

**UMASS MEMORIAL MEDICAL CENTER, INC.
CONTRACT FOR PURCHASE OF GOODS**

This Contract (“Contract”) is made by and between UMass Memorial Medical Center, Inc. a Massachusetts non-profit corporation (“UMMMC”) and _____, a _____ corporation (“Seller”). UMMC and Seller are sometimes referred to herein as the “Parties”. UMMC and Seller hereby agree to the following terms and conditions.

1. The Contract. This Contract including the attachments and exhibits hereto, together with any purchase orders made pursuant to this Contract constitute the entire agreement between the Parties. No prior proposals, statements, course of dealing or usage of trade will be part of the Contract unless expressly agreed upon in writing by both Parties. In the event of a conflict between the terms set forth herein and the provisions and specifications of any purchase order issued, the terms of this Contract will govern, unless specifically overridden in writing by UMMC.

2. Term. The term of this Contract will be for _____ years commencing _____ and expiring on _____ unless terminated earlier as provided herein.

3. Goods and Services. UMMC agrees to purchase the goods and services (if any) as specified in Attachment A (the “Goods”) in the quantities set forth therein.

4. Cost and Payment

4.1 The cost of the Goods are as stated in Attachment A. Unless otherwise expressly agreed in writing by UMMC, the cost of the Goods will remain fixed for the term of this Contract.

4.2 UMMC will issue a purchase order for each delivery (“Purchase Order”). Seller’s invoices, packages and packing slips must include: the Purchase Order number; the packing slip numbers; and the Goods identification number, quantity and price.

4.3 Seller will send invoices to the address indicated on the Purchase Order only. All payments will be due sixty (60) days following UMMC’s receipt of an invoice that meets the requirements set forth in Section 4.2 above.

4.4 UMMC will mail payments to the addressee specified on the Purchase Order only.

5. Packing, Shipping, Delivery and Pricing

5.1 Seller will pack and ship the Goods in accordance with UMMC’s instructions using good commercial practice to insure that no damage results from weather or transportation. Seller will label shipments of fragile, electrical, chemical or otherwise

hazardous equipment or material appropriately and in accordance with local, state and federal laws.

5.2 Seller will insure all shipments for full replacement cost during delivery.

5.3 The delivery dates and locations are as stated in the Purchase Order.

5.4 All prices will be based on delivery F.O.B. to the location(s) stated in the Purchase Order.

5.5 The costs of shipping all Goods will be prepaid by Seller.

6. Rejection of Goods. If the Goods are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of the Contract, UMMMC may, in addition to any other rights which it may have under warranties or otherwise, reject and return such Goods at Seller's expense.

7. Title and Risk of Loss. Seller is responsible for title and risk of loss of or damage to the Goods, regardless of cause, until the Goods are delivered as specified in the Purchase Order, accepted by UMMMC, and, where applicable, assembled and/or installed by Seller. Thereafter, title and risk of loss or damage will transfer to UMMMC unless the loss or damage is caused by Seller's negligence, fault or failure to comply with the terms and conditions of this Contract.

8. Change in Orders. UMMMC may at any time make changes in the quantities ordered or in the specifications of the Goods and/or the terms and conditions of the Contract, provided a written change order is received by Seller. In the event of a change order, an equitable adjustment will be made to the price, time of performance and/or any other provision of the Contract as reasonably appropriate, provided Buyer receives the adjustment request within fifteen (15) days from the date of Seller's receipt of the change order.

9. Warranties.

9.1 Seller warrants that the Goods delivered to Buyer are merchantable within the meaning of Article 2-314 of the Uniform Commercial Code. In addition to this and other warranties, which may be prescribed by law, Seller warrants that all Goods will be free from defects in materials and workmanship, are suitable for their intended purpose, and conform to the requirements of the Contract. The warranties set forth herein will run to UMMMC and its affiliated companies ("Affiliates") including their respective successors and assigns, and to UMMMC and Affiliates' customers and users of the Goods, for a period of one (1) year following Buyer's acceptance unless otherwise stated. Seller agrees that all warranties and representations made by the manufacturer are intended to be and will pass through to UMMMC and its Affiliates. Seller agrees to take all necessary steps to ensure that such warranties and representations flow through, to and for the benefit of UMMMC and its affiliates, and that the term of all warranties

commences upon acceptance of the Goods. Seller further represents that it has not and will not enter into any agreement with a manufacturer that will in any way limit, negate or nullify the manufacturer's warranty for Goods sold hereunder. Seller warrants that the Goods will be sold and delivered free from any security interest, lien or encumbrances, or claim of title hostile to the rights of Buyer.

9.2 Seller warrants that each (if any) hardware, software and firmware product delivered under this Contract will be able to accurately process data (including, but not limited to, calculating, comparing, sequencing and leap year calculations), when used in accordance with the product documentation provided by Seller. If this Contract requires that specific products must perform as a system in accordance with the foregoing warranty, then this warranty will apply to those products as a system. This paragraph will not be subject to any limitations of remedies or warranties contained in this Contract.

9.3. Seller certifies the following: (a) that, with respect to any services Seller is required to perform hereunder, it has the requisite authority, skill and experience to perform those services in accordance with applicable professional standards, and that it has obtained all requisite licenses and permits to perform those services; (b) that it has complied with all Massachusetts laws relating to contributions and payment in lieu of contributions to the Employment Security System and with all laws relating to Worker's Compensation (M.G.L. c. 152); (c) that neither it nor any of its directors, officers, agents or employees (i) are currently or have ever been excluded, suspended or debarred from, have been declared ineligible to participate in, or are currently a Party to an action or proceeding seeking to exclude, suspend or debar them from or to declare them ineligible to participate in, the Medicare or Medicaid programs or any other federal or state program, or (ii) have been convicted under federal or state law of a criminal offense related to the neglect or abuse of a patient, or the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under the Medicare or Medicaid Programs. If at any time during the term of this Contract there is a change in circumstances such that Seller is unable to make all of the certifications set forth in this Section 9.3, then Seller will immediately notify UMMMC in writing, whereupon UMMMC may terminate this Contract by providing Seller with thirty (30) days prior written notice.

9.4. Nothing in this Section 9 will be construed to limit any rights or remedies that customer may otherwise have under this Contract.

10. Fees, Assessments and Taxes. UMMMC is exempt from payment of sales tax (MA Tax Exempt # _____). Seller will pay all licensure fees and assessments and sales, use and other taxes now or hereafter imposed on account of the Goods; ownership, use or possession of any of the Goods; or any other activity or transaction under this Contract, whether such fees, assessments or taxes are assessed to Seller or UMMMC, together with any penalties or interest in connection therewith.

11. Insurance. Seller will procure and maintain in force and effect insurance on a so-called occurrence basis to cover bodily injury liability and property damage liability with

minimum coverage of \$1,000,000 for each occurrence and will upon UMMMC's request deliver to UMMMC, as evidence of such coverage, a Certificate of Insurance which Certificate will contain a statement to the effect that Seller will not cancel or reduce such insurance without first sending written notice by registered or certified mail to UMMMC at least thirty (30) days before such cancellation or reduction.

12. General Indemnification. Seller will indemnify and hold harmless UMMMC and its Affiliates, their officers, directors, trustees, employees, agents, servants, successors and assigns as well as their customers and users of the Goods from losses, damages, expenses (including attorney fees), and claims for injury or alleged damage to persons and/or property to the extent resulting from Seller's, its employees, and/or agents negligence or reckless or wrongful acts or omissions, whether on the Buyer's premises or otherwise in connection with Seller's performance under this Contract, except to the extent caused by UMMMC's negligence or reckless or wrongful acts or omissions. Seller will indemnify and hold harmless UMMMC from losses, damages, expenses, and claims in connection with equipment claims and/or labor disputes involving Seller's employees. UMMMC will indemnify and hold harmless Seller from losses, damages, expenses and claims for injury or alleged damage to persons and/or property to the extent resulting from UMMMC's sole negligence or reckless or wrongful acts or omissions.

13. Patent and Copyright Indemnification. Seller will defend, indemnify and hold harmless UMMMC and its Affiliates, their officers, directors, trustees, employees, agents, servants, successors and assigns, as well as their customers and users of the Goods, from and against any and all claims, demands, liabilities, causes of action, suits, damages, costs and expenses (including reasonable attorney's fees) on account of or based upon any claim that the manufacture or sale by Seller of any Goods, or the purchase or use by UMMMC or its Affiliates of any Goods in accordance with this Contract, actually or allegedly infringes the patent, copyright, or any other intellectual property claims of any third Party. In the event any action or proceeding is brought against UMMMC by reason of any of the foregoing, Seller upon notice from UMMMC will at the expense of Seller resist or defend UMMMC and employ counsel therefor reasonably satisfactory to UMMMC. If the use or sale of any Goods is enjoined as a result of a suit alleging patent, copyright or any other intellectual property right infringement, Seller will, at its own expense and at UMMMC' request, either replace all such Goods with equivalent terms (likewise covered by this indemnity) or obtain for UMMMC and its Affiliates the right to use equivalent terms (likewise covered by this indemnity) or obtain for UMMMC and its Affiliates the right to use and sell such Goods. The provision of this paragraph will survive the termination of this Contract.

14. Approval of Personnel. UMMMC will have the right at any time with reasonable prior notice to require Seller to replace any person assigned by Seller to work on the premises of UMMMC or its Affiliate organizations.

15. Subcontracting. If any Goods are to be made to UMMMC' design specifications, Seller may not assign or subcontract its obligations with respect thereto without UMMMC's prior written approval.

16. Use of Name. Seller will not use the name of UMMMC or any of its Affiliates in connection with this Contract without first obtaining on each occasion the prior written consent of UMMMC.

17. Accounting. Seller will maintain books and records of account pertaining to this Contract and all transactions conducted hereunder in accordance with standard accounting principles. UMMMC and any agent appointed by UMMMC will have the right to examine Seller's books and records at Seller's offices during normal business hours upon at least forty-eight (48) hours prior notice.

18. Notices. All notices between UMMMC and Seller provided for or permitted under this Contract or by law will be in writing and will be deemed duly delivered when personally served upon the Party or, in lieu of personal service, when deposited in the United States mail, certified, postage-prepaid, return receipt requested, addressed as follows or as either Party will last have designated by written notice to the other. If to UMMMC:

UMass Memorial Medical Center
Department of Materials Management
26 Queen Street
Worcester, MA 01610
Attn: Purchasing Manager

If to Seller: To the name and address indicated in the Purchase Order

19. Compliance with Laws

19.1 Both Parties agree that in performance of this Contract each will in all respects follow and comply with all applicable federal, state and local laws, regulations, orders and other rules of duly constituted authority.

19.2 If this is an order for services, the value or cost of which is \$10,000 or more over a 12-month period, Seller will within four years after furnishing such services under this Contract make available, upon written request of the Secretary of Health and Human Services or the Comptroller General, or any of their duly authorized representatives, the Contract, books, documents and records of Seller necessary to verify the nature and extent of the costs of such services. If Seller carries out any of such services through a subcontract with a related organization, such subcontract will also contain a clause allowing this access as specified above. This provision is intended to implement the requirements of 42 CFR, § 420, subpart D.

19.3 To the extent this Contract includes any discount or reduction in price: (1) Seller will fully and accurately report such discount or reduction in price to UMMMC on its invoice; provided, however, that where the value of the discount or reduction in price is not known at the time of sale, Seller will report the existence of a discount program on its

invoice and, when the value of the discount becomes known, provide UMMMC with documentation of the calculation of the discount, including a description of the goods or services to which the discount is applied; and (2) UMMMC will fully and accurately report the discount on the appropriate cost reports. This provision is intended to implement the requirements of 42 CFR § 1001.952(h), as amended from time to time.

20. Termination.

20.1 In addition to all other available remedies, either Party may terminate this Contract following the other Party's breach of any material term or condition of the Contract, provided the defaulting Party has received written notice specifying the nature of the default and the corrective action required, and such default is not cured within thirty (30) days following receipt of said notice of default.

20.2 UMMMC may terminate this Contract in whole or in part at any time following at least thirty (30) days prior written notice to Seller. Upon Seller's receipt of such termination notice, Seller will, to the extent specified therein, stop work hereunder and terminate any existing work hereunder by subcontracts. Seller will take any necessary action to protect property in Seller's possession that UMMMC has or may acquire an interest in. Any claim by Seller for wrongful termination must be submitted to UMMMC within sixty (60) days after the effective date of Seller's termination.

21. Governing Law. This Contract will be governed by the laws of the Commonwealth of Massachusetts.

22. Waiver. The waiver on any one occasion of a breach of any term, condition or obligation of this Contract will not be considered a waiver of that or any other term, condition, or obligation on any other occasion.

23. Severability. If any term or provision of this Contract or the application thereof to any person, property or circumstance will to any extent be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons, properties and circumstances other than those to which it is invalid or unenforceable, will not be affected thereby, and each term and provision of this Contract will be valid and enforceable to the fullest extent permitted by law.

24. No Assignment. Neither Party may assign this Contract without first obtaining on each occasion the prior written consent of the other Party, except that UMMMC may assign this Contract to its Affiliates without Sellers written consent.

25. Amendments. This Contract may be amended only by a writing executed by both Parties.

26. Independent Contractor. Seller is and shall be treated for all purposes as an independent contractor of UMMMC. Seller is solely responsible and liable for all salary,

workers compensation benefits, income tax withholding, unemployment insurance, FICA, and other aspects of employment of its employees, and UMMMC shall have no responsibility or liability with respect thereto.

27. Signing. Each person who signs these Contract warrants that he or she does so with the full and legal authority to execute this Contract on behalf of the respective Parties.

The undersigned agree to the foregoing terms and conditions

In witness whereof, the parties hereto set their hands as of the date first written above:

**UMASS MEMORIAL
MEDICAL CENTER, INC.**

SELLER

By: _____

By: _____

Print Name:

Print Name:

Title:

Title:

Date: _____

Date: _____

FEIN# or SS#: