

## **MASTER PURCHASED SERVICES AGREEMENT**

This Purchasing Agreement (the or this “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 Buyers, and [Company Name] (“Company”) a [entity type].

**WHEREAS**, Company desires to offer certain non-clinical services to Saint Luke’s and Buyers (as hereinafter defined) for purchase; and

**WHEREAS**, Saint Luke’s desires to, and desires for Buyers to be able to, purchase certain non-clinical services from Company from time to time in accordance with the terms and conditions herein.

**NOW, THEREFORE**, Company and Saint Luke’s agree that Company shall provide the non-clinical services to Saint Luke’s and Saint Luke’s may purchase the non-clinical services in accordance with the terms and conditions set forth herein.

### **1. Buyers and Services.**

- a. The parties hereto acknowledge and agree that (i) this Agreement is entered into by Saint Luke’s for its benefit and for the express, intended benefit of its facilities, hospitals, subsidiaries and affiliates, all as listed in Schedule 1, attached hereto and incorporated herein (each a “Buyer” and collectively the “Buyers”), (ii) each of the Buyers shall be and constitute an intended third party beneficiary of the representations, warranties, covenants and agreements of the Company contained herein, and (iii) each of the Buyers shall be entitled to enforce the terms and provisions of this Agreement to the same extent as Saint Luke’s and all of Saint Luke’s rights hereunder shall apply to the Buyers. Saint Luke’s may add entities to, or remove entities from, Schedule 1 upon thirty (30) days’ advance written notice to Company, which written notice shall constitute an amendment to Schedule 1. Company acknowledges that Saint Luke’s and each Buyer are separate legal entities. Except to the extent expressly stated in this Agreement, none of the liabilities of a Buyer shall be treated as a joint liability of Saint Luke’s or any other Buyer. Nothing contained herein shall be considered a guarantee of purchase by Saint Luke’s or any Buyer. Saint Luke’s shall have the right and ability to provide (distribute and/or transfer) Services acquired hereunder to all Buyers.
- b. Company shall sell and make available to Saint Luke’s the non-clinical services (“Services”) set forth on a Service Level Agreement (“SLA”), substantially in the form set forth in Exhibit A attached hereto and incorporated herein. Each SLA shall set forth the Services to be made available for purchase, the pricing for such Services, applicable rebates and/or discounts, performance metrics and standards, manual, physical and/or computerized processes for the performance of Services; the scope of Services; any deliverables, reports, products and/or materials (collectively herein “Deliverables”) to be generated; and such other terms as may be agreed to by the parties. Each SLA will be incorporated into this Agreement (via addendum or other written document) and will exist independently from any other SLA. In the event of any conflict or inconsistency between any material term of this Agreement and any SLA, the terms of this Agreement will control unless the SLA specifically states that a particular provision in an SLA will control over a particular provision in this Agreement, in which event such matter will only be effective with respect to that particular SLA. Any SLA may only be amended via a written amendment to this Agreement executed by Company and Saint Luke’s.
- c. All Services shall be performed at those locations specified by Saint Luke’s. Unless otherwise agreed to by Company and Saint Luke’s, Services shall be performed on [week days/weekends] and off shift hours, in order to minimize interruptions in the areas within the facility affected by the Services.

[revise as necessary per services to be performed] At Saint Luke's request, Company shall provide Saint Luke's with written reports on the progress and status of Services. Company shall, within ten (10) days of completion of Services, provide Saint Luke's with a final report of Services performed.

- d. The report shall include, at a minimum, a detailed information on \_\_\_\_\_, and any other information requested by Saint Luke's. All reports generated by Company during the course of, and related to, the performance of Services shall be the sole and exclusive property of Saint Luke's.
- e. Within \_\_\_\_\_ ( ) days of the Effective Date, Company shall provide Saint Luke's the following documentation and materials, as applicable to the Services to be provided: (a) copies of manuals or specifications covering or relating to the applicable Services; (b) information and documentation regarding any materials, software, products and/or equipment that Company and its representatives may utilize in the performance of Services; Company acknowledges and agrees that it may not utilize software in its provision of Services absent prior approval from Saint Luke's; and (c) service literature, technical service bulletins, and products end of life notifications (collectively the "Materials"). All such Materials shall be provided at no additional cost to Saint Luke's.

## 2. Pricing.

- a. Prices of the Services as of the Effective Date are set forth on an SLA and are subject to the discounts and rebates set forth on the SLA. All prices set forth on an SLA shall remain firm for the Term of this Agreement.
- b. Prices shown on an SLA are complete and no additional charges will be added, including but not limited to shipping, packaging, labeling, custom duties, taxes, storage and insurance, unless prior written approval is obtained from Saint Luke's.
- c. Saint Luke's represents that, unless otherwise indicated, Saint Luke's is a tax-exempt entity under Sections 501(a) and 501(c)(3) of the Internal Revenue Code of the United States, as amended and under state law. A copy of the tax exemption certificate for Saint Luke's will be provided to Company upon request. Company shall take all action required to cause Saint Luke's purchase of the Services to be treated as tax-exempt transactions, and in no event shall Saint Luke's be responsible for any sales, use, property, gross receipts, or similar taxes levied against any part. Company further agrees that the prices stated on an SLA do not, and the amounts invoiced hereunder (unless expressly agreed by Saint Luke's) will not, include any tax with respect to which exemption is available or indicated by Saint Luke's for it or otherwise, or any Federal Excise tax with respect to which Saint Luke's has furnished an applicable tax exemption determination letter. If, after the date of any order for Services, and prior to performance, any taxes charged to Saint Luke's are increased or Company is relieved in whole or in part of the burden of said taxes, the prices (or taxes if separately stated) shall be correspondingly increased or reduced. Company shall be responsible for all employment, unemployment, state, federal and local taxes or withholdings for its employees, agents, and independent contractors.
- d. Purchase activity under this Agreement shall, if requested by Saint Luke's, be reviewed on a quarterly basis, commencing ninety (90) days after the Effective Date hereof. Upon completion of each ninety (90) day period, the parties shall schedule a review of activity under this Agreement concerning market conditions affecting price, utilization, availability of Services during such ninety (90) day period. Upon completion of such review, Saint Luke's may notify Company of a proposed price change, change of Services subject to this Agreement, or other adjustment to the terms of this Agreement. Promptly upon delivery of such notice, the parties shall negotiate the proposed revisions to the Agreement and, if the

parties have not reached agreement within thirty (30) days of delivery of such notice, Saint Luke's may terminate this Agreement upon sixty (60) days' written notice to Company without penalty.

**3. Payment.**

- a. Company shall invoice Saint Luke's for the price of the Services set forth on an SLA following acceptance of Services as set forth in Section 5 herein. Saint Luke's shall pay conforming and undisputed invoices for Services in full within sixty (60) days after the receipt of the invoice, except no invoices shall be paid unless the applicable Services are accepted by Saint Luke's per Section 5.
- b. A two-percent (2%) discount will be applied to all invoices paid within ten (10) days of the date of receipt of invoice by Saint Luke's. In the event a dispute as to any invoice, such invoice shall be payable sixty (60) days after resolution of such dispute.
- c. Any notes, instructions or directions included in the Purchase Order (as hereinafter defined) 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 and confirmation is received. Notwithstanding the foregoing, 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.

**4. Order and Performance.**

- a. Company shall accept all orders of Services submitted by Saint Luke's to Company. Saint Luke's may place an order at any time with Company for any Services identified in an SLA utilizing a purchase order or other form of documentation evidencing the intent of Saint Luke's to purchase a Service ("Purchase Order"). Company shall perform the Services in accordance with the terms of this Agreement, the terms of the SLA and in accordance with the timeframes (and during such days and times) set forth within the SLA.
- b. Saint Luke's may cancel a Purchase Order for any Services at any time before Company's performance of the Services at no cost to Saint Luke's and Saint Luke's may make changes in the scope or quantity of the Services covered by any Purchase Order, provided such Services have not been performed. If either party requests a change in a Purchase Order, such change will be reduced to writing and mutually approved by the parties.
- c. There shall be no minimum purchase requirements applicable to Saint Luke's.
- d. If Company is unable to perform Services within the time periods specified in this Agreement or the applicable SLA or Purchase Order, and the parties are unable to resolve the issue to their mutual satisfaction, Saint Luke's shall, in addition to any other rights and remedies available under this Agreement or at law, have the right to either cancel the Purchase Order without penalty, in whole or in part, or to accept alternative performance dates.
- e. In the event that Company fails to perform the Services within the time frame specified in the Purchase Order and/or SLA, Saint Luke's shall have the right, at its sole discretion, to obtain the Services from another source of its choosing and Company shall reimburse Saint Luke's for the amount by which the cost of Services acquired from such other source exceed the costs of such Services set forth in the applicable SLA.

**5. Acceptance.** Following performance of Services Company shall certify in writing that the Services are ready for acceptance review (such review shall include a review of any Deliverables). Saint Luke's shall, within a

reasonable amount of time after receipt of such certification, conduct acceptance review, which means to review the Deliverables and the work product of the Services to determine whether the Services provided meet the provided documentation, specifications and warranties, and perform the functions identified in the applicable SLA, any Purchase Order, statement of work or other document defining the Services to be rendered. In the event the Services fail to meet the above requirements and fulfill the identified specifications, Company shall re-perform the Services (and reproduce any non-accepted Deliverables) without additional cost to Saint Luke's. Notwithstanding any other provision of this Agreement, or any other writing, payments made relating to Services shall not constitute the acceptance of the Services or of any Deliverables.

**6. Term and Termination.**

- a. The initial term of this Agreement commences on the Effective Date and continues for a period of [REDACTED] years thereafter (the "Initial Term"). Thereafter, the term of this Agreement may be renewed for successive additional one-year terms upon mutual written agreement of the parties (each a "Renewal Term"). The Initial Term and all Renewal Terms together shall constitute the "Term."
- b. Either party may terminate this Agreement or any SLA at any time upon sixty (60) days prior written notice to the other party. Termination of an individual SLA shall not serve to terminate this Agreement, however termination of this Agreement shall serve to terminate any and all SLA then in existence.
- c. Either party may terminate this Agreement (or any SLA) for cause if the other party fails to cure any material breach of this Agreement (or SLA) within thirty (30) days after receiving written notice of such breach.
- d. Notwithstanding any other provision of this Agreement, Saint Luke's may, in its sole discretion, terminate this Agreement immediately upon written notice if Saint Luke's reasonably determines that continuation of this Agreement or performance hereunder jeopardizes (i) the health or safety of any patient, employee or other person; (ii) Saint Luke's or any Buyer's licensure; (iii) Saint Luke's or any Buyer's participation in or the payment or reimbursement from Medicare, Medicaid, or any third party payer; (iv) Saint Luke's or any Buyer's full accreditation by any state or nationally recognized accreditation organization (v) the ability of any physician, or any other health care professionals or their patients, to utilize Saint Luke's (or any Buyer) or its services; or (vi) Saint Luke's or any Buyer's compliance with ethical principles or any recognized body, agency, or association in the nursing facility or hospital fields. In the alternative, in the event that any of the foregoing conditions arise, Saint Luke's may, at its option, enter into negotiations with Company to resolve the issue through amendments to this Agreement and, if the parties are unable to resolve the issue within thirty (30) days thereafter, Saint Luke's may terminate this Agreement.

**7. Confidential Information.**

- a. During discussions leading up to the execution of the Agreement, and during the course of performance of the Agreement, it is expected that each party hereto ("Receiving Party") will learn confidential and proprietary information and/or trade secrets ("Confidential Information") of the other party (which is inclusive of Buyers) ("Disclosing Party"). Confidential Information includes, by way of example, all technical, marketing, financial, and clinical information, as applicable, of Disclosing Party that the Receiving Party knows or reasonably should know are to be treated as confidential, as well as all materials that are marked by Disclosing Party as confidential or proprietary. Except as authorized by Disclosing Party in writing, Receiving Party will not, directly or indirectly, (a) use any Confidential Information for any purpose that is not directly related to the performance of its obligations under the Agreement or (b) publish or disclose any Confidential Information to any third party. Receiving Party shall maintain the Confidential Information in a secure manner that is at least as protective as that which Receiving Party uses with respect to its own confidential and proprietary information, but in no event shall Receiving Party provide Confidential

- Information less than reasonable protection. Receiving Party 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. Receiving Party's obligations with respect to Confidential Information shall cease to apply with respect to Confidential Information that: (i) is or becomes part of the public domain other than by breach of the Agreement by Receiving Party; (ii) is developed by Receiving Party independent of any Confidential Information; (iii) is rightly received by Receiving Party from a third party who is not under an obligation of confidentiality with respect to such information; (iv) must be disclosed by law; or (v) is required to be disclosed under court order or subpoena. In the event Confidential Information is required to be disclosed by a court order, to the extent allowed by law, Receiving Party shall notify the Disclosing Party of such court order prior to disclosing the Confidential Information (if permitted by law, but in any case as soon as possible) and cooperate with Disclosing Party to obtain a protective order to contest the disclosure of such Confidential Information.
- b. Both parties acknowledge that a breach or attempted breach of the Agreement will cause irreparable damage and that damages at law will be an insufficient remedy. Accordingly, both parties agree that, notwithstanding the arbitration clause in the Agreement, the Disclosing Party shall be entitled as a matter of right to: (i) injunctive relief in the Sixteenth Circuit Court of Jackson County, Missouri or the United States District Court for the Western District of Missouri solely in order to restrain the breach or threatened breach of Confidential Information; and (ii) its reasonable attorney's fees and costs in obtaining such relief or specific enforcement.
- c. In the event of an unauthorized use or disclosure by Company, its employees, agents or subcontractors of personally identifiable information held or possessed by Saint Luke's or any Buyer (collectively "Personal Information"), Company shall take the following action with respect to such unauthorized use or disclosure: (a) promptly communicate the nature of the unauthorized use or disclosure to those persons and/or entities whose Personal Information was or likely was involved in an unauthorized use or disclosure ("Affected Individuals") via written correspondence approved by Saint Luke's legal counsel; (b) if the unauthorized use or disclosure of Personal Information could lead to identity theft or related financial risk to the individual subject(s) of such Personal Information, purchase identity theft monitoring services from a major credit reporting service for each Affected Individual offered such service by Saint Luke's provided such Affected Individual agrees in writing to waive all claims against Saint Luke's for such disclosure for a period of time mutually agreed to by Saint Luke's and Company, but not less than three (3) years; (c) comply with any and all laws, regulations, governmental orders or other governmental requirements applicable to such unauthorized use or disclosure of Personal Information; and (d) take all action commercially reasonable to mitigate any damages of Saint Luke's relating to the unauthorized use or disclosure of Personal Information.

**8. Company Registration and Removal of Company's Employees.** Saint Luke's contracts with a third party contractor that provides vendor credentialing services (a "Credentialing Contractor"). Company, its employees and agents shall cooperate with the credentialing process; provide all information and documentation requested by Credentialing Contractor to complete this process; and pay Credentialing Contractor's fees for providing this service. The registration and approval should be completed prior to Company providing Services. If the Services were previously provided, payment may be held until registration is complete and approved. In the event that Company, or its employees or agents, fail to be credentialed by Credentialing Contractor, Saint Luke's may immediately terminate this Agreement. Failure of Company, its employees and/or agents to complete the credentialing process and to comply with the terms and requirements imposed pursuant to the credentialing process and program shall be a material breach of this Agreement for which no cure period shall apply. All employees, representatives and/or agents of Company, while on site at any of Saint Luke's facilities, shall comply with and abide by Saint Luke's policies and procedures, of which they are made aware. Saint Luke's reserves the right to immediately remove from its premises any Company employee, agent, authorized representative or permitted

subcontractor if, in Saint Luke's sole discretion, that course of action is in the best interest of Saint Luke's, its employees, agents, contractors, patients or other visitors, or if any of the requirements in this Section 8 are not complied with.

**9. Company Relationships With Referral Sources.** In order for Saint Luke's to ensure compliance with applicable federal laws and regulations, Company will provide to Saint Luke's in writing a list of all relationships between the Company and any Saint Luke's employed or affiliated physician or family member of a physician. These relationships would include but not be limited to, existing consulting agreements, existing service agreements, research projects, other professional engagements, training center or demonstration site agreements, charitable donations, ownership, investment or royalty interests and the like. The Company will update its list on an annual basis and provide the written update to a designated representative of Saint Luke's.

**10. Maintenance of Documents and Records.** Company shall maintain all documents and records in connection with the Services provided under the Agreement relating to reimbursement from Federal health care programs, or which may be necessary to verify the nature and extent of the cost of the Services provided by the Company hereunder, until the expiration of six (6) years after the furnishing of any Services under the Agreement, or any longer period as may be required by law, and shall make such documents and records available to upon request by the Secretary of Health and Human Services, the Comptroller General of the United States, or any other governmental authority, or their duly authorized representatives. If Company uses a permitted subcontractor to perform services under the Agreement with a value of \$10,000 or more during any year, Company shall cause such subcontractor to agree in writing to assume the same obligations as described above with respect to maintenance of documents and records in connection with Services and any services provided under the Agreement and cooperation with governmental audits and investigations.

**11. Indemnification.**

- a. **General.** Company shall indemnify, defend (with competent counsel reasonably acceptable to Saint Luke's) and hold harmless Saint Luke's, its affiliates and subsidiaries (inclusive of Buyers), and their respective directors, officers, medical staff, agents, and employees (each, a "Saint Luke's Indemnitee") from and against any third party claims, demands, investigations, suits, or causes of action (each, a "Claim") asserted against any Saint Luke's Indemnitee with respect to actual or alleged losses, liabilities, injuries, deaths, damages, fines, penalties, costs, expenses, incidental, special, consequential, indirect and exemplary damages, including, but not limited to, loss of profits or revenues, impairment of goods, loss of capital and modifications to or substitutions for the Deliverables, facilities or Services, down-time costs or other increased expenses of operation, or claims of Saint Luke's customers due to added cost or loss, failure of supply and other amounts (including attorneys' and other professionals' fees and expenses incurred by any Saint Luke's Indemnitee and/or Company in connection with the defending against the subject Claim), relating to or arising out of (1) any person filing any lien against any property of Saint Luke's or any claim or lawsuit against Saint Luke's which the person claims payment from Saint Luke's for Services to Saint Luke's by an employee or agent of Company, (2) any claims or liability for wages, workers' compensation or unemployment compensation owed to Company employees, or payroll or related taxes or other governmental charges related to the performance of the Services, (3) any claims or liabilities for employee benefits related to the performance of the Services by an employee or agent of Company, (4) any personal injury (including death) or property damage caused by or arising from the negligence, acts or omissions of Company or any employee or agent of Company, (5) Company's or its employees or agents breach of this Agreement and/or any federal, state or local law, rule, regulation or ordinance, or (6) 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 in effect.
- b. **Infringement.** If a claim is made or an action brought alleging that any Deliverables delivered to any Saint Luke's Indemnitee by Company infringes a U.S. patent, or any copyright, trademark, trade secret or other proprietary right, Company will defend the Saint Luke's Indemnitees against such claim and will pay

resulting costs and damages, and attorneys' fees, provided that (i) Saint Luke's promptly notifies Company in writing of the claim, (ii) Company has sole control of the defense and all related settlement negotiations, and (iii) Saint Luke's cooperates in such defense at no expense to Saint Luke's. If Company gives Saint Luke's notice that it chooses not to defend such claim or attempt to settle such claim on reasonable terms, Company shall be deemed to have elected not to conduct the defense of the subject claim, and in such event Saint Luke's shall have the right to conduct such defense and to compromise and settle the claim without prior consent of Company, and in such case, the indemnity set forth in the first sentence of this Section shall apply.

**12. Insurance.** During the Term of this Agreement, Company shall, as applicable, self-insure and/or 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 and product recall. 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. Company shall provide certificates of coverage and any necessary endorsements evidencing compliance with these obligations to the other party upon reasonable request. Except to the extent that Insured is self-insured, the insurance company(ies) providing the coverage described herein must have a rating of a least A- by A.M. Best Company, Inc., or a substantially equal rating (indicating excellent financial strength) by another nationally-recognized insurance rating organization. Company agrees to name Saint Luke's as an additional insured and structure the insurance coverage such that Saint Luke's must be provided at least thirty (30) days' advance written notice of the cancellation of the coverage by either Company or the insurance carrier. If Company has any self-insured retentions or deductibles under any of the minimum required insurance, Company shall provide the Certificate of Insurance to Saint Luke's, identify on the Certificate of Insurance the nature and amount of such self-insured retentions, deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles shall be the sole responsibility of Company and are subject to approval by Saint Luke's in its reasonable judgment. Insurance effected or procured by Company shall not reduce or limits Company's obligation to indemnify and defend the Saint Luke's Indemnitees as contemplated in Section 11 hereof.

**13. Regulatory Compliance.**

- a. 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 purpose of the Agreement is to enter into a commercially reasonable and fair market value arrangement. 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.
- b. 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 and the "safe harbor" regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. 1001.952(j), as applicable. Company further 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) and (j). 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 Services. 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.

- c. The parties agree to comply with all applicable laws, rules and regulations, including but not limited to, those laws prohibiting payment for referrals. The parties agree that it is not a purpose of this Agreement to generate referrals for services or supplies for which payment may be made in whole or in part under any federal healthcare program.
- d. Company represents and warrants that throughout the Term, Company shall, and all Services shall conform to, be and shall remain in compliance with, all applicable federal, state and local laws, regulations, ordinances, regulations and codes, including, but not limited to: (i) those relating to the privacy or security of information including, but not limited to, HIPAA (as hereinafter defined) and corresponding regulations; (ii) Medicare and Medicaid law; and (iii) all laws and regulations relating to the licensing, regulation and accreditation of health care facilities, (inclusive of the requirements of The Joint Commission or other private accreditation organizations that have established standards relevant to medical care).

**14. Background Checks.** Company, subject to any federal, state, or local laws, rules or regulations which may limit any Company action otherwise required by this section, shall make reasonable and legally permitted efforts, including checking background and verifying personal information, to determine that no Company employee, agent or representative (collectively herein for this Section 14 "Employee") who shall perform any services that permit physical, virtual or other access to Saint Luke's or its patients, premises, systems, networks, or information ("Access") at any time during the term of the Agreement, has been convicted of any felony less than ten (10) years prior to becoming Company's Employee, or has been convicted of any misdemeanor involving violence, sexual misconduct, theft or computer crimes, fraud or financial crimes, drug distribution, or crimes involving unlawful possession or use of a dangerous weapon less than ten (10) years prior to becoming Company's Employee. Company shall not permit any Employee having such a conviction to perform any Services that permit such Access during the term of the Agreement, subject to any federal, state, or local restrictions on the consideration of criminal convictions in making employment decisions, unless in the sole judgment of Saint Luke's, said conviction has no reasonable relationship to the Employee's fitness or trustworthiness to perform the Services. Company shall comply with obligations under this section through the use of a third party service which shall perform a review of applicable records for those counties, states, and federal court districts in which a proposed Company Employee has identified as having resided, worked, or attended school in the previous ten (10) years, unless a shorter period is required by any federal, state, or local law. Upon execution of this Agreement, the foregoing requirements shall also apply to Company's subcontractors engaged following the Effective Date of this Agreement. Company's existing subcontractors engaged prior to the Effective Date shall be exempt from the requirements of this section. All existing subcontractors that Company renews subsequent to executing this Agreement shall be subject to the requirements of this section. Notwithstanding any of the foregoing, exceptions for individual Company personnel may be granted by Saint Luke's on a case-by-case basis. Company represents and warrants that Employees and subcontractors of Company with Access shall meet all requirements set forth in the Saint Luke's Health System Vendor Relations Policy ("Vendor Policy"), and Company agrees to comply with the Vendor Policy and to abide by the rules and processes outlined therein, and to require Company's subcontractors to comply with the Vendor Policy and to abide by the rules and processes outlined therein, in order to maintain Access.

**15. Representations.** Company represents and warrants to Saint Luke's that: (a) it has the requisite power, authority and authorization to enter into the Agreement and carry out the terms hereof, (b) the person signing the Agreement on behalf of Company has the requisite corporate authority, (c) the execution, delivery and performance of the Agreement is not prohibited or impaired by any judgment or other agreement to which Company is a party or by which it is bound, (d) Company is and at all times during the Term shall be in possession of all approvals necessary to perform, provide, deliver and sell the Services and Deliverables; (e) Company has and will have the right to render, sell and perform Services pursuant to a Purchase Order, (f) Company has and will have ownership rights necessary to convey good and marketable title to all Deliverables, free and clear of all liens and encumbrances upon delivery of Deliverables to Saint Luke's, and



(g) Company shall at all times comply with Applicable Law (defined below) pertaining to the performance of Services. “Applicable Law” means any applicable statute, law, regulation, ordinance, order, decree or the like promulgated by any governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, or judicial or administrative body, whether federal, state, or local or in a foreign country having jurisdiction over the parties.

## **16. Warranties.**

- a. Company warrants to Saint Luke’s that Company has and shall continue to have for the Term of this Agreement, good title to the Deliverables and Materials delivered 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.
- b. Company warrants and represents that, if any Deliverables contain embedded software or if the Deliverables or performance of the Services include the delivery or use of software, that: (i) it has and shall continue to have the right to grant to Saint Luke’s the license to use any software embedded or incorporated within, used in the performance of Services or delivered for use with any Deliverable or Material (“Software”), without violating the rights of any third party; and (ii) there is no actual or threatened suit by any third party based on an alleged violation of such right by Company.
  1. To the extent Company incorporates third party rights into the Software, Company warrants and represents that it has obtained the rights from those third parties necessary to vest in or grant to Saint Luke’s the various license rights necessary under this Agreement.
  2. Company represents and warrants that the Software shall meet the functional and performance criteria as set forth in this Agreement and the Software’s 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.
  3. Company represents and warrants that: (i) unless authorized in writing by Saint Luke’s; or (ii) necessary to perform valid duties under this Agreement; any Software provided to or accessed by Saint Luke’s, or by Company for use by Company on behalf of Saint Luke’s in the performance of Services shall: (a) not contain (and Saint Luke’s will not receive from any transmission by Company via modem or any other medium) any time bomb, virus, worm, trap door, back door, timer, clock, counter or other limiting routine, dongle key, hidden file, instruction, design, key, node lock, time out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to any equipment or products, or that would erase data or programming or otherwise cause the products, or Saint Luke’s’ software, systems, equipment or products to become inoperable or incapable of being used in the full manner for which it was designed and created (collectively “Illicit Code”); (b) not replicate, transmit or activate itself without control of a person operating computing equipment or products on which it resides; and (c) not alter, damage, or erase any data or computer programs without control of a person operating the computing products/equipment on which it resides. Notwithstanding anything elsewhere in this Agreement to the contrary and to the extent any Software contains Illicit Code, Company shall be in default of this Agreement and no cure period shall apply.
- c. Company warrants and represents that Services performed by Company, or by a permitted subcontractor or agent of Company, shall be performed on a professional basis, consistent with the best practices in the industry and in a diligent, workmanlike, and expeditious manner. Company acknowledges that time is of the essence for all Services provided hereunder. Company represents and warrants that all Company employees, personnel, agents or contractors performing Services shall be trained, experienced, professional, and where applicable, licensed, certified and bonded, to perform the Services and shall comply with all applicable

- federal and state laws in the performance of Services. Company warrants that its performance under this Agreement and its performance of Services (and provision of Deliverables) shall comply with all federal, state and local laws, rules, ordinances and regulations (inclusive of, but not limited to, all safety regulations applicable to the Services including regulations of the Occupational Safety and Health Administration and all environmental regulations of the state and federal environmental protection authorities). Company hereby acknowledges and agrees that Company is solely responsible for the selection of means, methods, equipment and procedures to perform the Services in compliance with all applicable safety laws, ordinances, and regulations.
- d. If Saint Luke's, in its reasonable discretion, determines that any Services (or Deliverables) fail to meet any of the warranties set forth above or exhibit functional or appearance nonconformance from Saint Luke's standards or other defects or fail to meet specifications (a "Nonconformity"), Saint Luke's in its sole discretion, in addition to and without limitation or exclusion of any other rights and remedies available to it in law, contract or equity, may, and at Company's sole expense, take one or more of the following actions:
1. require replacement Services and/or Deliverables;
  2. require a refund of any purchase price paid with respect thereto; and/or
  3. require that Company perform rework/repair.
- e. Company hereby assigns and passes through to Saint Luke's, and Saint Luke's shall have the benefit of, all rights it obtains under representations, warranties, service agreements and indemnities given by its third party subcontractors in connection with any Services and/or Deliverables provided by Company pursuant to the Agreement to the extent permitted by the applicable subcontractors. To the extent that such representations, warranties, service agreements and indemnities are not assignable by Company, Company agrees that Saint Luke's may assert or enforce any right Company may have to enforce such warranties, representations, service agreements, and indemnities, or if such can only be enforced by Company under its own name, upon written request by Saint Luke's, Company shall take all reasonable action requested by Saint Luke's to enforce such warranties, representations, service agreements, and indemnities.
- f. All of the warranties referenced or set forth in this Section 16 shall be in addition to all other warranties which may be prescribed by law. In addition to all other remedies available at law or in equity. In the event Company is deemed not to have good title to Services set forth in this Agreement, any and all minimum purchase order requirements contemplated herein, if any, shall be deemed to be met.
- g. The warranties set forth in Section 16 shall survive termination of this Agreement.

**17. Notice Requirements.** Company represents and warrants that neither it, nor any of its employees, agents or other contracted staff (collectively referred to in this Section as "employees") has been or is about to be excluded from participation in any Federal Health Care Program (as defined herein). If at any time during the Term of the Agreement, Company: (i) is charged with a criminal offense related to Federal Health Care Program or is proposed for exclusion from participation in Federal Health Care Program or procurement or nonprocurement programs; or (ii) has notice that any of its directors, officers, employees or Agents has been charged with a criminal offense related to Federal Health Care Program or is proposed for exclusion, Company agrees to notify Saint Luke's immediately. In the event of any such notification, Saint Luke's shall have the right to terminate the Agreement immediately upon notice to Company. For the purpose of this paragraph, the term "Federal Health Care Program" means the Medicare program, the Medicaid program, TRICARE, any health care program of the Department of Veterans Affairs, the Maternal and Child Health Services Block Grant program, any state social services block grant program, any state children's health insurance program, or any similar program. If Company is excluded from any Federal Health Care Program and fails to immediately notify Saint Luke's, Company agrees to indemnify Saint Luke's for any sanctions, penalties, or fines incurred under the federal Civil Monetary Penalty Law (Section 1128A of the Social Security Act), the Health



Insurance Portability and Accountability Act of 1996 or the Balanced Budget Act of 1997, as a result of Saint Luke's entering this Agreement with Company. Further, in the event that Saint Luke's becomes aware that any criminal charges or exclusions as described above are pending or proposed against Company, or that any director, officer, employee or agent of Company may otherwise be in violation of (or put Company in violation of) the Agreement, Saint Luke's reserves the right in its sole discretion to terminate the Agreement or to exclude such individual/party or parties from participation in the Agreement, or to take other appropriate steps to protect patients and state and Federal program funds.

**18. HIPAA.** Company agrees that if Saint Luke's determines that Company qualifies as a business associate under 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"), Company shall execute a Business Associate Agreement in the form later provided by Saint Luke's, as may be amended from time to time to comply with the regulations.

**19. Audit and Inspection.** Company shall maintain records and supporting documentation of all financial and non-financial transactions under the Agreement sufficient to permit a complete audit thereof in accordance with this Section 19. 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.

**20. Notices.** All notes under this Agreement shall be given in writing to the following applicable address:

If to Company: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Saint Luke's: Saint Luke's Health System  
901 E. 104<sup>th</sup> Street, Mailstop 600  
Kansas City, MO 64131  
Attn: Vice President of Supply Chain

With a copy to: Saint Luke's Health System  
901 E. 104<sup>th</sup> Street, Mailstop 900S  
Kansas City, MO 64131  
Attn: Sr. Vice President & General Counsel

**21. Multiple Counterpart Signatures.** 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. Copies of signatures sent by facsimile transmission shall be deemed to be originals for purposes of execution and proof of the Agreement.



**22. Use of Names; Logos.** Company shall not use the name, logo, likeness or any intellectual property of Saint Luke's without the prior written approval of Saint Luke's Vice President of Marketing and Communications.

**23. Governing Law.** 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.

**24. Waiver.** 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.

**25. Severability.** 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.

**26. Approvals.** Whenever a party withholds its consent or approval under the Agreement, such party shall give notice of such withholding to the other party, which notice must set forth all material reasons for the withholding by such party of its consent or approval.

**27. Cumulative Remedy.** 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.

**28. Force Majeure.** Any delays in or failure of performance of either party shall not constitute a default under the Agreement or give rise to any claim for damages to the extent such delays or failure of performance are caused by circumstances beyond the reasonable control of such party, including, but not limited to, acts of God, fire, flood, explosion, war, terrorism, strikes or work stoppages, inability to obtain equipment or transportation, or loss of any necessary utility. The time for performance so delayed will be deemed extended for the period of such delay.

**29. Independent Contractor Status.** 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.

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Saint Luke's:

Saint Luke's Health System  
901 E. 104<sup>th</sup> Street, Mailstop 600  
Kansas City, MO 64131  
Attn: Vice President of Supply Chain

With a copy to:

Saint Luke's Health System  
901 E. 104<sup>th</sup> Street, Mailstop 900S  
Kansas City, MO 64131  
Attn: Sr. Vice President & General Counsel



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**33. Waiver.** 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.

**34. Severability.** 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.

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**36. Cumulative Remedy.** 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.

**37. Force Majeure.** Any delays in or failure of performance of either party shall not constitute a default under the Agreement or give rise to any claim for damages to the extent such delays or failure of performance are caused by circumstances beyond the reasonable control of such party, including, but not limited to, acts of God, fire, flood, explosion, war, terrorism, strikes or work stoppages, inability to obtain equipment or transportation, or loss of any necessary utility. The time for performance so delayed will be deemed extended for the period of such delay.

**38. Independent Contractor Status.** 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.

**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: \_\_\_\_\_

**EXHIBIT A**

**SERVICE LEVEL AGREEMENT #[ ]**  
**TO PURCHASING AGREEMENT DATED \_\_\_\_\_, 20\_\_**

This Service Level Agreement #[ ] to the Purchasing Agreement (“SLA”) is entered into as of the date of last signature (“SLA Effective Date”), by and between 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, and [Company Name] (“Company”) a [entity type]. Saint Luke’s and Company are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS:**

**WHEREAS**, the Parties entered into that certain Purchasing Agreement dated \_\_\_\_\_, (“PSA”), which outlines the rights and obligations of the Parties with respect to the conduct of services to be performed by Company; and

**WHEREAS**, in accordance with Section 1.b of the PSA, the Parties wish to enter into this SLA for the purpose of describing the services to be made available to Saint Luke’s for purchase.

**NOW, THEREFORE**, in consideration of the foregoing premises, and the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**1. DEFINITIONS:**

Any capitalized terms not otherwise defined herein will have the meaning set forth in the PSA.

**2. SERVICES:**

Company will offer to Saint Luke’s for purchase all of the Services set forth below, at the pricing listed herein.

[insert Services, Deliverables and pricing listing]

[insert any Service specifications]

[insert any Service timelines, days and times or performance, milestones, etc....]

**3. TERM:**

The term of this SLA will commence as of \_\_\_\_\_, 20\_\_ (the “Start Date”) and will terminate \_\_\_\_\_, 20\_\_, unless earlier terminated in accordance with the terms of the PSA (the “Term”).

**4. PERFORMANCE METRICS:**

Company represents and warrants that: (i) it will, with respect to any Services, meet all of and comply with the performance metrics set forth herein; and (ii) with respect to Deliverables, the Deliverables will function in accordance with and comply with and meet all of the performance metrics set forth herein.

[insert performance metrics]

**5. REBATES AND DISCOUNTS:**

As required pursuant to Section 13 of the PSA, Company shall report to Saint Luke's any and all discounts and/or rebates. Company shall provide Saint Luke's the following discounts and rebates:

- (a) Discounts. [insert specific discounts]
- (b) Rebates. [insert any rebates and rebate earning terms]

Company will pay to Saint Luke's any and all rebates earned and owed pursuant to this Section 5 (collectively herein "Rebates") by check payable to [Saint Luke's Health System]. Payments of the Rebates will be remitted such that they are received by Saint Luke's in accordance with such instructions no later than sixty (60) days after the last day of the quarter, or year, as appropriate. All checks and payments shall be sent to:

[Saint Luke's Health System]  
[address]  
[address]  
[address]  
Attn: \_\_\_\_\_

Company shall pay to Saint Luke's interest on any past due amount owing Saint Luke's hereunder at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the maximum interest rate legally permitted. Company will provide Saint Luke's with notice when a Rebate was not earned. Notification shall be sent to same address as the Rebate payment set forth above.

**6. MISCELLANEOUS:**

- (a) In addition to the terms set forth in this SLA, Company will also comply with all of the terms and conditions of the PSA, all of which will govern this SLA. The PSA will remain unchanged and in full force and effect in accordance with its original terms; provided, however, that to the extent that any of the terms and conditions of this SLA are inconsistent with the terms and conditions of the PSA, the terms of the PSA [optional - this SLA] will govern.
- (b) Each Party hereby represents and warrants that it has fully power and authority to enter into this SLA.
- (c) This SLA may be executed in counterparts, each of which will constitute an original, and all of which, when taken together, will constitute one and the same instrument





IN WITNESS WHEREOF, each Party has caused this SLA #[ ] to be executed by a duly authorized representative as of the [the date of last signature] or [Effective Date].

SAINT LUKE'S HEALTH SYSTEM, INC.

[COMPANY NAME]

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

By: [Name]  
[Title]

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

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