

PRODUCT PURCHASING AGREEMENT

This Product Purchasing Agreement (the “Agreement”) is entered into effective as of the ___ day of [Month], [Year] (the “Effective Date”) by and between Saint Luke’s Health System, Inc. (“Saint Luke’s”), a Kansas nonprofit corporation, on its behalf and on behalf of the Facilities, and [Company Name] (“Company”) a [entity type].

1. Facilities. Company acknowledges and agrees that this Agreement is entered into by Saint Luke’s for its benefit and for the express, intended benefit of its subsidiaries, Affiliates and for such entities for which it performs contracting services (where Saint Luke’s, via a written agreement has been granted or delegated contracting authority)(“Client Entity”). As used herein, an “Affiliate” means, with respect to a specified entity, an entity that directly or indirectly through one or more intermediaries, controls or is controlled by Saint Luke’s or is under common control with Saint Luke’s, in each case where the term “control” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by membership, by contract interest or otherwise. Herein, each Saint Luke’s subsidiary, Saint Luke’s Affiliate and each Client Entity shall be a “Facility” and collectively the “Facilities”. Company acknowledges and agrees each of the Facilities shall be and constitutes an intended third party beneficiary of the representations, warranties, covenants and agreements of the Company contained herein, and each of the Facilities shall be entitled to enforce the terms and provisions of this Agreement to the same extent as Saint Luke’s. Company acknowledges that Saint Luke’s and each Facility are separate legal entities; none of the obligations or liabilities of a Facility shall be treated as a joint obligation or liability of Saint Luke’s or any other Facility. Company acknowledges and agrees that the Affiliate or Client Entity that places a Purchase Order (as hereinafter defined) shall be solely responsible to Company for payments associated with the Purchase Order and that each Affiliate and Client Entity is solely responsible for its compliance with all of the terms herein. Nothing contained herein shall be considered a guarantee of purchase by Saint Luke’s or any Facility. Saint Luke’s, when it is the party to a Purchase Order, shall have the right and ability to disseminate Products acquired hereunder to all subsidiaries. Herein all rights of Saint Luke’s, and all warranties made by Company and all Company obligations hereunder, shall apply equally to each Facility that is the purchaser or recipient of Products hereunder.

2. Products; Pricing. Company shall sell and make available to Saint Luke’s the products set forth on Exhibit A attached hereto and incorporated herein (“Products”). Exhibit A shall set forth the pricing for such Products, applicable rebates and/or discounts, performance metrics, and such other terms as may be agreed to by the parties. All prices set forth on Exhibit A are complete and shall remain firm for the Term.

2.1 Software. If any Products contain any embedded Software and/or if Company provides Software for use by Saint Luke’s in relation to the Products, and/or if the provision of any services by Company hereunder will require Company’s use of Software which will interact with any of Saint Luke’s systems, the parties agree that the terms and conditions in Exhibit B (Software Terms) shall apply. As used herein “Software” means the machine readable forms of specific computer software programs, interfaces and configurations developed by or for Company or used by Company, including: (i) embedded third party software; (ii) all updates, upgrades, and new releases to the foregoing; and (iii) any content and computer-based training software developed or used by Company in connection the Products or any services provided by Company. In the event that Company requires an additional or separate license (other than the license in Exhibit B) be given or acquired in relation to any Software, the parties will negotiate and enter into a separate license agreement with respect to same. If, to carry out its obligations under the Agreement, Company will provide the Products or services that require Company to store any of Saint Luke’s or the Facilities’ data or information (referred to herein as “Data”) on its system (“Hosting Services”), then Company agrees that the terms and conditions set forth in Exhibit C (Hosting Services) shall apply. To the extent Company, is able to, via the Software, Products or otherwise, or has a need to, access or use any of Saint Luke’s (or any Facility’s) systems, servers, information, records or data, Company agrees that any such access will be conditioned upon its compliance with any rules, requirements and procedures for such access that Saint Luke’s may impose. Company further agrees that, if deemed necessary by Saint Luke’s in relation to any such Company access or in relation to any functions or duties of Company under this Agreement, Company will execute a business associate agreement (“BAA”) that complies with the Health Insurance and Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. §1320d, et seq., and the regulations promulgated there under (“HIPAA”) and will further execute an IT Security Addendum; failure of Company to execute the Saint Luke’s provided BAA and IT Security Addendum will be a breach of this Agreement by Company and, without limitation of Saint Luke’s rights, Saint Luke’s may immediately terminate this Agreement without penalty.

3. Orders; Delivery; Tracking. Saint Luke’s may place an order at any time for Products utilizing a purchase order (“Purchase Order”). Saint Luke’s retains the right to purchase Products directly from Company or through any authorized distributor. Shipping terms are FOB Destination. “FOB Destination” shall mean that: (i) title and risk of loss to the Products shall not pass to Saint Luke’s until the

Product is delivered and signed for at the Saint Luke's designated shipping destination; and (ii) Company will be responsible for paying applicable freight charges to the commercial carrier. Company shall remain responsible for the condition of the Product in transit, insurance, and filing claims with the commercial carrier. Company shall deliver the Products in accordance with the terms of this Agreement and the Purchase Order to the attention of the individual and address identified on the Purchase Order. There shall be no minimum purchase requirements applicable to Saint Luke's. Any notes, instructions or directions included in the Purchase Order placed by Saint Luke's or a Facility which are specific to the order described therein shall be considered accepted and binding with respect to such order if the Purchase Order is accepted by Company and confirmation is received. If there is any conflict between the terms of the Purchase Order and the terms of this Agreement, the terms of this Agreement shall govern. Saint Luke's may cancel or alter a Purchase Order at any time before Company's shipment of the Products at no cost to Saint Luke's. Unless Saint Luke's specifies otherwise in a Purchase Order, all Products must be delivered to Saint Luke's no later than 7 business days after Company's receipt of the Purchase Order. With respect to all Products purchased hereunder, Company shall provide sales documentation reports ("Reports") in a mutually agreeable hard copy and electronic-Excel format, ("Sales Documentation Format"), within thirty (30) calendar days following the end of each calendar quarter for the Term of this Agreement and as may be reasonably requested by the Saint Luke's requestor. Company shall further report the following on the form/document requested by Saint Luke's: the Company's product tracking number and SKU, GLN, UPN, UNSPSC, and GTIN. Such Reports will include information on all Products purchased by each Facility individually and in the aggregate hereunder and all information reasonably requested by Saint Luke's. Company shall provide such Reports to the applicable Saint Luke's requestor.

4. Acceptance. Saint Luke's shall be allowed a reasonable period of time to inspect and test the Products and to notify Company of its rejection of any Products based on any of the following: (i) any nonconformance with the terms and conditions of the Purchase Order or this Agreement, (ii) shipping damage, and/or (iii) failure of the Products to comply with law or to meet the Products warranty, documentation and/or the quality or safety rules of Saint Luke's. Products rejected may be returned to Company at Company's risk and expense and Company shall refund the purchase price. Products not so rejected shall be deemed to be accepted. Company shall not assess or collect any fees, costs or expenses associated with or related to the return of any rejected Products by Saint Luke's.

5. Payment. Company shall invoice Saint Luke's (or the Client Entity or Affiliate if such is the ordering party) for Products set forth on a Purchase Order at the time of shipment or as otherwise mutually agreed upon. Saint Luke's (or the Client Entity or Affiliate if such is the ordering party) shall pay conforming and undisputed invoices for Products in full within sixty (60) days after the receipt of the invoice, except no invoices shall be paid unless the applicable Products are received by Saint Luke's (or the Client Entity or Affiliate if such is the ordering party) and are not rejected pursuant to Section 4 above.

6. Term and Termination. This Agreement commences on the Effective Date and continues for a period of [REDACTED] thereafter (the "Term"). Either party may terminate this Agreement any time upon thirty (30) days' prior written notice to the other party.

7. Confidentiality. During the Term it is expected that Company will learn of certain confidential and proprietary information and/or trade secrets ("Confidential Information") of Saint Luke's and/or the Facilities. Saint Luke's Confidential Information includes, but is not limited to, (i) all information concerning Saint Luke's business affairs, proprietary information and trade secrets, internal reports, patient lists, marketing plans, purchasing information, pricing information, strategic plans, sales tracings, financial and other business information and clinical information, (ii) all information Company knows or reasonably should know is to be or should be treated as confidential, and (iii) all materials that are marked as confidential or proprietary. All Confidential Information is and remains, Saint Luke's property. Company warrants that it will not, directly or indirectly, (a) use any Confidential Information for any purpose that is not directly and solely related to the performance of its obligations under the Agreement, (b) publish or disclose any Confidential Information to any third party, or (c) use the Confidential Information in any manner for its business development or any commercial purposes. For sake of clarity, Company expressly agrees that it will not monetize or use any Confidential Information (regardless of whether it is aggregated or de-identified). Company shall maintain the Confidential Information in a secure manner that is at least as protective as that which Company uses with respect to its own confidential and proprietary information, but in no event shall Company provide Confidential Information less than reasonable protection. Company will take such action as necessary, including agreements with or instructions to its employees and agents, to enable it to perform its obligations with respect to Confidential Information. Company expressly acknowledges and agrees that any documents, data and information ("Information") that it discloses or provides to Saint Luke's pursuant to this Agreement (whether provided directly or indirectly, in whatever form or medium, and regardless of whether such Information is marked as "confidential") will become, upon disclosure/provision, Saint Luke's property and may be used and disclosed by Saint Luke's for any purpose. Company hereby warrants that it has the legal right and ability, and without violation of any (i) third party intellectual property right, or (ii) duty of confidentiality owed to a third party, to disclose and provide its Information to Saint Luke's and that, upon such disclosure/provision, Saint Luke's will be the owner of such Information.

8. **Indemnity: Insurance.** Company shall indemnify, defend (with competent counsel reasonably acceptable to Saint Luke's) and hold harmless Saint Luke's, its Affiliates, the Client Entities and Saint Luke's subsidiaries and each such entity's respective directors, officers, medical staff, agents, and employees (each, an "Indemnitee") from and against any third party claims, demands, investigations, suits, or causes of action (each, a "Claim") asserted against any Indemnitee with respect to actual or alleged losses, liabilities, injuries, deaths, damages, fines, penalties, costs, and expenses (including attorneys' and other professionals' fees and expenses incurred by any Indemnitee and/or Company in connection with the defending against the subject Claim), relating to or arising out of: (i) breach by Company or its employees, agents, subcontractors, sub-manufacturers or assigns of the representations, warranties or other terms of this Agreement; (ii) Company's or its employees, agents, subcontractors non-compliance with or violation of any federal, state or local law, rule, regulation or ordinance; (iii) acts or omissions of Company or its employees, agents, subcontractors, sub-manufacturers, assigns, or its or their employees that are negligent, willfully wrongful, or in violation of this Agreement; (iv) the sale, license, recall, distribution or use of the Products or Software; (v) any claims, actions, suits or governmental investigations or proceedings, brought against or involving any of them, which relate to or arise out of the manufacture or sale of the Products by Company or its subcontractors, sub-manufacturers or assigns including product liability claims (including negligence and breach of warranty claims, as well as traditional product liability claims); and/or (vi) any claim arising out of or relating to Company or its employees' or agents' release, use or transmittal of data in violation of this Agreement or any BAA then in effect. Saint Luke's or the applicable Indemnitee will provide Company ("indemnitor") with timely notice of any Claim for which indemnification will be sought hereunder; provided, however, that failure to provide timely notice shall relieve the indemnitor of its duty to indemnify only to the extent such delay prejudices the indemnitor. Saint Luke's or the applicable Indemnitee will permit the indemnitor to assume full responsibility for the investigation of, preparation for, and defense of any Claim for which indemnification is sought, provided Saint Luke's or the applicable Indemnitee may, in its discretion, assist in such indemnity. The indemnitor may not compromise or settle any such Claim without Saint Luke's prior written consent. Saint Luke's and/or the applicable Indemnitee shall have the right in its sole discretion and at its sole expense to select and obtain representation by separate legal counsel. During the Term and for 5 years thereafter, Company shall maintain commercial general liability insurance written on an occurrence form, insuring against damages because of bodily injury, including death, property damage and personal and advertising injury and include without limitation, coverage for blanket contractual liability, broad form property and fire damage legal liability, premises and operations liability, product recall and cyber security and liability. The minimum limits of insurance shall be \$1,000,000 per occurrence, \$3,000,000 general annual aggregate and \$3,000,000 products and completed operations annual aggregate. Company shall maintain workers' compensation insurance as required by law.

9. **Regulatory Compliance.** Each party is responsible for compliance with all applicable laws, rules, regulations, or ordinances which may relate to its respective activities and responsibilities under this Agreement. The parties in good faith believe that this Agreement fully complies with the provisions of 42 U.S.C. 1320a-7b (the Medicare/Medicaid "Anti-Kickback Statute"). Neither Saint Luke's nor Company are, by virtue of this Agreement or otherwise, willfully offering, paying, soliciting, or receiving remuneration in return for referring an individual to or from each other for the furnishing of any item or service reimbursed under the Medicare or other federal or state health care programs. Pricing hereunder does not take into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a state health care program. The parties shall comply with the reporting requirements of 42 C.F.R. §1001.952(h), regarding "safe harbor" protection for discounts under the Anti-Kickback Statute. Company represents and warrants that any discount or rebate provided to Saint Luke's satisfies the requirements of the Anti-Kickback Statute Safe Harbor at 42 C.F.R. §1001.952(h); in no event shall Company offer or provide any discounts or rebates that involve the impermissible bundling of Products or the involve multiple Products where such Products are not reimbursable under the same Federal Healthcare Program using the same methodology. Company warrants that, if a rebate or discount involves multiple Products, that all of the Products provided are reimbursable under the same Federal Healthcare Program using the same methodology. Company shall disclose to Saint Luke's on each invoice, or as otherwise agreed in writing, the amount of any discount or rebate relating to the Product. The statement shall inform Saint Luke's in a clear and simple manner of the amount of the discount or rebate so as to enable Saint Luke's to satisfy its obligations to report such discount or rebate to Medicare. The parties agree to comply with all applicable laws, rules and regulations, including but not limited to, those laws prohibiting payment for referrals. All of Company's representatives, agents, employees, and contractors ("Representatives") intending to enter the premises of Saint Luke's or any Facility may do so only if all of the following conditions are met: (i) the Representative logs in through Saint Luke's vendor credentialing system (RepTrax), (ii) reasonable advance notice of the intended visit is given, (iii) the Representative must be acceptable to Saint Luke's or the applicable Facility, and (iv) the Representative must comply with all of Saint Luke's and the applicable Facility's policies and procedures while on site. Company represents and warrants that neither it nor any of its employees, directors, officers, equity owners, personnel, subcontractors or agents under this Agreement (collectively, "Company Personnel") are excluded from participation, or are otherwise ineligible to participate, in a "federal health care program" (as defined in 42 USC §1320a-7b(f)) or in any other government payment program, and that no such action is pending. Company will assess the status of the Company Personnel prior to hire or contracting and on a monthly basis thereafter as required by the United States Department of Health and Human Licensed Services or the Centers for Medicare and Medicaid Licensed Services. Company will notify Saint Luke's in writing within three days of either of the following: (a) the discovery of any debarment, exclusion, suspension or other event that makes Company or any Company Personnel ineligible to participate

in a federal health care program or any other government payment program; or (b) any conviction of Company or any of the Company Personnel of a criminal offense that falls within the scope of 42 USC §1320a-7(a), even if they have not yet been excluded, debarred, suspended or otherwise declared ineligible. Such notice will contain reasonably sufficient information to allow Saint Luke's to determine the nature of any sanction. Company will be responsible for any and all expenses and lost revenue incurred by Saint Luke's as a result of Company's failure to screen or to notify Saint Luke's of any such occurrence. Company will also be responsible for any and all related expenses and lost revenue directly or indirectly caused by Company's failure to identify excluded individuals, including reimbursement of Saint Luke's for any amounts Saint Luke's is required to repay to any federal health care program or any amounts that Saint Luke's is unable to bill for reimbursement because of the involvement of an excluded individual in the provision of the Services. If Company is in breach of this Section or upon the occurrence of such exclusion, debarment, suspension or conviction of Company or any Company Personnel, whether or not notice is given, Saint Luke's may immediately terminate this Agreement. Company represents, warrants and covenants that it is fully aware of and shall comply with, and in the performance of its obligations to Saint Luke's shall not take any action or omit to take any action that would cause either party to be in violation of: (a) the U.S. Foreign Corrupt Practices Act, (b) any other applicable anti-corruption laws, or (c) any regulations promulgated under any such laws. To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the "Act") and the regulations promulgated there under are applicable to this Agreement, Company and the organizations related to it, if any, performing any of the duties pursuant to this Agreement valued at Ten Thousand Dollars (\$10,000) or more in any twelve (12)-month period shall, until four (4) years after the furnishing of Products pursuant to this Agreement, comply with requests by the Comptroller General, the Secretary of the Department of Health and Human, and their duly authorized representatives for access (in accordance with Section 952 of the Act) to any contract or agreement between Company and Saint Luke's for Products to any contract or agreement between Company and such related organizations, as well as the books, documents and records of Company and its related organizations, if any, which are necessary to verify the cost of the Products provided. **The parties shall abide by the requirements of 41 C.F.R. 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 C.F.R. Part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.**

10. Representations and Warranties. Company represents and warrants to Saint Luke's that: (a) Company shall, and all Products shall conform to, be and shall remain in compliance with, all applicable federal, state and local laws, regulations, ordinances, regulations and codes; (b) it has the requisite power, authority and authorization to enter into the Agreement and carry out the terms hereof; (c) Company is and at all times during the Term shall be in possession of all approvals necessary to manufacture, render, process, package, label, deliver and sell Products; (d) Company has and will have ownership rights necessary to convey good and marketable title to all Products, free and clear of all liens and encumbrances upon delivery of Products to Saint Luke's and without violating the property rights or interests of any third party inclusive of the intellectual property contained therein and that there is no actual or threatened suit by any third party based on an alleged violation of such right by Company; (e) Company shall at all times comply with applicable law pertaining to the manufacture and sale of Products; and (f) the Products shall be free from defects in material and workmanship and shall conform to the documentation for such Products and the Company's representations and warranties regarding the functions and uses for which the Products is marketed. Company further warrants that all Products provided to Saint Luke's have received FDA approval or will have 510K clearance prior to delivery to Saint Luke's; and that all Products delivered to Saint Luke's will be in compliance with FDA regulations. The above warranties shall cover all parts and labor necessary to repair, maintain, and update the Products. Company warrants that any services and maintenance performed by Company or by a permitted subcontractor or agent of Company shall be performed on a professional basis, in compliance with all applicable laws, consistent with the best practices in the industry and in a diligent, workmanlike, and expeditious manner. Company will promptly provide Saint Luke's with any and all information regarding any routine backorders of Products, Products changes, Products packaging changes, safety announcements, and clinical information regarding Products. Company shall immediately provide Saint Luke's with a copy of all communications from Company and/or the FDA advising of a recall, request for a recall, market withdrawal, safety alert, or a non-routine issue of Products availability. Company shall reimburse Saint Luke's for any costs actually incurred by Saint Luke's in complying with any recall.

11. Audit and Inspection. Company shall maintain records and supporting documentation of all transactions under the Agreement sufficient to permit a complete audit thereof in accordance with this Section. Company shall, at no additional cost to Saint Luke's, provide to Saint Luke's and its respective internal and external auditors, inspectors, regulators, and such other representatives as Saint Luke's may designate from time to time access at reasonable times and after reasonable notice (unless circumstances reasonably preclude such notice) to all data and records relating to the equipment, instruments, products and services provided or used by Company under the Agreement. The foregoing audit rights shall include, without limitation, and when applicable, audits (A) of practices and procedures, (B) of systems, (C) of general controls and security practices and procedures, (D) of disaster recovery and backup procedures, (E) of

costs and procurement practices, (F) of charges hereunder, (G) as necessary to enable Saint Luke's to meet applicable regulatory requirements, and (H) for any reasonable purpose as determined by Saint Luke's. Company shall provide full cooperation to such auditors, inspectors, regulators, and representatives, including the installation and operation of audit software.

12. Miscellaneous. All notices under this Agreement shall be given in writing to the party's address on the signature page hereto. Any notice required or permitted to be given hereunder shall be in writing and shall be (i) sent by registered or certified mail, or (ii) sent by a recognized qualified overnight delivery service (e.g., Federal Express), in each with return receipt requested. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same instrument. Any dispute arising out of, related to or in connection with the Agreement shall be governed by, and the Agreement shall be construed under, the laws of the State of Missouri, without giving effect to any choice of law or conflict of laws principles that would result in the application of the laws of any other state. The failure of a party to enforce any right or provision of the Agreement shall not be construed as a waiver of such right or provision or a waiver by such party to thereafter enforce such rights or provisions or any other rights or provisions under the Agreement. If any term, condition or provision of the Agreement is held to be unenforceable for any reason, it shall be interpreted to achieve the intent of the parties to the Agreement to the extent possible rather than voided. In any event, all other terms, conditions and provisions of the Agreement shall be deemed valid and enforceable to their full extent. All rights and remedies of each party to the Agreement will be cumulative, and the exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy available under the Agreement or applicable law. Each party shall be considered to be an independent contractor hereunder. The relationship between the parties hereto shall not be construed to be that of employer and employee, or to constitute a partnership, joint venture or agency of any kind. Neither party shall have the right to bind the other party to any contract or other commitment. No assignment of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of both parties hereto. Sections 7 through 12 of this Agreement shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representative as of the Effective Date set forth above.

SAINT LUKE'S HEALTH SYSTEM, INC.

[COMPANY NAME]

By: Michael D. Darling, RN, CMRP
Vice President of Supply Chain

By: [Name]
[Title]

Date: _____

Date: _____

Notice Address:

Notice Address:

Attn:

Attn:

EXHIBIT A

Products and Pricing

EXHIBIT B
SOFTWARE TERMS

In accordance with Section 2.1 of the Agreement, any and all Software will be governed by the terms set forth in the Agreement and the following terms and conditions:

1. **License and Restrictions.** Subject to the terms and conditions of the Agreement, Company hereby grants to Saint Luke's, and each Facility, a perpetual, irrevocable, world-wide, non-exclusive license to possess and use the Software and Documentation for its business purposes. "**Documentation**" means the user manuals and/or technical publications supplied in connection with Software, including that relating to the installation, use and administration of Software. For the purposes of this Section, the term "**use**" means, but is not limited to, the ability to copy, install, access, execute, operate, archive and run the Software for test, development, production, archival, emergency restart, and disaster recovery purposes. The license granted hereunder shall apply to Saint Luke's wherever situated, and the Software may be used by Saint Luke's and its officers and employees engaged in work on behalf of Saint Luke's, whether on or off premises. The license granted hereunder shall also apply to agents, contractors, customers and suppliers of Saint Luke's (collectively "**Third Parties**") provided that such Third Parties have entered into a written agreement that: (a) any such Software accessed or utilized by a Third Party of Saint Luke's shall be done only on equipment operated under the control of Saint Luke's and in accordance with the terms of the license granted in this Section, and (b) such written agreement restricts such Third Party's access and/or utilization of such Software to either business between Saint Luke's and such Third Party and/or in conjunction with services being provided to Saint Luke's by such Third Party for Saint Luke's benefit. Notwithstanding the foregoing, Software designed and intended to be accessed and utilized by end users for purposes of obtaining services (such as application service software or hosted software) shall not be subject to the written agreement requirement set forth in this Section. Saint Luke's shall not: (i) remove any proprietary notices (e.g., copyright and trademark notices) from the Software; or (ii) disassemble, decompile, or reverse engineer the Software, except to the extent permitted by applicable law. All use of the Software shall be in accordance with its then current Documentation. Except for the limited license granted above, Company retains all right, title, and interest in and to its Software. The term "Software" shall also include any Updates, bug, fixes, or other Versions of the Software that Company may provide to Saint Luke's from time-to-time under the Agreement.

1.2 **Shrinkwrap Licenses.** The Agreement, and any exhibit or appendix to the Agreement, shall replace, supersede, and override any and all shrinkwrap license ("**Shrinkwrap License**") and/or click-on, webwrap, browserwrap or clickwrap online license agreements ("**Click-On License**") Company has or will have concerning the Software, even in the event that Saint Luke's, Facilities or their respective employees, agents, customers, subservicers, or subcontractors are required to click-on an "accept button", or other accept-type button, prior to obtaining access to the Software and notwithstanding any requirement or provision by such Shrinkwrap or Click-On License provides of (i) clear notice of the applicable contract terms, (ii) a reasonable chance to review those contract terms prior to using any such Software, (iii) the performance of an act to affirmatively indicate consent to those contract terms before obtaining access to the Software (the requirement to click on an accept button), and (iv) the requirement of a digital signature.

1.3 **Software Updates; Versions.** Company will, from time to time provide Updates to Saint Luke's. For purposes of this Agreement, "**Updates**" means minor corrections, fixes or minor changes to the Software that do not materially or substantially change, enhance, modify or improve the functionality of the Software and which (i) relate to the operating performance of the Software, but do not change the basic function of the Software; and (ii) are intended for general commercial use in connection with the Software. New Versions (as hereinafter defined) of the Software will be provided at no additional cost to Saint Luke's for functional enhancements, clinical enhancements, modifications, or other changes to improve the operation or stability of the Software. Company's duty to provide Software Updates and new Versions pursuant to this Section shall survive the expiration or termination of this Agreement regardless of the cause giving rise to termination. Any Company support and maintenance on the Software will not be conditioned on any Updates or new Versions which are not provided free of charge. As used herein, "**Versions**" means a delivery of new features packaged as part of existing Software (e.g., XYX Workflow V27.1 Service Pack 2; XYZ Imaging, v20d; XYZ Dynamics V5.1).

1.4 **Scope of License.** The rights and obligations of Saint Luke's hereunder may be exercised in whole or in part by its parent and their respective affiliates and subsidiaries and, to the extent such entities use or access the Software, the term "Saint Luke's" shall include those entities. Saint Luke's may also serve as a service bureau for any of the foregoing entities, subject to any license scope limitations herein.

2. **Acceptance Testing.** On delivery of the Product and/or Software to Saint Luke's (as applicable), and with Company's assistance if requested by Saint Luke's, Saint Luke's shall, within sixty (60) calendar days after receipt of such Software, conduct acceptance testing, which shall include full-stress testing to determine whether, in Saint Luke's sole judgment: (i) the Software meets the Documentation and provided specifications, provides the functionality and performance characteristics described in the Documentation, and otherwise performs in accordance with the Documentation or as stated elsewhere in this Agreement; (ii) the Software is capable of running at full load, on a repetitive basis, using a variety of Saint Luke's actual data, without failure; and (iii) the Documentation for the Software meets the requirements in any proposal, response to request for information, or as stated elsewhere in this Agreement ("**Acceptance Tests**"). If the Software successfully completes the Acceptance Tests, Saint Luke's shall so notify Company in writing within five (5) business days and the Software shall be deemed to be accepted ("**Acceptance**"). In such case, the acceptance date shall be the date that the Software satisfactorily completed all of the tests specified above ("**Acceptance Date**"). Notwithstanding any other provision contained herein, no warranty period for the Software or hardware which is provided as part of the Software shall begin until the Acceptance Date.

If the Software fails to meet any or all of the specified Acceptance Tests, Saint Luke's shall notify Company of such failure in writing and Company shall have fifteen (15) business days in which to correct, modify, or improve the Software or provide a new version of the Software, to cause it to meet each Acceptance Test. Thereafter, Saint Luke's shall have fifteen (15) additional business days in which to repeat all of the Acceptance Tests specified above. This process shall be repeated as may be necessary until the Software meets the Acceptance Tests; provided, however, that if the Software does not achieve Acceptance hereunder within ninety (90) calendar days after Company's initial written certification to Saint Luke's that the Software is ready for Acceptance Testing, then Saint Luke's shall have the right and option to: (i) cancel the applicable Purchase Order for the Product and request the removal of the Software failing to meet the acceptance criteria; (ii) receive a full reimbursement from Company to be paid within thirty (30) business days for any and all fees that Saint Luke's may have paid; (iii) extend the Acceptance Testing subject to Saint Luke's right to cancel and obtain reimbursements if the Software is not repaired within such extension period; (iv) demand Company install a direct replacement of the Software failing to meet the applicable phase of Acceptance Testing within a mutually agreed upon time frame; and/or (v) pursue any other remedies provided at law. Software which must be accepted in stages shall not be finally accepted until final acceptance of the Software as a whole.

Notwithstanding the above provisions of this Section, Saint Luke's shall have the right to cause any operating system furnished as part of the Agreement for the Software acquired by Saint Luke's hereunder to undergo Acceptance Testing as part of the Acceptance Testing of such Software. In any such event, the operating system shall be deemed a part of such Software and shall undergo Acceptance Testing for the Software; provided, however, that such operating system shall also be individually subject to the Acceptance Testing standards specified in this Section. In such event, the Acceptance Tests specified in this Section shall be performed during the same period in which the Acceptance Tests specified in the Agreement are performed.

Company shall refund all fees paid under the Agreement is terminated prior to Acceptance as a result of Company's failure to achieve implementation landmarks, Company's failure to provide Software that successfully completes Acceptance Testing, or Company's breach of a material term of this Exhibit. Company shall refund all fees paid for Software under the Agreement if it (or the Purchase Order) is terminated prior to Acceptance for any reason other than Saint Luke's breach. Company's failure to refund fees paid within sixty (60) calendar days of notice by Saint Luke's shall entitle Saint Luke's to attorneys' fees and costs in any action to collect such refund.

3. **Software Maintenance and Support.** Company agrees, at a minimum, to: (a) maintain the Software and to support all updated, new, replacement, follow on, or next generation operating system Versions and releases, (b) provide all maintenance services necessary to keep the Software in good working order and free from defects, (c) provide all maintenance services necessary to keep the Software in conformance with the warranties set forth herein, (d) provide, at no additional cost, all major and minor enhancements, Versions, releases, Updates, Upgrades and other modifications to the Software, and (e) provide to Saint Luke's all reasonably necessary telephone or written consultation requested by Saint Luke's in connection with its use and operation of Products and Equipment containing Software between the hours of ___ a.m. and ___ p.m., Central Standard Time, Monday through Friday.

4. **Third Party Software.** In the event Company provides any third party software (the "**Third Party Software**"), including Open Source Software (as defined below), to Saint Luke's, the following shall apply: (i) with regard to Third Party Software for which Saint Luke's will be required to accept third party terms and conditions, Company shall identify all such software and provide Saint Luke's with written copies of all applicable terms and conditions; (ii) with regard to all Third Party Software, Company warrants that (x) it has the right to license any Third Party Software licensed to Saint Luke's under the Agreement; (y) to the best of Company's knowledge, the Third Party Software does not, and the use of the Third Party Software by Saint Luke's as contemplated by the Agreement will not, infringe any intellectual property rights of any third party; and (iii) unless specifically provided otherwise in the Agreement, Saint Luke's

shall have no obligation to pay any third party any fees, royalties, or other payments for Saint Luke's use of any Third Party Software in accordance with the terms of the Agreement. Company shall support and maintain all such Third Party Software to the same extent as the Software. With regard to Open Source Software and any Third Party Software that Company fails to identify in the Agreement, all such software shall be considered, as appropriate, part of and included in the definition of "Software" and subject to all warranties, indemnities, and other requirements of this Agreement. "**Open Source Software**" shall mean any software, programming, or other intellectual property that is subject to (i) the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, or any similar license, including, but not limited to, those licenses listed at www.opensource.org/licenses or (ii) any agreement with terms requiring any intellectual property owned or licensed by Saint Luke's to be (a) disclosed or distributed in source code or object code form; (b) licensed for the purpose of making derivative works; or (c) redistributable.

5. Warranties.

5.1 Title. Company represents and warrants as follows: (i) it has and shall continue to have the right to grant to Saint Luke's the license to use all Software without violating the rights of any third party, and there is no actual or threatened suit by any third party based on an alleged violation of such right by Company; (ii) Saint Luke's permitted use of the Software shall not infringe the intellectual property rights of any third party; and (iii) there is no existing pattern or repetition of material Saint Luke's complaints regarding the Software, including functionality or performance issues, and that Company's engineers have not currently identified any repeating adverse impact on the Software, including functionality or performance, for which the root cause is believed to be a flaw or defect in the Software.

5.2 Virus. Company represents and warrants that the Software shall not contain, and that Saint Luke's shall not receive via access to or use of the Software, any Destructive Mechanisms, as defined below and Company shall not invoke such mechanisms at any time, including upon expiration or termination of the Agreement for any reason. For purposes of this Section, "**Destructive Mechanisms**" means computer code that: (i) is designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Software or any other software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms"); (ii) would disable or impair the Software or any other software, firmware, hardware, computer systems or networks in any way where such disablement or impairment is caused by the passage of time, exceeding an authorized number of copies, advancement to a particular date or other numeral (sometimes referred to as "time bombs," "time locks" or "drop dead" devices); (iii) would permit Company to access the Software or any other software, firmware, hardware, computer systems or networks to cause such disablement or impairment (sometimes referred to as "traps," "access codes" or "trap door" devices); or (iv) which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications or otherwise interfere with operations. If any Software contains Destructive Mechanism, Company shall, via a document specific to this provision, notify Saint Luke's in writing. Such notification shall specifically inform Saint Luke's of the full extent and nature of the Destructive Mechanism and provide Saint Luke's with instructions for overriding such Destructive Mechanism in emergencies. Notwithstanding anything elsewhere in the Agreement to the contrary and to the extent any Software contains a Destructive Mechanism, Company shall be in default of the Agreement and no cure period shall apply. In addition to any other remedies available to it under the Agreement, Saint Luke's reserves the right to pursue any civil and/or criminal penalties available to it against Company. Company represents and warrants that the occurrence of or use by the Software on dates or times that change (e.g. DST) will not adversely affect the performance of the Software with respect to date-dependent data, computations, output or other functions (including, without limitation, calculating, computing or sequencing), and the Software will create, store and generate output data related to or including such dates without errors or omissions.

5.3 Function. Company represents and warrants that the Software shall meet the functional and performance criteria as set forth in the Agreement, in this Exhibit and the Documentation, including, without limitation, maximum response times and availability. Company shall correct any failure of the Software to operate in accordance with the performance warranties set forth in this Section by providing additional hardware, Software or services to Saint Luke's at no additional cost. In the event Company is unable to correct such failure within ten (10) calendar days of when the problem was reported to Company, a breach shall be deemed to have occurred, and Saint Luke's shall be entitled to seek the rights and remedies available to it under the Agreement. Company also represents and warrants that the Software is compatible with the Products specified in the Documentation. In the event that such software modifications, versions, Updates, upgrades or enhancements are received by Saint Luke's with incomplete or reduced functionality, Company will continue to maintain the version of the product and equipment containing the functionality initially licensed by Saint Luke's until such Software modification, Version, Update, upgrade or enhancement is modified to restore all original functionality in good working order and received by Saint Luke's.

5.4 Temporal. Company warrants and represents that the occurrence in or use by the Software of any dates or times (“**Temporal Elements**”), including without limitation any date with a year specified as “99” or “00” regardless of other meanings attached to these values, any date and any time change related to daylight savings time or changes in time zones will not adversely affect its performance with respect to date and time-dependent data, computations, output, or other functions (including, without limitation, calculating, comparing, and sequencing) and that the Software will create, store, process, and output information related to or including Temporal Elements without errors or omissions and at no additional cost to Saint Luke’s. At Saint Luke’s request, Company will provide sufficient evidence to demonstrate the adequate testing of the Software to meet the foregoing requirements. Further, at no cost to Saint Luke’s, Company shall support the Software through any change in time mandated by law.

5.5 Clinical Content. Company warrants and represents that any information and data in the Software relating to clinical decision support or coding for billing purposes (“**Clinical Content**”) has been developed using due care based on information from reliable sources and have been developed or provided by individuals holding an appropriate unlimited license to practice the relevant profession in the state within the United States of America in which such clinician is a resident. Company further warrants and represents that Clinical Content and parameters are consistent, at the time of programming, with then-current standards of practice, and will be updated appropriately.

EXHIBIT C
HOSTING SERVICES

If there is a conflict between the terms of the Agreement and the terms of this Hosting Exhibit, the terms of this Hosting Exhibit shall control.

1. **Data Center / Host Contractor.** Company's primary data center is operated by _____ and is located at: _____. Company's secondary data center is operated by _____ and is located at _____. Together, the primary data center and the secondary data center are referred to herein as "**Data Center.**"
2. **Security.** **** Optional – Attach a Data Security Requirements Exhibit. **** For purposes of this Exhibit, "**Saint Luke's Data**" means all data, content, material, Confidential Information and other information provided by Saint Luke's to Company or otherwise transmitted to Company for use in connection with the Hosting Services. In addition to the confidentiality requirements and protections in the Agreement, Company and any subcontractors to whom Saint Luke's Data is provided also agree to maintain a comprehensive data security program, which shall include reasonable and appropriate technical, organizational and physical security measures against the destruction, loss, unauthorized access or alteration of Saint Luke's Data in the possession of Company or such subcontractors, and which shall be no less rigorous than those maintained by Saint Luke's as of the Agreement Effective Date (or implemented by Saint Luke's in the future to the extent deemed necessary by Saint Luke's), as each is communicated to Company. Company will maintain and enforce information and data privacy and security procedures with respect to its access, use and storage of all Saint Luke's Data that (a) are at least equal to industry standards taking into consideration the sensitivity of the relevant Saint Luke's Data, and the nature and scope of the Hosting Services, and any services to be provided pursuant to the Agreement, (b) are in accordance with Saint Luke's security requirements, (c) comply with all applicable international, foreign, federal, state and local laws, statutes, rules, orders and regulations, and (d) provide reasonably appropriate administrative, technical, and physical safeguards to protect against accidental or unlawful destruction, loss, alteration or unauthorized disclosure, access or use of Saint Luke's Data.

The content and implementation of the data security program and associated technical, organizational and security measures shall be fully documented in writing by Company. Company shall permit Saint Luke's to review such documentation and/or to inspect Company's compliance with such data security program upon request. Under no circumstances shall Company or Company's employees attempt to access or allow access to Saint Luke's Data that is not required for the performance of Company's obligations or otherwise permitted under the Agreement. Saint Luke's shall have the right to establish backup security for any Saint Luke's Data and to keep backup copies of such Saint Luke's Data in its possession if it chooses. At Saint Luke's request, Company shall provide Saint Luke's with downloads of Saint Luke's Data to enable Saint Luke's to maintain such backup copies.

If Saint Luke's authorizes certain Company employees to access and use (direct or remote) any of its computer or electronic data storage systems, Company shall limit such access and use solely to Company employees and subcontractors and to the performance of the Services or Company's other obligations under the Agreement, and shall not permit any access or use of any such computer or electronic data storage system by unauthorized personnel or for any other purpose. All user identification numbers and passwords disclosed to Company or Company's employees or subcontractors for, and any information obtained by Company or Company's employees or subcontractors as a result of, their access to and use of such computer and electronic storage systems shall be deemed to be, and shall be treated as, Saint Luke's Data.

Without limiting the generality of any of the above, Company will take all reasonable measures to secure and defend its location and equipment against "hackers" and others who may seek, without authorization, to modify or access Company systems or the information found therein without the consent of Saint Luke's. Company will periodically test its systems for potential areas where security could be breached. Company will (i) report to Saint Luke's immediately any breaches of security or unauthorized access to Company systems, (ii) investigate (with Saint Luke's participation if so desired by Saint Luke's) such breach or potential breach, (iii) perform a root cause analysis and prepare a corrective action plan, (iv) provide written reports of its findings and proposed actions to Saint Luke's for its review and approval, and (v) to the extent such breach or potential breach is within Company's or its subcontractor's or affiliate's areas of control, remediate such breach or potential breach of security and take commercially reasonable actions to prevent its recurrence. To the extent Company removes Saint Luke's Data from any media under its control that is taken out of service, Company shall destroy or securely

erase such media in accordance with Saint Luke's approval and the BAA, if applicable. Under no circumstances shall Company use or re-use media on which Saint Luke's Data has been stored for any purpose unless such Saint Luke's Data has been securely erased. In the event that Company vaults backup copies off-site, the backup media shall ensure that transportation of such media is performed in a secure manner.

3. Certification and Audits of Company. Company represents and warrants that with respect to its data center, it has performed a security audit based on the Statement on Standards for Attestation Engagements (SSAE) No. 18 and is in receipt of an American Institute of Certified Public Accountants ("AICPA") AT Section 101 SOC 2 and SOC 3, Type II report prepared by a certified public accountant registered with the Public Company Oversight Board that covers at least a six month period of time in a [REDACTED] to [REDACTED] fiscal year with a favorable assessment of Company's internal controls and shall maintain same on an annual basis throughout the Term of this Agreement. Annually, Company shall provide Saint Luke's with a copy of its then current AICPA AT Section 101 SOC 2 and SOC 3, Type II audit for any six month period in a [REDACTED] to [REDACTED] fiscal year by not later than [REDACTED] of the applicable year and shall provide any updates thereto necessary to address any deficiencies identified in such audit. If Company becomes certified in other programs intended to evaluate security of the data center or measures to ensure data confidentiality and integrity, Company shall provide information regarding such certification to Saint Luke's.
4. Audit Logs. Company will comply with all laws and regulations regulating record retention policies and recording how and by whom records were modified as well as historical views of Saint Luke's Data, that are in effect during the term of the Agreement. Company shall ensure audit trails are maintained with regard to access to all Saint Luke's Data. Company shall investigate any security breach resulting in unauthorized access to such Saint Luke's Data, and provide additional security protections, at no additional charge to Saint Luke's, to correct any security deficiencies identified by Saint Luke's. Company will retain the system and security logs generated by the operating system and security software for twelve (12) months.
5. Disaster Avoidance and Recovery.
 - 5.1 Definitions
 - a. "Disaster" means an unplanned event which results in a loss of access to and use of the Products or Company provided services at the Primary Site and/or Secondary Site.
 - b. "DR Testing" means the activities involved in evaluating the DR Plan, conducting a test execution of the DR Plan, identifying improvements to be made, and otherwise measuring the ability of the Company to prepare for, withstand, and recover from a Disaster.
 - c. "Failback" means the transition of computing and related services from the Secondary Site to the Primary Site following recovery from a Disaster or as part of DR Testing.
 - d. "Failover" means use of a Secondary Site to assume computing and related services as a consequence of a declared Disaster, or in the course of DR Testing, whether transition to the Secondary Site is automatic, manual, or both.
 - e. "Primary Site" means the primary Data Center.

- f. "Recovery Time Objective" or "RTO" means the length of time, from the point of the Disaster, in which the impacted Products, Equipment or Company services or services are to be restored. The RTO is [REDACTED].
- g. "Recovery Point Objective" or "RPO" means the maximum amount of electronic data that the Products or Company services are permitted to lose in the event of a Disaster at the Data Center. The RPO shall result in no Data loss.
- h. "Secondary Site" means each and any secondary data center that is geographically separate from the Primary Site.

5.2 Disaster Recovery Plan. Company will develop a disaster recovery plan that will include the procedures related to transitioning Saint Luke's Products or Services or Services from the Primary Site to a Secondary Site as necessary to maintain the Products or Services or Services and a mutually agreeable communications plan with an identified point of contact in the event of a Disaster prior to the Effective Date ("Disaster Recovery Plan"). The Disaster Recovery Plan shall also include the planning, system administration, system management, and system monitoring activities to maintain access, functionality and performance of the business operations and functionality as described in the Agreement. At a minimum, the Disaster Recovery Plan will include a Secondary Site that is geographically separate from the Primary Site; planning and disaster recovery testing; and monitoring and analysis of operations at the Primary Site. In the event of a Disaster, Company shall include consultation with Saint Luke's regarding the need to Failover to the Secondary Site, operation of the Secondary Site, activities to resume stable operations at the Primary Site, and Failback to the Primary Site when appropriate. Company will provide information on the DR Plan, the DR Test results and any remediation planning, which Saint Luke's may use for its own business continuity planning purposes. The Disaster Recovery Plan shall be calculated to minimize the disruption of the Products or Services or Services covered by Disaster Recovery Plan. Saint Luke's and Company shall review the Disaster Recovery Plan annually, or in the event that the Data Center infrastructure has changed, and revise as necessary or appropriate. The Secondary Site must have the same functionality as the standard production infrastructure capacity for the Products or Services or Services covered by Disaster Recovery Plan, as it existed at the Primary Site immediately prior to the Disaster, including all hardware, software, infrastructure, applications necessary to maintain such functionality and capacity.

5.2.1 Disaster Recovery Testing

A full Failover to the Secondary Site and DR Test shall be satisfactorily conducted prior to go-live. If any DR Test indicates a fail point, Company shall promptly work with Saint Luke's to correct any such failure in order to successfully complete a DR Test. The parties shall cooperate in developing a DR Test plan and objectives for each DR Test. The parties shall cooperate after each DR Test to identify lessons learned and analyze the strengths and weaknesses identified in the DR Test, and to determine actions to be taken to improve disaster recovery capability.

Saint Luke's and Company will determine whether a DR Test was successful based upon the mutually developed DR Test objectives, including whether the RTO and RPO have been met. Saint Luke's shall have overall responsibility in developing DR Test objectives to which Company and Saint Luke's will mutually agree. Saint Luke's may test specific criteria and may utilize documentation related to the DR Test scenario and performance as appropriate to permit Saint Luke's to meet its legal, regulatory, accreditation, and mission needs. If the DR Test was unsuccessful, within thirty (30) days the Parties will develop a remediation plan and promptly implement such remediation plan within the timeframes mutually agreed upon therein. Saint Luke's may have the right to request a follow-up DR Test to demonstrate that remediation was effective, which will not count against Saint Luke's allotted testing cycle.

5.2.2 Restoration of Primary Site Objective

In the event of a Disaster requiring the Failover of the Products or Services or Services from the Primary Site to the Secondary Site, Company will rebuild the Primary Site within ninety (90) days of the Disaster event. If the Secondary Site becomes the Primary Site, Company will rebuild the Secondary Site within ninety (90) days of the Disaster event. The Parties will mutually agree on a plan to Failback.