

## 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.

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. Company 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 Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. §1320d, et seq., and the regulations promulgated there under ("**HIPAA**"); failure of Company to execute the Saint Luke's provided BAA 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.

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; (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, 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.

**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 Services, 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:

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

Attn:

**EXHIBIT A**

**Products and Pricing**