

VENDOR ORDER AGREEMENT FOR MERCHANDISE (PRODUCTS)

This Vendor Order Agreement for Merchandise **XXX** (Products) under the execution of the Order Agreement by both parties **XXX** (the “Effective Date”) by and San Antonio Regional Hospital (“Hospital”) and **XXX** (“Seller”).

Whereas, the parties mutually agree that (i) the following General Terms and Conditions shall govern this non-exclusive Order Agreement, and (ii) that “Exhibit A – fee schedule/pricing exhibit,” attached hereto and made part hereof by this reference, shall govern the term, pricing, and Sellers best practices of the merchandise covered by this Order Agreement.

GENERAL TERMS AND CONDITIONS

1. GENERAL PROVISIONS INCORPORATED INTO ALL PURCHASE ORDERS

1.1. ACCEPTANCE.

By fulfilling a San Antonio Regional Hospital (SARH) Purchase Order (Order), Seller agrees to furnish the items or services covered by this Order and to be bound by and to comply with these Order Terms and Conditions, including all particulars. Sellers should not fulfill Orders from SARH without a Purchase Order Number.

Written acceptance (including, but not limited to, signature on this Order or any related proposal, addendum, or agreement) or shipment of all or any portion of the items or the performance of all or any portion of the items or services covered by this Order shall constitute unqualified acceptance of the Order Terms and Conditions.

No other terms or conditions shall be binding upon the parties, unless such terms and conditions have expressly been agreed to in a separate written agreement or addendum that has been signed by both parties.

These Order Terms and Conditions shall prevail should any contradiction arise between any terms and conditions provided by the Seller. The terms and conditions of any proposal referred to in this Order are included and made part of the Order only to the extent of specifying the nature of the items or services ordered, the price thereof and delivery date, and then only to the extent that such terms are consistent with these Order Terms and Conditions.

1.2. PAYMENTS AND INVOICES.

Upon receipt of an invoice that references a SARH Purchase Order, payment by SARH to the Seller will be in the form of a San Antonio Regional Hospital check, electronic funds transfer, or wire transfer, depending on which form of payment has been requested by the Seller. Seller shall be responsible for invoicing SARH for services rendered or goods received. Invoices without a Purchase Order Number will not be accepted. Payment shall be made by SARH within thirty (30) days after SARH's receipt of each invoice which certifies the occurrence of each event and SARH's acceptance of the goods received and/or services rendered.

SARH is not responsible for paying invoices that are dated more than 60 days after services were rendered or goods were received. Sellers are responsible for issuing invoices to SARH in a timely manner to ensure payment.

1.3. SALES TAX.

SARH is not sales tax exempt. Sellers are required to charge SARH sales tax on taxable items, and must identify sales tax on all invoices. Items are subject to the current Upland city sales tax. However, SARH operates locations throughout California. Sellers should reference the delivery address and apply the sales tax amount for the applicable city.

1.4. SHIPPING INSTRUCTIONS.

Shipments, if applicable, must be made as specified on the face of the Order unless subsequently modified in writing by SARH. Seller shall load and secure the shipment, if applicable, of the materials to comply with all trade rules and regulations and to ensure sufficient protection to prevent damage to such materials.

1.5. DELIVERY.

All goods and/or services are to be provided in a timely manner, and to the reasonable satisfaction of SARH. In the event of a delay in delivery, such delay must be communicated to SARH, who shall have the option of canceling all or part of the subject Order without liability.

1.6. TITLE.

Title to the materials or supplies purchased hereunder shall pass directly from Vendor to SARH at the F.O.B. destination, or as otherwise specified in this agreement or any purchase order resulting from this agreement, subject to the right of SARH to reject upon inspection.

1.7. RISK OF LOSS.

Seller assumes the risk of, and shall be responsible for, any loss or damage to the materials, and all portions thereof, until the materials have been accepted by SARH.

1.8. WARRANTIES.

In addition to any express warranties Seller may make, Seller warrants the articles delivered hereunder to be free from defects in labor, material and manufacture, and to be in compliance with any drawings of specifications incorporated or referenced herein and with any samples furnished by the Seller. All warranties shall cover SARH, its successors, transferee or subcontractor.

1.9. DISCOUNT DATE.

The date for calculation of any applicable fast-pay discount offered by the Seller and provided for on the face of this Order is (i) the date material is received, (ii) the date material is scheduled to be received under the Order, or (iii) the date an acceptable invoice is received, whichever is later.

1.10. INSPECTION.

The supplies furnished shall be exactly as specified in this agreement free from all defects in Vendor's performance, design, workmanship and materials, and, except as otherwise provided in this agreement, shall be subject to inspection and test by SARH at all times and places. If, prior

to final acceptance, any materials and supplies furnished therewith are found to be incomplete, or not as specified, SARH may reject them, require Vendor to correct them without charge, or require delivery of such materials or supplies at a reduction in price which is equitable under the circumstances. If Vendor is unable or refuses to correct such items within a time deemed reasonable by SARH, SARH may terminate the agreement in whole or in part. Vendor shall bear all risks as to rejected services and, in addition to any costs for which Vendor may become liable to SARH under other provisions of this agreement, shall reimburse SARH for all transportation costs, other related costs incurred, or payments to Vendor in accordance with the terms of this agreement for unaccepted materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Vendor shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.

1.11. CHANGES.

No variations, deletions, modifications and/or price changes to this agreement shall be valid or effective unless approved in writing by a duly authorized representative of each party. A minimum of 45 days written notice must be made prior to the acceptance of any changes to this agreement.

1.12. LABOR DISPUTES.

Seller shall give prompt notice to SARH of any actual or potential labor dispute which delays or may delay timely performance of this Order.

1.13. TERMINATION AND DELAYS.

SARH may by written notice stating the extent and effective date terminate this Order for convenience at any time and without penalty to SARH. SARH shall pay Seller as full compensation for performance until the termination for convenience: (i) the unit or pro rata Order price for the delivered and accepted portion; and (ii) a reasonable amount, not otherwise recoverable from other sources by Seller with respect to the undelivered or unaccepted portion of this Order, provided compensation hereunder shall in no event exceed the total Order price.

SARH may by written notice terminate this Order for Seller's default, at any time and without penalty to SARH, if Seller refuses or fails to comply with the provisions of this Order, or fails to make deliveries within the time specified or any written extension thereof. If after notice of termination for default, SARH determines that failure to perform this Order is due to causes beyond the control and without the fault or negligence of the Seller, or if such delay is due to failure of SARH, not caused or contributed to by Seller, SARH may extend the time for completion of this Order, or termination shall be deemed for the convenience of SARH.

The rights and remedies of SARH provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Order.

1.14. AFFIRMATIVE ACTION.

During the performance of this Order, the Seller agrees to adhere to the principals set forth in Executive Orders 11246 and 11375. The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Seller will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.

1.15. INDEMINFICATION.

General. Vendor shall defend, indemnify, and hold harmless SARH, its officers, employees, and agents, from and against all losses, expenses (including attorneys' fees), damages, and liabilities of any kind resulting from or arising out of this agreement and/or Vendor's performance hereunder, provided such losses, expenses, damages and liabilities are due or claimed to be due to the negligent or willful acts or omissions of Vendor, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under Vendor's direction and control.

Products. Vendor shall fully indemnify, defend, and hold harmless SARH from and against any and all claim, action, and liability, for injury, death, and property damage, arising out of the dispensing or use of any of Vendor's product provided under authorized SARH orders. In addition to the liability imposed by law on the Vendor for damage or injury (including death) to persons or property by reason of the negligence, willful acts or omissions, or strict liability of the Vendor or his agents, which liability is not impaired or otherwise affected hereby, the Vendor hereby assumes liability for and agrees to save SARH harmless and indemnify it from every expense, liability or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any act or omission of the Vendor.

The SARH agrees to provide Vendor with prompt notice of any such claims and to permit Vendor to defend any claim or suit, and that it will cooperate fully in such defense.

1.16. INSURANCE.

Unless more specific insurance provisions are stipulated in an agreement, such as, but not limited to, agreements for construction, maintenance, facilities, transportation, and architects, a seller performing work at or for SARH will be required to maintain the charted insurance coverage at the seller's own expense. It is the seller's responsibility to ensure that the required insurances remain in effect for the entire duration of the awarded contract or order. If requested by the university, it will be the seller's full responsibility to provide the university with evidence of the required insurances.

Insurance Type	Corresponding Insurance Details
Workers' Compensation	Workers' compensation insurance with statutory limits if required to do so by California State law. If the Seller is self-insured for Workers' Compensation, the Seller will maintain a certified copy of the "Certificate of Consent to Self-Insure" issued by the State of California, 1.7.2 Department of Industrial Relations.
Comprehensive General Liability	Comprehensive General Liability coverage for death, bodily injury, and property damage, including products liability, with limits of no less than \$1,000,000 per occurrence.
Automobile Liability Insurance	Automobile Liability coverage of \$1,000,000 each occurrence, if the seller drives on campus property using a company car.

Additional Insured	Comprehensive General Liability and Automobile Liability Certificates must name the San Antonio Regional Hospital as an additional insured. Such insurance shall waive any right of subrogation against SARH and shall specifically cover Seller's obligations to defend, indemnify and hold SARH harmless as provided herein.
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1.17. WAIVER.

The failure of SARH to enforce at any time any of the provisions of these Order Terms and Conditions, or to exercise any option herein provided, or to require at any time performance by the Seller of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Order or any part thereof, or the right of SARH thereafter to enforce each and every such provision.

1.18. INDEPENDENT SELLERS.

In all matters relating to this Order, the Parties herein shall be acting as independent Sellers. Neither the Seller, nor any of the persons furnishing materials or performing work or services which are required by this Order, are employees of SARH within the meaning of or the application of any Federal or State Unemployment Insurance Laws, or Social Security Laws or any Worker's Compensation, Industrial Accident Laws, or other Industrial or Labor Laws.

1.19. CONFIDENTIALITY.

While fulfilling this Order, Seller may have access to SARH's internal records, systems and methods of operating its business, trade secrets, customer lists, price lists, contract information and other confidential or proprietary information. Seller agrees that all such information is the exclusive property of SARH, irrespective of whether such information was created or prepared by the Seller or others. Seller further agrees that Seller will not, at any time, in any manner, directly or indirectly, disclose such information to any person or entity, or use such information other than in furtherance of the purposes of SARH. Upon termination of this Order, Seller will deliver to SARH all property of SARH, including any written memorial of, or documents relating to, the information described above, in whatever manner maintained or stored. The Parties agree that this Paragraph shall survive the termination of this Order.

1.20. OTHER APPLICABLE LAWS.

Vendor represents and warrants to SARH that VENDOR and VENDOR's representatives are not (i) currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. Section 1320a - 7b-(f) (the "Federal health care programs"); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; and (iii) under investigation or otherwise aware of any circumstances which may result in VENDOR's or any of VENDOR's representatives being excluded from participation in the Federal health care programs. This shall be an ongoing

representation and warranty during the term of this Agreement and **VENDOR** shall immediately notify **SARH** of any change in the status of the representation and warranty set forth in this Section. Any breach of this Section shall give **SARH** the right to terminate this Agreement immediately for cause.

1.21. GOVERNING LAW AND DISPUTE RESOLUTION.

The laws of the State of California shall govern this Order, in all of its aspects, including execution, performance, interpretation and enforcement.

Except as may be otherwise provided herein, the arbitration shall be conducted under the California Arbitration Act, Code of Civil Procedure 1280 et seq. The Parties shall have the discovery rights provided in Code of Civil Procedure 1283.05 and 1283.1. The arbitration hearing will be commenced within 180 days of the filing of this application by any Party hereto, and a decision shall be rendered by the arbitrator within (30) days of the conclusion of the hearing. The arbitrator shall have complete authority to render any and all relief, legal and equitable, appropriate under California law and this Order. The arbitrator shall award costs of the proceeding, including reasonable attorney's fees, to the Party determined to have substantially prevailed.

1.22. FORCE MAJEURE.

Neither the Seller nor **SARH** shall be liable for any failure to perform its obligations under this Order if prevented from doing so by a cause or causes beyond either party's control. Without limiting the generality of the foregoing, such causes include Acts of God, or the public enemy, fires, floods, storms, earthquakes, riots, war or war operations, restraints of governments of other cause or causes which would not with reasonable diligence be controlled or prevented by the party.

1.23. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL SARH BE RESPONSIBLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST GOODWILL, LOST PROFITS, LOST BUSINESS OR OTHER INDIRECT ECONOMIC DAMAGES, WHETHER SUCH CLAIM IS BASED ON CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR OTHER LEGAL THEORY, AS A RESULT OF A BREACH OF ANY WARRANTY OR ANY OTHER TERM OF THIS AGREEMENT, AND REGARDLESS OF WHETHER THE PARTIES WERE ADVISED OR HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

SAN ANTONIO REGIONAL HOSPITAL

By: _____

Name: _____

Title: _____

Date: _____

(Insert Company Name)

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A