registered to collect and remit sales, use, and lease tax on all taxable sales and leases of personal property in Alabama and that Supplier is not barred from bidding for or entering into a contract pursuant to Section 41-4-116 and that Supplier acknowledges that Hospital may declare the Agreement void if this certification is false.

25. Compliance with Laws

Supplier shall observe, perform and comply with or require compliance with all federal, state, and local laws, ordinances, rules and regulations and all amendments thereto which in any manner may affect the operation and Supplier's activities undertaken pursuant to this agreement. The Supplier shall also comply with all state and local building, fire, health, zoning laws, codes and/or regulations that affect or that are applicable to Supplier's activities and operations hereunder. Supplier represents and warrants that all articles and services covered by the request meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, No. 2006, and its regulations in effect or proposed as of the date of this offer. When applicable, all articles and services must also meet or exceed other federal requirements including but not limited to the Americans with Disabilities Act of 1992 and the Food and Drug Administration. The performance of this contract by Supplier will not violate the provisions of the Civil Rights Act of 1964, The Rehabilitation Act of 1973, and the Vietnam ERA Veterans Readjustment Assistance Act of 1974. The furnishing of materials, supplies, equipment or services to any UABHS facility under this purchase order, contract, requests or construction specification constitutes assurance by the Supplier or Supplier of his compliance with applicable provisions of and pertinent regulations promulgated under Executive Order 11246, dated September 28, 1965, as amended (Equal Opportunity Employment), issued by the President of the United States of America, and Public Law 88-352, 88th Congress, the Civil Rights Act of 1964. The parties understand that this agreement will be subject to section 952 of the Omnibus Reconciliation Act of 1980 and its corresponding regulations at 42 C.F.R. part 420 if the contract includes furnishing of services at a cost or value of \$10,000 or more over a twelve-month period.

26. Liability

Each party shall be responsible for any and all liability resulting from the acts and/or omissions of their respective directors, officers, employees, agents and Suppliers. Except as set forth in Section 2.9, neither party shall be responsible for any liability resulting from the acts and/or omissions of the other party's directors, officers, employees, agents and Suppliers. The Hospital carries insurance in sufficient amounts to cover its activities under this Agreement.

27. Supplier Indemnification

The Supplier hereby covenants and agrees to indemnify and hold harmless the Hospital and its officers, agents, and employees from and against any and all claims or demands by or on behalf of any person, firm, corporation or governmental authority, arising out of, attributable to or in connection with the use, occupation, possession, conduct or management of the Supplier concerning the equipment or services performed and rendered hereunder, including, but without limitation, any and all claims for injury or death to persons or damage to property. The Supplier also covenants and agrees to hold the Hospital harmless from and against all judgment costs, counsel fees, expense and liabilities incurred in connection with any such claim and any action or proceeding brought thereon, and in case any action is brought against Hospital by reason of any such claim, the Supplier upon notice from Hospital will resist and defend such action or proceeding by qualified counsel. However, the provisions of this section shall not apply to any claims arising from the negligent or willfully wrongful acts or omissions of Hospital.

28. Supplier Visitation

Supplier shall consult with the Hospital regarding policies relating to access to facilities and personnel. Supplier and Supplier representatives shall comply with such policies.

29. Small Disadvantaged Business

The Hospital is committed to its efforts to ensure the opportunity for participation of small, disadvantaged businesses in the procurement of goods and services. The Hospital may be required to report purchases under governmental contracts. Suppliers may be required to provide detailed reports of all minorities, women-owned and other small, disadvantaged business participation in the performance of this contract.

30. Disclosure

If any owner, officer, partner, board of director member, employee, or holder of more than 5% of the fair market value of Supplier or any member of their households is a public official or public employee (including the Hospital) as defined by the Code of Alabama Section 36-25-1, this information must be disclosed to the Hospital on the attached form in Exhibit A. Failure to disclose this information will result in termination of the Agreement. The Hospital reserves the right to furnish a copy of this Agreement to the State of Alabama Ethics Commission as directed in the Code of Alabama, Section 36-25-1, within ten (10) days of award.

31. No Remuneration Certification

Hospital employees are not allowed to accept personal gifts or gratuities from Suppliers as an inducement for the Hospital to enter into the agreement. By accepting this agreement, Supplier certifies that it has not offered or given any Hospital employee or official or their family members any remuneration, except as has been previously disclosed, in writing, to the Hospital.

32. Payment of Invoices

Invoice Reconciliation must be provided within 12 months of invoice date. Supplier must provide the UAB Accounts Payable department with an itemized, monthly statement requesting resolution within this (12)-twelve month period. Invoices presented for payment beyond this (12)-twelve month period may not be honored. Supplier statements reaching \$50,000 or more in the (90)-ninety day pay status must be brought to the immediate attention of the UAB Accounts Payable Director for resolution.

The parties hereby execute this Agreement as of the date first written:

**THE BOARD OF TRUSTEES
OF THE UNIVERSITY OF ALABAMA
ON BEHALF OF
UNIVERSITY HOSPITAL**

SUPPLIER

By: _____

By: _____

Title: _____

Date: _____

Date: _____

Exhibit A -- Disclosure

**1DISCLOSURE STATEMENT OF RELATIONSHIP BETWEEN
CONTRACTORS AND EMPLOYEES
AND/OR OFFICIALS OF UNIVERSITY HOSPITAL**

1. Contract Number: _____

2. Name of Contractor: _____

Address: _____

Phone: _____

3. Nature of contract: _____

4. CERTIFICATION/DISCLOSURE: Please check one:

By checking this box and signing below, the contractor/grantee certifies it does not have any relationship with an employee or official of the Hospital or a family member of such employee or official, that will enable such employee or official, or his/her family member, to benefit from this contract.

By checking this box, signing below, and attaching disclosure information to this document, contractor/grantee certifies it does have a relationship with an employee or official of the Hospital or a family member of such employee or official, that will enable such employee or official, or his/her family member, to benefit from this contract. Please disclose the names, relationships, and nature of the benefit on an attachment to this document.

Signature of Authorized Agent

Its: _____

Date: _____