

**AGREEMENT BETWEEN UAB SCHOOL OF OPTOMETRY****AND****JEFFERSON COUNTY DEPARTMENT OF HEALTH**

THIS AGREEMENT, made this 1<sup>st</sup> day of August 2010, by and between the Jefferson County Board of Health, hereinafter referred to as "Board", and the Board of Trustees of the University of Alabama, for the University of Alabama at Birmingham, School of Optometry hereinafter referred to as "Contractor".

**WITNESSETH:**

WHEREAS, the Board is a county board of health constituted under the laws of the State of Alabama.

WHEREAS, Contractor is a public corporation organized under the laws of the State of Alabama providing services in the Birmingham, Alabama area.

WHEREAS, the Board is desirous of entering into this Agreement with the Contractor whereby the Contractor will provide certain ocular disease and vision services to patients/clients of Board.

NOW, THEREFORE, in consideration of the premises, the mutual promises and covenants of the parties contained herein and other good and valuable consideration the parties hereto agree as follows:

**1. OBLIGATIONS OF CONTRACTOR**

The Contractor shall perform the following services and terms for the Board:

- a) Provide appropriate vision screenings to Board patients who participate in the Vision Screening Program.
- b) Provide appropriate ocular disease services to Board patients who participate in the Eye Health Program.
- c) Provide appropriate refractive services to board patients who participate in the Eye Health Program.
- d) Contractor will make all necessary referrals for additional services.
- e) Contractor will furnish a copy of the vision screening report on all patients evaluated in the vision screening program to the Board.
- f) Contractor will furnish a consultation report on all patients evaluated in the Eye Health Clinic to the board.
- g) Contractor teams will be supervised directly or by remote link by a licensed Doctor of Optometry.
- h) Contractor to provide specific patient education guidelines to Health Center staff.
- i) The Contractor teams receive disease screenings as appropriate in order to operate in public and private clinics and institutions
- j) Specific tests and inoculations desired by the Board shall be provided to the Contractor by the Board at no charge to the Contractor.
- k) Only Board patients will receive vision screening services under this agreement.

## **2. OBLIGATIONS OF THE BOARD**

The Board agrees to and reserves the right to:

- a) Provide guidance to the Contractor to aid in the successful completion of the contract.
- b) Monitor the activities of the Contractor for compliance with the terms of the contract, including the performance of audits of Contractor if deemed necessary by the Board.
- c) Provide work space for the clinic
- d) Assist with registration of patients
- e) Provide completed referral forms from medical staff
- f) Provide copies of patient insurance cards, and other information necessary for filling of insurance claims by contractor
- g) Provide a secure area for the storage of contractor's equipment, if needed.
- h) Provide access to patient's medical file for information purposes.
- i) Assist in the education of the patients regarding their visual limitations and safety after their pupils have been dilated.

## **3. PAYMENT**

There will be no fee assessed for contractor services to the Board except that the contractor reserves the right to bill for the services and materials provided both on site and at its remote clinic locations to Insurance and Health Plan Carriers where available. Contractor agrees to accept assignment for Medicare and Medicaid claims provided that the Board furnishes all necessary information for filing such claims. If no insurance coverage is available, contractor reserves the right to bill patient for services and materials based on the Jefferson County Department of Health income assessment codes.

## **4. INDEPENDENT CONTRACTOR**

Contractor acknowledges that it (and its agents and employees) is an independent Contractor and not an agent or employee of the Board for any purpose and is not entitled to any type of leave, insurance or other employee benefit from the Board, unless such benefit is expressly set forth in this Agreement. Contractor shall not represent itself to any third party as an agent or employee of Board. The Contractor shall withhold and pay all Federal, Social Security taxes, Federal and State Unemployment taxes, and all similar payroll taxes related to its agents and employees and indemnify and hold Board harmless from such claims.



**5. TERM OF AGREEMENT**

The term of this Agreement shall be from October 1, 2010 through September 30, 2011, unless terminated sooner by the parties as provided herein. This Agreement is not automatically renewable.

**6. TERMINATION**

This contract may be terminated by either party by giving thirty (30) days written notice to the other party.

**7. NOT DEBT OF STATE**

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama of 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this contract, be enacted, then that conflicting provision in the contract shall be deemed null and void.

The Contractor's sole remedy for the settlement of any and all disputes arising under the terms of this agreement shall be limited to the filing of a claim with the board of Adjustment for the State of Alabama.

**8. NON-DISCRIMINATION**

Contractor will comply with Titles IV, VI, and VII of the Civil Rights Act of 1964, the Federal Age Discrimination in Employment Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and all applicable federal and state laws, rules and regulations implementing the foregoing statutes with respect to nondiscrimination on the basis of race, creed, color, religion, national origin, age, sex or disability, as defined in the above laws and regulations. Contractor shall not discriminate against any otherwise qualified disabled applicant for, or recipient of aid, benefits, or services or any employee or person on the basis of physical or mental disability in accordance with the Rehabilitation Act of 1973 or the Americans With Disabilities Act of 1990.

Contractor agrees not to discriminate but may be exempt from the jurisdiction of same statutes as a matter of law.

**9. CIVIL SERVICE SYSTEM**

Board and Contractor acknowledge that the Board is an appointing authority under the Civil Service System of Jefferson County, Alabama (the "System") and that the Board's obligations hereunder are subject to said System. Contractor further acknowledges that Contractor (and its agents and employees) is an independent contractor and not an agent or employee of the Board; is not a member or employee under the System; is not entitled to receive employee benefits under the System; and is not entitled to appeal rights promulgated in the System's rules and regulations.

**10. CONTRACTOR, EMPLOYEES, AGENTS AND SUBCONTRACTORS**

CONTRACTOR AGREES TO THE FOLLOWING:

a) Provide, at Contractor's expense, all insurance or self-insurance coverage necessary, to provide coverage for Contractor, its employees, agents, servants and assigns, including comprehensive liability coverage while performing this contract.

b) Remain fully responsible for the direct supervision of its employees and personnel, and will be available at all reasonable times to report and confer with the Board or its designated representative with respect to services rendered.

c) Agree that upon the request of the Board, Contractor will remove from services hereunder any of its employees, agents or subcontractors who in the sole opinion of the Board are not qualified to perform the work assigned to them.

#### **11. GOOD STANDING**

Contractor is duly organized as a public corporation under the laws of the State of Alabama and has full power and authority to enter into this Agreement and to do all other acts required hereunder.

#### **12. DUE AUTHORITY**

Contractor has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been duly executed and delivered by Contractor and constitute its legal, valid and binding obligation enforceable against it in accordance with its terms, and the consummation and performance by Contractor of the transactions contemplated herein will not result in a violation of or be in conflict with or constitute a default under any term or provision of the organizational documents of Contractor, or of any term of any applicable law ordinance, rule or regulation of any governmental authority or of any term of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

#### **13. INSURANCE**

Contractor shall furnish to the Board upon execution of this Agreement, a certificate of insurance evidencing adequate professional and public liability insurance insuring Contractor.

#### **14. MEDICAL/CLINICAL REQUIREMENTS**

a) Medical and clinical service shall be provided by appropriately licensed and credentialed personnel in accordance with the laws and regulations of the State of Alabama. The professional supervision of the Contractor's personnel shall be the responsibility of the Contractor's Medical Director or other person specifically designated by Contractor. Contractor shall identify to the Board the name(s) of the person(s) who will be responsible for providing services under this Agreement. Contractor shall certify to the Board in writing that all persons providing services under this Agreement are properly licensed and credentialed in accordance with the laws and regulations of the state of Alabama. Contractor at Board's request shall provide information about each provider to include licensure, relevant education, training and experience, and competency for level of services specified. Contractor shall provide the Board with a copy of its credentialing policy.

b) Referrals to the Board's health centers or other providers shall be governed by the Board's referral procedures. The Contractor's personnel shall advise all patients of where to seek care during the hours when the clinic is closed, according to the Board's procedures.

c) Contractor must provide documentation that all of its personnel performing laboratory services have been trained in CLIA procedures corresponding to the site's CLIA category. Such personnel are subject to proficiency testing by the Board or its agents to meet Joint Commission on Accreditation of Health Care organizations and CLIA regulations. The Contractor is responsible for assuring that personnel trained in the appropriate laboratory procedures are present during each clinic session.

d) Personnel and patient files pertaining to this Agreement shall be subject to periodic auditing by the Board or its agents for the purposes of quality assurance and adherence to Joint Commission and grant requirements.



**18. ASSIGNMENT**

No assignment of this Agreement or delegation of any duty or obligation of performance hereunder shall be made in whole or in part by Contractor without the prior written consent of the Board.

**19. CONFLICTS**

To the best of Contractor's knowledge, nepotism does not exist between the parties nor are the parties receiving pecuniary benefits other than those identified in this Agreement and no conflict of interest exists between the parties.

**20. GOVERNING LAW**

The validity and enforceability of this Agreement and each and every term or provision herein, as well as the rights and duties of the parties to this Agreement shall be governed by the laws of the State of Alabama.

**21. WORK PRODUCT**

Contractor agrees that all work product, materials, scripts, video and written productions (collectively "Productions") created pursuant to this Agreement are and shall be the sole property of the Board and that Contractor shall not use such Productions at any time or for any other purpose not expressly authorized in writing by the Board.

**22. HIPAA COMPLIANCE**

Contractor, its employees, vendors recognize, acknowledge, and hereby agree that all information or data provided pursuant to this Agreement will be treated as confidential and proprietary and shall not be used or disclosed, in whole or part, to any person, firm, corporation, association, or other entity, except as provided for in this Agreement. Contractor further agrees to abide by the provision of state and federal statutes and Medicaid and Medicare regulations regarding confidentiality. Contractor access to that information is hereby restricted to that information which is needed to fulfill the purposes/function of this contract. To the extent required by law and not otherwise, Contractor does hereby assure Board that Contractor will appropriately safeguard protected health information made available to or obtained by Contractor. In implementation of such assurance and without limiting the obligations of Contractor otherwise set forth in this agreement or imposed by applicable law, Contractor hereby agrees to comply with applicable requirements of law relating to protected health information and with respect to any task or other activity Contractor performs on behalf of Board, to the extent Board would be required to comply with such requirements. Contractor agrees that it will: not use or further disclose such information other than as permitted or required by this agreement; not use or further disclose the information in a manner that would violate the requirements of applicable law, if done by Board; use appropriate safeguards to prevent use or disclosure of such information other than as provided for by this Agreement; report to Board any use or disclosure of such information not provided for by this Agreement of which Contractor becomes aware; ensure that any subcontractors or agents, whom Contractor provides protected health information received from the Board, agree to the same restrictions and conditions that apply to Contractor with respect to such information; make available protected health information in accordance with applicable law; make Contractor internal practices, books, records, relating to the use and disclosure of protected health information received from Board available to the Board and the Secretary of the United States Health and Human Services for purposes of determining Contractor compliance with applicable law. In all events Contractor shall immediately notify Board in writing upon receipt by Contractor of any such request. At termination of this Agreement, return or destroy all protected health information received from Board that Contractor still maintains in any form and retain no copies of such



e) The Contractor must provide documentation to the Board assuring that the Contractor's clinical personnel have immunity to Rubella and Rubeola and have been screened for Tuberculosis.

f) The Contractor's personnel must sign the Board's confidentiality statement. All patient files remain the sole property of the Board and may not be removed without the permission of the Board. The Contractor's personnel shall comply with the Board's medical record policy.

g) The use of any drugs furnished by the Board shall be governed by the Board's protocols and procedures.

h) The Contractor shall follow the Board's policy concerning research studies.

i) In providing services under this Agreement, the Contractor shall observe customary professional standards of practice and ethics and shall comply with all applicable federal and state laws and regulations, all as may from time to time be applicable during the term of this Agreement. Contractor warrants that all physicians providing services under this Agreement maintain active medical staff privileges with no disciplinary action (and none pending).

j) The Contractor represents and warrants to the Board as of the date of this Agreement that to the best of its knowledge (i) all Licenses have been duly obtained by the Contractor and its employees, agents, independent contractors and subcontractors, (ii) all the licenses are in full force and effect, and (iii) there are no proceedings pending or threatened that may result in the revocation, cancellation or suspension, or any adverse modification, of any License. The Contractor agrees that this representation is a continuing one, and that the Contractor will notify the Board immediately in writing of any fact, event or condition which arises or is discovered subsequent to the execution of this Agreement which affects the truthfulness or completeness of this representation. Throughout the term of this Agreement, the Contractor shall maintain in full force and effect all of the licenses and shall notify the Board of the lapse of any thereof within five days of its knowledge of such lapse.

## **15. MEDICAL RECORDS**

All records related to a particular patient shall be maintained by the Contractor until the later of: (i) three years after the end of the calendar year in which any services, equipment, supplies and/or goods are furnished to such patient by the Contractor pursuant to this Agreement, or (ii) the final resolution of any audit, litigation or other action by or on behalf of the Board or State of Alabama. During such period of time, the Contractor shall promptly make such records available for inspection and audit and at the request of authorized representatives of the Jefferson County Board of Health or appropriate agencies of the State of Alabama. The Contractor shall provide such representatives with photocopies of such records without cost or shall allow such representatives to remove such records from its place of business for the purpose of photocopying. For purposes hereof, the Contractor's place of business shall be open to such representatives during its regular business hours.

## **16. CONFIDENTIALITY**

The Contractor shall treat all information obtained by or through its performance under this Agreement, as confidential information to the extent confidential treatment is provided under State and Federal laws. The Contractor shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and rights under this Agreement. All information as to personal facts and circumstances concerning patients shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the express written consent of the Board or the patient, or as required by courts of competent jurisdiction.

## **17. BOARD'S REMEDIES**

UAB, a division of The Board of Trustees of The University of Alabama, is an agency of the State of Alabama and cannot waive immunity conferred by Ala. Const., Article I § 14. The exclusive forum for asserting a claim against UAB is the State Board of Adjustment.

information; and incorporate any amendments or corrections to protected health information when notified pursuant to applicable law. Protected Health Information means individually identifiable health information that is or has been electronically transmitted or maintained by Board and includes such information in any other form.

Individually Identifiable Health Information means information collected from an individual that is created by or received by Board and relates to a past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual or the past, present or future payment for health care, and which identifies the individual and with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

#### CONTRACTOR

The Board of Trustees of the  
University of Alabama for the  
University of Alabama at Birmingham

By Patricia A. Raczynski  
Patricia Raczynski  
Associate Vice President for Financial  
Affairs

Date: 7/27/10

The University of Alabama at Birmingham  
School of Optometry

Rodney W. Nowakowski  
Rodney W. Nowakowski, O. D., Ph.D.  
Interim Dean

Date 7-21-10

#### JEFFERSON COUNTY BOARD OF HEALTH

By Michael E. Fleenor, M.D.  
Michael E. Fleenor, M.D.  
Health Officer

Date 08/05/10

The University of Alabama at Birmingham  
School of Optometry  
Chief of Clinical Services

Joseph Fleming, O. D.  
Joseph Fleming, O. D.  
Chief, Optometry Clinical Services

Date 7/22/10



## 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 the University may be dependent upon the appropriation and allocation of funds by the Alabama Legislature. Should funds adequate to fulfill the obligations of an agreement not be appropriated and allocated to the University, the University shall have the discretion to issue written notice of termination to the Contractor without further obligation, except to pay the Contractor for goods and services received prior to such written notice to Contractor. Contractor acknowledges that the appropriation and allocation of state funds by the Alabama Legislature are beyond the control of the 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.