

## HOSPITAL CONTRACTS

### 1. *When are contracts required?*

Contracts are required for the purchase or lease of any item or certain services in excess of \$15,000 annually. Contracts are required for professional, personal or consulting services in excess of \$2,500 annually.

### 2. *Are boilerplate contracts available?*

Yes. There are boilerplate contracts posted at the website. There are specific agreements for use by the Hospital:

- Hospital Services Agreement
- Hospital Equipment/Supplies Agreement
- Consignment Agreement
- Leased Employee Agreement

The Hospital Services Agreement and the Hospital Equipment/Supplies Agreement are set up so that you can work with the vendor to generate the description of equipment/supplies or services to be furnished, any warranties that apply, and any applicable pricing or compensation. These will be attached as exhibits to the boilerplate agreements.

UAB Health System may negotiate System-wide agreements that apply to all UABHS-managed entities and there is a boilerplate agreement for these system-wide agreements. If the Hospital wants to participate in the System-wide agreements, Hospital Financial Management will arrange for a Letter of Participation to be signed by Procurement.

There are also UAB-wide boilerplate agreements for:

- Affiliation for preceptorship education
- Affiliation for clinical education
- UAB fee for service
- Vendor fee for service
- Consulting
- Guest Speaker

### 3. *What if the vendor insists on its contract?*

There is an "Addendum to Agreement" that must accompany any vendor-originated agreements (Attachment 1).

**4. *What contracts must be competitively bid and is there a maximum term limit?***

Contracts for the purchase/lease of materials, equipment, supplies or other personal property and contracts for the purchase of labor, services and work (other than professional services) equal to \$15,000 or more must generally be bid, although there are exceptions for sole source, professional services, and contractual services and purchases of personal property which by their very nature are impossible of award by competitive bidding. You should consult Procurement Contracts for advice.

For those purchases that must be competitively bid, the term can be up to five years. In some instances, when the Hospital can demonstrate additional savings, contracts may be ten years with the approval of the Hospital and Procurement. Items under a Novation agreement may continue for the life of the Novation contract. Items under a sole source must be reviewed each year to see if the sole source is still valid. Consult Procurement Contracts for advice.

For those purchases that are not competitively bid, there is no term limit. For example, professional service agreements, temp agency contracts, and software license and maintenance agreements do not have term limits. However, UAB requires provisions that UAB may terminate the contract without cause upon [x] days notice; or, that the contract may be terminated at the end of any fiscal year if funds are not available for continuation of the agreement.

**5. *Who is authorized to sign contracts? What is the process for contract approval and signature?***

Individuals authorized to execute contracts on behalf of UAB are designated by The Board of Trustees of The University of Alabama. These individuals are:

- Dr. Richard B Marchase, Interim President of UAB
- Dr. Linda Lucas, Interim Provost
- Mr. Richard L. Margison, VP for Financial Affairs and Administration
- Ms. Patricia Raczynski, AVP for Financial Affairs
- Ms. Stephanie Mullins, Asst. VP for Financial Affairs/Controller
- Mr. Harlan Sands, VP for Administration and Quality Improvement
- Ms. Lynn Stedman, Director, Office of Sponsored Programs
- Mr. David Winwood, Chief Executive Officer of UAB Research Foundation
- Dr. Shirley Salloway Kahn, VP University Development
- Ms. Belinda Mitchell, Director of Procurement Contracts

The Director of Procurement Contracts is vested with the sole authority to issue purchase orders and related contractual agreements. Therefore, any contract executed or obligation incurred by individuals who do not have this authority obligates the individual rather than UAB. If the agreement requires a signature it must be signed by a Board Authorized signature authority. If the document is simply a quote, with no legal language, it may be signed in the Procurement Contracts Office. All other agreements must be routed through the University Contract Office for review and signature. All contracts require review by the Legal office, Risk Management and the AVP for Financial Affairs. Other specialized reviews will be assigned in the University Contract office if required.

**6. *What is the Hospital's position on negotiation and acceptance of discounts, rebates and free goods/services?***

See Attachment 2 for Discount Guidance.

**7. *When do I need HIPAA Business Associate Agreements?***

HIPAA Business Associate Agreements are required whenever the Hospital contracts with a third party to furnish services on behalf of the Hospital and, in order to do the services, the third party will see or have access to patient identifiable health information.

HIPAA Business Associate Agreements may be found at [www.uab.edu](http://www.uab.edu) (click on "HIPAA" followed by "forms.")

**8. *Where can I find answers to questions about related issues that come up, such as what constitutes a "sole source" and what documentation is required; whether a contractor must be classified as an employee or independent contractor; and what expenses are covered by UAB?***

If you have questions about proposed business arrangements like those set forth above, UAB Institutional Policies and Guidelines are located under the following links.

- <http://uabfinancial.infomedia.com/policies.asp> (Link to all UAB Expenditure Guidelines)
- <http://www.iss.uab.edu/MgtSupSvcs/PolManual.PDF> (Link to the UAB Institutional Policy Manual)

ATTACHMENT 1

# ADDENDUM TO AGREEMENT

**The purpose of this addendum is to provide a statement of UAB's position regarding contract provisions that may be the source of disagreement. By including these provisions in this addendum, which is incorporated into and made a part of the agreement to which it is attached, it will not be necessary for UAB to edit corresponding provisions on the face of the contract.**

The following terms and conditions are incorporated into and form a part of the agreement or contract to which they are attached (the "Agreement"). Provisions in the Agreement that are consistent with the Addendum will continue in full force and effect. In the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control. For all purposes, "University" means The Board of Trustees of the University of Alabama acting for the University of Alabama at Birmingham, the University of Alabama Hospital, the University of Alabama School of Medicine, the University of Alabama School of Dentistry and/or the University of Alabama School of Optometry, as the same is provided in the Agreement; and "Contractor," "Client," "Vendor," or "Consultant" is as previously identified in the Agreement (hereinafter individually or collectively called "Contractor.")

**Representations and Warranties by Contractor.** If Contractor is a corporation or a limited liability company, Contractor 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 Contractor has been duly authorized to act for and bind Contractor.

**No Benefit Certification.** By accepting this agreement, Contractor certifies that no University employee or official, and no family members of a University employee or official, will receive a benefit from this University payment, except as has been previously disclosed, in writing, to the University.

**Federal Healthcare Participation Certification (Applicable only to Agreements with University Hospital).** Contractor represents and warrants that Contractor 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 Contractor is no longer able to make such representations, and Facility may upon five (5) business days written notice terminate this Agreement.

**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, Contractor certifies that Contractor 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 Contractor is not

barred from bidding for or entering into a contract pursuant to Section 41-4-116 and that Contractor acknowledges that University may declare the Agreement void if this certification is false.

**Governing Law.** The Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Alabama.

**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)

**Liability.** University and Contractor shall each be responsible for any and all liability resulting from the acts and/or omissions of their respective employees, officers, directors, agents and contractors. Neither party shall be liable for any liability resulting from the acts and/or omissions of the other party's employees, officers, directors, agents and contractors. University is not authorized to and does not indemnify, hold harmless, and cannot defend Contractor or any third party for any liability that may result from activities under this Agreement.

**Loss of Funding.** Performance by University 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 University will issue written notice to Contractor and University may terminate the Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

**Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF ALABAMA.

**Entire Agreement; Modifications.** This Addendum to Agreement and the Agreement supersede all prior agreements, written or oral, between Contractor and University and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by University and Contractor.

ATTACHMENT 2

## UNIVERSITY HOSPITAL

### NEGOTIATION AND ACCEPTANCE OF DISCOUNTS, REBATES AND FREE GOODS/SERVICES

**Background and Purpose:** The federal anti-kickback statute prohibits the Hospital from receiving remuneration in return for referrals of Medicare-Medicaid business. There are “safe-harbor” regulations that expressly authorize the Hospital to receive discounts, rebates and free goods/services IF the criteria of the safe harbor are met. The safe harbor criteria are:

- ❑ The discount or rebate must be reflected on the invoice and purchase order
- ❑ The discount or rebate must be earned on the purchases of that same good or service bought within a single fiscal year
- ❑ The discount or rebate must be claimed and reported on the Medicare cost report during the year earned or the following year.
- ❑ The discount must apply to all payors

In addition, there are specific criteria for what does and does not constitute a discount or rebate. The purpose of this document is to set forth guidelines for negotiating and accepting discounts, rebates and free goods/services, consistent with the safe harbor regulations. Significantly, failure to fall in the safe harbor does not mean that the arrangement violates the anti-kickback statute. Variations of arrangements set forth in this document may be permissible. Any such variations should be reviewed by Legal Counsel to ensure compliance with the anti-kickback statute.

#### **Guidelines.**

1. **Discounts Offered at the Time of Sale.** All purchases that involve discounts offered at the time of sale must have invoices that reflect the amount of the discount. The amount due must be net of any discount. The discounted price (not the full price) must be the price that is noted in UAB's general ledger, paid by accounts payable, and passed onto the Medicare cost report. If capital equipment is purchased at a discount, the discounted price must serve as the “basis” for the equipment for purposes of depreciation.
2. **Contingent Discounts.**
  - a. Discounts on one type of item (like supplies) may be contingent on the purchase of like-kind items (other supplies).
    - i. Example: discount on disposable gloves can be contingent on purchase of disposable hats
  - b. Other than as set forth in Section 3, discounts on one type of item (supplies) may NOT be contingent on the purchase of another type of item (capital) if those items are reimbursed under different methodologies by Medicare.
    - i. Example: discount on disposable gloves cannot be contingent on purchase of IV poles



3. **Free/Discounted Capital Equipment With Purchase of Supplies.** The Hospital should not accept free/discounted capital equipment contingent on the purchase of supplies/expense items or vice versa. When vendors offer free capital equipment in exchange for purchasing the supplies used on the equipment, the Hospital may either purchase or lease the equipment under the following conditions:
  - a. The Hospital will pay fair value for purchase or use of equipment in connection with the purchase of supplies. The value will be determined by obtaining the information from the vendor; or, if the vendor does not furnish the information, the Hospital will assign a value by determining what portion of the supply cost is attributed to funding the equipment and what the hospital's purchase price for that equipment would be if it were purchased outright.
  - b. The following process will be used:
    - i. Request the vendor to break out the cost of purchasing/leasing the equipment from the supply cost. If the vendor agrees to provide the break-out information, include this information in the agreement and material forwarded to Hospital Finance.
    - ii. If the vendor refuses to break-out the price, forward the agreement proposal to Hospital Finance. Hospital Finance will assign a value to the purchase or lease of the equipment by determining what portion of the supply cost is attributed to funding the equipment and what the hospital's purchase price for that equipment would be if it were purchased outright. The Hospital will ensure appropriate accounting treatment to reflect the purchase/use of the equipment and the purchase of the supplies.
  - c. These guidelines only apply when the equipment is related to use of the supplies. If the capital equipment offered by the vendor for free is unrelated to the use of the supplies, we may not use the process set forth above and must negotiate a fair price with the vendor. We may negotiate discounts, but, the purchase of the equipment cannot be contingent on purchase of the supplies in any manner.
  
4. **Equipment Product Evaluations.** If vendors offer the Hospital a piece of equipment or similar products to "evaluate", the Hospital may accept the equipment for the evaluation if:
  - a. There is a written agreement specifying the equipment to be evaluated, the terms of the evaluation and the work-product expected.
  - b. The evaluation period is limited to a specified time, not to exceed one year.
  - c. At the end of the evaluation period, the Hospital must either purchase, lease or return the product.
  
5. **Rebates/Credits.** The Hospital may accept rebates and credits as long as the terms are fixed and disclosed in writing to the Hospital at the time of the purchase. For rebate checks and credits that are issued to UAB subsequent to the time of purchase, i.e. volume discounts, the Hospital must ensure that all rebate checks are deposited into expense accounts with a subcode for rebates. This ensures that the rebates will be appropriately reflected on the Medicare cost report.
  
6. **Free Goods and Services.** The Hospital may not accept cash payments (other than rebates as described in #4); free services, or any other remuneration (other than as described in the Guidelines) from a vendor in return for the purchase of products from the vendor. Examples of items that may NOT be accepted by the Hospital:
  - a. Educational donations tied in any manner to purchases from a vendor
  - b. Tuition grants tied in any manner to purchases from a vendor
  - c. Free inventory software contingent on purchase of supplies
  - d. Free consulting services contingent on purchase of products

7. **UHC Patronage Dividends.** The Hospital should record its equity in UHC as a non-current investment asset. The patronage dividends should be reported as either a current period cost recovery or as additional discounts.
  
8. **Questions.** Please direct any questions on the appropriateness of proposed discount or rebate arrangements to UABHS Legal Counsel.