



## CONSIGNMENT AGREEMENT

This Agreement is made between SafetyFix Medical Technologies, Inc. ("Supplier") and \_\_\_\_\_ ("Facility")  
on this \_\_\_\_\_ day of \_\_\_\_\_ (Month), 20\_\_.

### 1. Delivery

The Supplier shall, upon request made by the Facility, deliver to the Facility 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 Facility shall store the Products on Consignment at its premises so as to be at all times segregated from all of the Facility'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 and ascertain that the products are still in a saleable condition.

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

### 4. Inventory of Products on Consignment

The Facility shall have one of its representatives and allow one representative of the Supplier to take an inventory of the Products on Consignment as requested by Supplier's representative in order to determine which Products on Consignment 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 Facility.

#### 5a. Disposal

All explanted hardware (removed from the human body) must be treated as biologic waste and immediately disposed of in proper containers within one (1) hour of the operative procedure. Failure to properly dispose of product will effectively terminate this Agreement and potentially expose the Facility and/or surgical team to investigation and liability for improper handling.

### 6. Invoicing and Payment

The Facility shall, within three (3) days of the use of any Product on Consignment, forward a purchase order to the Supplier for the Products on Consignment deemed purchased by the Facility, and the Supplier shall invoice the Facility for such Products on Consignment. Payment by the Facility shall be made within 30 days of receipt of each such invoice.

### 7. Return

Products on Consignment may be returned at Facility'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 Facility.

## **9. Supplier's Representations and Warranties**

The Supplier represents and warrants to the Facility 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 Facility 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.

## **10. Remedy of Breach of Representations and Warranties**

Where the Facility 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 Facility, to remedy such breach as quickly as possible but not longer than ten (10) days following such notification, including providing additional or alternate Products on Consignment to the Facility to ensure that the Facility's operations are not disrupted by such breach.

Where the Supplier is unable to correct the breach within the said ten (10) day period, the Facility, without restricting its recourse, shall be entitled to return any or all unused Products on Consignment.

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**

Supplier does not warrant either a good result or against any ill effect following the use of Products on Consignment. THERE ARE NO WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXPRESSED OR IMPLIED IN THIS AGREEMENT.

## **12. Term**

This Agreement shall commence on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and shall continue for so long as the Facility shall continue to hold any of those products listed in the attached Schedule A on consignment.

## **13. Termination**

The Supplier may terminate this Agreement at any time by giving thirty (30) days prior written notice. Upon termination by the Supplier, the Facility shall deliver, at the Facility'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 Facility pursuant to this Agreement.

The Facility may terminate the agreement at any time by giving thirty (30) days prior written notice. Upon termination by the Facility, the Facility 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 Facility pursuant to this Agreement.

## **14. Governing Law**

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

## **15. 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 three (3) business days after being deposited in the mail.

Notice to Supplier shall be given as follows:

MICHAEL HORWITZ, DPM,  
8637 DELMAR BLVD.  
ST. LOUIS, MO 63124  
FACSIMILE: 314-983-2777

Notice to Facility shall be given to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**16. Confidentiality**

Supplier and Facility 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.

**17. Representations by Supplier**

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 Missouri, 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.

**18. 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. 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 Facility carries insurance in sufficient amounts to cover its activities under this Agreement.

**SAFETYFIX MEDICAL TECHNOLOGIES, INC**

Supplier

Facility

By: \_\_\_\_\_  
MICHAEL HORWITZ, DPM  
President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE A**

The Products on Consignment per the SafetyFix Consignment Agreement with \_\_\_\_\_ shall be as follows:

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**SCHEDULE B**

The contract price for the Products on Consignment under the SafetyFix contract with \_\_\_\_\_ shall be as follows:

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