

MASTER PURCHASING AGREEMENT

This Master 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 Facilities (as hereinafter defined), and [Company Name] (“Company”) a [entity type] having a place of business at [address].

WHEREAS, Company desires to offer certain products to Saint Luke’s and the Facilities for purchase; and

WHEREAS, Saint Luke’s desires to, and desires for Facilities to be able to, purchase certain products from Company from time to time in accordance with the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows.

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) under a PA (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; Product Addenda. Company shall sell, license and/or make available to Saint Luke’s and the Facilities the products (“Products”) set forth in a Product Addendum (“PA”), each Product Addendum shall be substantially in the form set forth in Exhibit A attached hereto and incorporated herein (the parties acknowledge that Exhibit A is a template form and is not for completion). Each PA shall set forth the Products to be made available for purchase under the individual PA, the pricing for such Products, applicable rebates and/or discounts, performance metrics, the term of the individual PA (which term shall not exceed the term of this Agreement), and such other terms as may be agreed to by the parties. Prices shown on a PA are and shall be 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. Each PA will reference and be incorporated into this Agreement and will exist independently from any other PA. In the event of any conflict or inconsistency between any material term of this Agreement and any PA, the terms of this Agreement will control unless the PA specifically states that a particular provision in a PA will control over a particular provision in this Agreement, in which event such matter will only be effective with respect to that particular PA. A PA may only be amended via a written amendment to this Agreement executed by Company and Saint Luke’s.

2.1 Consignment. If requested by Saint Luke's, Products shall be made available on a consignment basis; any such consignment arrangement shall be memorialized in a written agreement, executed by the Company and the applicable Facility that will hold the consignment inventory.

2.2 Software; Hosting Services; System Access. If any Products contain any embedded Software (as hereinafter defined) 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 C (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, Equipment or any services provided by Company. In the event that Company requires an additional or separate license (other than the license in Exhibit C) 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 D (Hosting Services) shall apply.

2.2.1 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. Ordering.

3.1 Purchase Orders. Saint Luke's and any Facility may place an order at any time with Company for any Products identified in a PA utilizing a purchase order or other form of documentation evidencing the intent of Saint Luke's/Facility to purchase a specific type, amount and quality of Products ("Purchase Order"). Company shall accept all orders of Products submitted by Saint Luke's and the Facilities. There shall be no minimum purchase requirements applicable to Saint Luke's or the Facilities. 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. 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.

3.2 Authorized Distributors. Saint Luke's shall have the option to acquire Products from and through Authorized Distributors, and Company shall make Products available to Saint Luke's through Authorized Distributors. "Authorized Distributor" shall mean the distribution entities/agents selected by Saint Luke's that Company has agreements with. Company agrees that, for each Authorized Distributor with whom Company has in place "contingency pricing agreements" (being arrangements pursuant to which the distributor works as an agent for the sale of products at the negotiated prices), Company will make the Products available for purchase by Saint Luke's from such Authorized Distributors at the prices set forth herein. All Purchase Orders hereunder may be submitted by Saint Luke's by electronic order entry, telephone, mail, Internet or fax directly to any Authorized Distributor.

3.3 Cancellation. Saint Luke's may cancel a Purchase Order for any Products at any time before Company's shipment of the Products at no cost to Saint Luke's and Saint Luke's may make changes in the scope or quantity of the Products covered by any Purchase Order, provided such Products have not been shipped. If either party requests a change in a Purchase Order, such change will be reduced to writing and mutually approved by the parties.

3.4 Purchase Review. If requested by Saint Luke's, purchase activity under this Agreement shall 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 the Products and technological advances relevant to the Products during such ninety (90) day period. Upon completion of such review, Saint Luke's may notify Company of a proposed price change, change of Products subject to then effective PAs, 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.

4. Shipping; Acceptance.

4.1 Shipment Terms. Shipping terms for all orders of Products placed 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. In the event Saint Luke's and Company agree to other shipping terms, such shipping terms shall be consistent with Saint Luke's policies and shall be in a writing signed by the parties. 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.

4.2 Freight Management. If requested by Saint Luke's, Company shall utilize any third party carrier designated by Saint Luke's and participate in Saint Luke's freight/transportation management program then in effect.

4.3 Special Delivery. Special delivery and/or air shipment charges, for circumstances in which Saint Luke's requests expedited delivery, shall be prepaid by Company and invoiced to Saint Luke's pursuant to the payment terms set forth in this Agreement. Company shall only invoice Saint Luke's for Company's actual incurred costs.

4.4 Delivery Times. 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. If Company anticipates that it will not be able to deliver any particular Product ordered by the stated delivery date, Company shall immediately notify Saint Luke's and work with Saint Luke's to resolve the supply issue to the parties' mutual satisfaction. If Company is unable to ship a Product within the time periods specified in this Agreement or the applicable Purchase Order, and the parties are unable to resolve the supply 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 delivery dates.

4.5 Product Tracking/Reporting. 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.

4.6 Acceptance. All Products will be received by Saint Luke's subject to its right of inspection and rejection. 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 Product(s) 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 Product(s) to comply with law or to meet the Product's warranty, documentation and/or the quality or safety rules or of Saint Luke's. Products so rejected may be returned to Company at Company's risk and expense. 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. Products not so rejected shall be deemed to be accepted. Upon rejection of the Product(s) by Saint Luke's, Company shall pay all costs of shipping and Saint Luke's shall receive, at its discretion, a full credit of purchase price, including, but not limited to the cost of the Product and all shipping costs, or the replacement of the Product(s) with no additional cost of shipping. Notwithstanding any other

provision of this Agreement, or any other writing, delivery and/or any payments made relating to Products shall not constitute the Acceptance of the Product.

5. Payment Terms.

5.1 **Payment - Products.** Company shall invoice Saint Luke's (or the Client Entity or Affiliate if such is the ordering party) for the price of the Products set forth on a Purchase Order at the corresponding Product price listed in a PA 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. In the event a dispute as to any invoice, such invoice shall be payable sixty (60) days after resolution of such dispute.

5.2 **Tax-Exemption.** Saint Luke's represents that, unless otherwise indicated, Saint Luke's and the subsidiaries are tax-exempt entities 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 and the applicable subsidiary will be provided to Company upon request. Company shall take all action required to cause Saint Luke's purchase of the Products to be treated as tax-exempt transactions, and in no event shall Saint Luke's or the subsidiaries be responsible for any sales, use, property, gross receipts, or similar taxes levied against any part. Company further agrees that the prices stated on a PA will not, and the amounts to be 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 Product order, and prior to date of shipment, 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.

6. Training; Documentation and Materials.

6.1 **Training/Operation Materials.** Within () days of the Effective Date, Company shall provide Saint Luke's the following documentation and materials for each Product available for purchase hereunder: (a) copies of operator manuals covering the applicable Products; (b) copies of complete service and operating manuals detailing the applicable Products; and (c) service literature, technical service bulletins, and Products end of life notifications (collectively the "**Materials**"). Materials will be provided at no cost to Saint Luke's.

6.2 **In-Service Training.** Upon request and in accordance with applicable law, Company will provide to all personnel and workforce shifts of Saint Luke's and each Facility in-service training for Products at no additional charge (as the parties acknowledge that the cost of the training is included in the price of the Product). This training shall be offered and provided upon Saint Luke's request, not less than annually to each Facility at no charge. The scope of such training shall include, but not be limited to, the operation, safety, maintenance and troubleshooting required for the Products to operate in accordance with the Product's documentation, the specifications provided by Company and the Materials. Training will be provided by competent qualified personnel of Company who are knowledgeable about the Products and operation and use of the Products.

7. Maintenance and Support.

7.1 **Support.** Company shall, as applicable to the Product, provide maintenance, repair and support services for the Products consistent with the needs of Saint Luke's as set forth in Section 7 and **Exhibit B**, and in accordance with any service addendum that may be entered into by the parties (each "**Service Addendum**"). Any applicable Service Addendum shall reference this Agreement and be incorporated herein by reference. In the event of a conflict between the terms of any such Service Addendum and the terms herein, the terms most favorable to Saint Luke's shall control.

7.1.1 Company shall, at no additional cost, provide telephone and internet support (including technical support) three hundred sixty-five (365) days a year, twenty-four (24) hours a day. All telephone support service calls and requests by Saint Luke's shall be responded to by Company within thirty (30) minutes of Saint Luke's initial call. The

maintenance and support services shall ensure continued operations of the Product(s) in accordance with the Materials, the Product's documentation, and support in integrating the Products with other systems of Saint Luke's and advancements in technology.

7.2 Service Levels. All maintenance, support and services shall be provided in accordance with the service levels and terms set forth in Exhibit B (Support Service Levels), attached hereto and incorporated herein. When performing support and maintenance services herein, Company shall properly document and provide to Saint Luke's the documentation at the completion of the service call all services performed, all parts repaired, replaced, or refurbished in accordance with all federal, state, local laws and regulations, as well as all reasonable Saint Luke's rules.

7.3 Loaner Equipment. If (i) Products will be removed from a Facility for a period in excess of [redacted] ([redacted] [hours/days] to perform necessary repairs, service and/or maintenance, or (ii) Products will not be useable by a Facility for a period of greater than [redacted] ([redacted] [hours/days] due to Company performing any necessary repairs, service and/or maintenance, then Company will, at no additional charge to Saint Luke's or the Facility, loan the Facility a Product (being the same Product being serviced, herein the "Loaner Product") for use by the Facility. The Loaner Product shall be provided at the commencement of the service described herein, and shall be retained and used by the Facility until the Product being serviced is returned to the Facility and is fully operational (the "Service Period"). All of the Product representations and warranties herein, and obligations of Company herein, shall apply to the Loaner Product. Company shall be responsible for provision of the Loaner Product to the Facility at the commencement of the Service Period and shall promptly retrieve the Loaner Product at the end of the Service Period; a Facility may not, and will cease all use of a Loaner Product, upon conclusion of the Service Period. Company is responsible for all costs of shipment and transport of the Loaner Product to and from the Facility.

8. Warranties.

8.1 General Company Warranties. Company represents and warrants that (i) it is duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization; (ii) it has the power, authority and legal right to enter into this Agreement and to sell and deliver the Products contemplated hereunder, and that it has taken all necessary corporate action to authorize execution of this Agreement; (iii) all necessary consents, approvals and authorizations of governmental authorities and other persons required to be obtained related to the performance of this Agreement have been or will be obtained and all approvals will be in full force and effect during the Term; and (iv) the execution and delivery of this Agreement will not conflict with or violate any requirement of any applicable law or regulation and does not materially conflict with or constitute a material default under any contractual obligation enforceable against it.

8.2 Non-Exclusion. 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.

8.3 Product Warranty. Company warrants to Saint Luke's that the Products shall be processed, manufactured and labeled using first-class manufacturing practices, with all service levels being performed in a professional and workmanlike manner, in all respects in accordance with all applicable federal, state and local laws, rules, statutes and regulations and in a manner so as to ensure the safety of all persons and the preservation of property. Company warrants that it has and shall continue to have for the Term of this Agreement, good title to the Products 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. Company further warrants that each of the Products as delivered to and Accepted by Saint Luke's (i) shall be free from defects in material and workmanship, (ii) will be merchantable, (iii) if ordered for a stated purpose, will be fit for such purpose, and (iv) shall conform to the Materials and documentation for such Product(s) and the Company's representations and warranties regarding the functions and uses for which the Product is marketed. Company further warrants that Products 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 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). 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.

8.4 Service Warranty. Company warrants and represents that any services performed by Company or by a permitted subcontractor or agent of Company pursuant to this Agreement shall be performed on a professional basis, consistent with the best practices in the industry, in compliance with all applicable federal, state and local laws, rules and regulations, 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.

8.5 Warranty Nonconformance. Without limitation of any other rights, if Saint Luke's, in its reasonable discretion, determines that any Products 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 the applicable Product specifications or conform to the Materials, 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. reject all or a portion of the shipment or lot and return the same to Company
2. require replacement products;
3. require a refund of any purchase price paid with respect thereto, as well as Saint Luke's and its patients' costs with respect to such shipment or part thereof; and/or
4. require that Company perform rework/repair.

8.6 Third Party Warranties. 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 Products 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.

8.7 Implied and Statutory Warranties. All of the warranties referenced or set forth in Section 8 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 Products set forth in this Agreement, any and all minimum purchase order requirements contemplated herein, if any, shall be deemed to be met.

9. Term and Termination.

9.1 Term. The initial term of this Agreement commences on the Effective Date and continues for a period of [REDACTED] 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."

9.2 Termination Without Cause. Either party may terminate this Agreement or any individual PA at any time upon sixty (60) days' prior written notice to the other party.

9.3 Termination for Cause. Either party may terminate this Agreement (or any individual PA) for cause if the other party fails to cure any material breach of this Agreement within thirty (30) days after receiving written notice of such breach.

9.4 Termination by Saint Luke's. 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 Facility's licensure; (iii) Saint Luke's or any Facility's participation in or the payment or reimbursement from Medicare, Medicaid, or any third party payer; (iv) Saint Luke's or any Facility'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 its services; or (vi) Saint Luke's or any Facility'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 the Agreement.

9.5 Effect of Termination. Termination of an individual PA shall not serve to terminate this Agreement or any other PA then in existence, however termination of this Agreement shall serve to terminate any and all PA then in existence. Unless it is expressly authorized by this Agreement to retain Saint Luke's Confidential Information, Company shall promptly return or destroy, at Saint Luke's option, Saint Luke's Confidential Information, including materials prepared in whole or in part based on such Confidential Information to the extent containing Confidential Information, and all copies thereof, upon termination or expiration of this Agreement or at any time at Saint Luke's request, and an officer of Company shall certify to Saint Luke's that it no longer has in its possession or under its control any Confidential Information in any form whatsoever, or any copy thereof. Company shall fulfill, in accordance with the terms of this Agreement, all Purchase Orders for Products submitted by all Facilities and received by Company prior to termination or expiration of this Agreement. Saint Luke's shall make payment for such orders in accordance with the terms of this Agreement, subject to offset for any credit due as a result of the early termination. If this Agreement, or any individual PA, is terminated within the first twelve months of the Effective Date, and to the extent the Company is a Stark Entity (as hereinafter defined), the parties agree that they will not enter into another agreement (or another PA in the case of termination of an individual PA) for the Products (and Software) contracted for herein for the period of one (1) year from the Effective Date of this Agreement.

9.6 Survival. The following Sections shall survive the termination or expiration of this Agreement: 1, 8, 9.5, 9.6, 10, 12, 13, 14, 15 and 16.

10. Confidential Information; HIPAA.

10.1 Confidentiality Obligations. During the course of performance of the Agreement, 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. Without limitation of the above, all Data and Personal Information is included in the definition of Saint Luke's Confidential Information. 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 or any PA (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.

10.2 Remedies. Both parties acknowledge that a breach or attempted breach of Section 10 may cause Saint Luke's irreparable damage and that damages at law will be an insufficient remedy. Accordingly, both parties agree that Saint Luke's shall be entitled as a matter of right to injunctive relief in the Sixteenth Circuit Court of Jackson County, Missouri or the United States District Court for the Western District of Missouri, without necessity of bond or proof of damages, in order to restrain the breach or threatened breach of Confidential Information.

10.3 HIPAA; Unauthorized Disclosures. Company warrants that its provision of the Products (and any related services hereunder) does not require possession or use of, or access to, any Protected Health Information ("PHI") or Electronic Protected Health Information ("ePHI"), each as defined by HIPAA. Company shall not seek to receive, possess, access or maintain any PHI or ePHI on behalf of Saint Luke's. Company agrees that if the nature of this arrangement changes, and/or if Saint Luke's determines that Company qualifies as a business associate under HIPAA, the provisions of Section 2.2.1 herein apply. Without limitation of the above, in the event of an unauthorized use or disclosure by Company, its employees, agents or subcontractors of personally identifiable information possessed or held by Saint Luke's or Facilities (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.

11. Vendor Credentialing; Employee Access Requirements.

11.1 Credentialing. 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 any Products and performing any services hereunder; no Company employee or representative will be allowed access to Saint Luke's or any Facility unless and until the credentialing process is complete. 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. 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 11.1 are not complied with.

11.2 **Background Checks.** For each Company employee, agent or representative (collectively herein for this Section "Employee") who shall perform any services that permit, or which by virtue of this Agreement will or may have, 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, Company shall, 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 confirm that no such Employee has been convicted, within ten years, of any felony 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 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. 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 Commencement 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.

12. Regulatory; Compliance.

12.1 **Anti-Kickback Statute.** 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. 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.

12.2 **Credit Memorandum.** For all Products, including, but not limited to, any products which are implantable medical products to which the Centers for Medicare & Medicaid Services full and/or partial credit policies apply, Company shall, and for each and every full and/or partial Product credit given, provide Saint Luke's with a credit memo that provides Saint Luke's specific information and credit value on a monthly basis. Company is responsible for such reporting and shall notify Saint Luke's of any credits earned over the previous sales period.

12.3 **Product Notices.** Company shall monitor adverse event and other failure reports or complaints and promptly advise Saint Luke's of information indicating a significant trend of adverse events, consumer or practitioner complaints,

or failures or injuries related to the use of the Products. Company agrees to send all Product notices (inclusive of notices of any changes affecting the Products and notices of new products) to Saint Luke's. Company will promptly provide Saint Luke's (via letter, e-mail or other similar form of communication) with any and all information regarding any routine backorders of Products, Product changes, Product 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 Product availability (e.g. significant backorders of Products). Company shall provide Saint Luke's with written notice of any Class I recall, whether voluntary or initiated by the FDA, affecting any of the Products within twenty-four (24) hours of Company's receipt of any such request for a recall, or shorter period of time provided in the recall strategy. Company shall reimburse Saint Luke's for any costs actually incurred by Saint Luke's in complying with any recall instructions and processes provided by Company. In addition, Company shall, at no additional cost to Saint Luke's, replace any such Products which are the subject of a recall with Company products which have been approved by Saint Luke's as being clinically equivalent to the recalled products.

12.3.1 In the event Products are required to be modified to comply with any regulatory or safety standards imposed or implemented for such Product, Company shall, for Products previously purchased by Saint Luke's hereunder, at no cost to Saint Luke's provide hardware modifications necessary for the Products to meet all such regulatory requirements or shall exchange the Products for new Products that comply with the new requirements.

12.4 **Equal Opportunity.** 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.

12.5 **Anti-Corruption Laws.** Company represents, warrants and covenants that: (i) 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; (ii) neither it nor any Company Personnel is an official or employee of any government (or any department, agency or instrumentality of any government), political party, state owned enterprise or a public international organization such as the United Nations, or a representative or any such person (each, an "Official"); (iii) neither it nor any Company Personnel has offered, promised, made or authorized to be made, or provided any contribution, thing of value or gift, or any other type of payment to, or for the private use of, directly or indirectly, any Official for the purpose of influencing or inducing any act or decision of the Official to secure an improper advantage in connection with, or in any way relating to: (a) any government authorization or approval involving Saint Luke's, or (b) the obtaining or retention of business by Saint Luke's; and (iv) it shall not in the future offer, promise, make or otherwise allow to be made or provide any such payment and it shall take all lawful and necessary actions to ensure that no such payment is promised, made or provided in the future by it or any Company Personnel.

12.6 **Access to Books and Records.** To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the "Act") and the regulations promulgated thereunder are applicable to this Agreement, Company, and any organizations related to it 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 services pursuant to this Agreement, comply with requests of 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 services and 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 services provided. Company shall promptly advise the Saint Luke's of such request, and shall promptly provide to Saint Luke's copies of any documents so provided. No party shall be deemed to have waived any attorney-client or work-product privilege by virtue of this Section.

12.7 **Export Control.** Company shall provide written notice to Saint Luke's if any Products or services are subject to export controls or sanctions under the Laws of the United States and other countries and jurisdictions (including the Export Administration Regulations, 15 C.F.R. §§730-774, the International Traffic in Arms Regulations, 22 C.F.R. Parts 120-

130, and sanctions programs implemented by the Office of Foreign Assets Control of the U.S. Department of the Treasury) prior to the Effective Date of the applicable PA.

12.8 **Referral Relations.** In relation to and for purposes of compliance with the “Stark” law, 42 U.S.C. § 1395nn, Company represents and warrants that: (i) it is not a physician owned distributor or “POD”, (ii) it is not owned by one or more providers or physicians (as defined by the Stark law, and (iii) there are no physicians or providers with investment interests in the Company, in the case of (ii) and (iii) where any such ownership or investment interest would cause this arrangement to create a financial relationship between a “DHS entity” and a physician (hereinafter a “Stark Entity”). In the event the above representation and warranty changes so that it is inaccurate, Company will provide Saint Luke’s with prompt written notice and the parties will negotiate any amendments to this Agreement necessary to ensure compliance with the Stark law. Further, 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. Company will update its list on an annual basis and provide the written update to a designated representative of Saint Luke’s.

13. Indemnification; Insurance.

13.1 **General.** 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 or Software 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.

13.2 **Infringement.** Company represents and warrants that no Product or any Software infringes upon any trademark, patent, copyright, or any similar property rights. Company shall indemnify, defend (with competent counsel reasonably acceptable to Saint Luke’s) and hold harmless each Indemnitee from and against any Claims asserted against any Indemnitee based upon any assertion that (i) any Indemnitees’ use of a Product infringes on any patent, copyright, trade secret or other proprietary or contractual right of any third party; and/or (ii) the marketing, advertising, use or sale of any Product constitutes an infringement of any patent, trademark, copyright, or other proprietary right of any third party. Company at its own expense and option shall either (i) procure for Saint Luke’s the right to continue using Products; (ii) replace the infringing Products with non-infringing Products; or (iii) accept return of the enjoined Products and refund the full purchase price (plus shipping costs).

13.3 **Procedure.** 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.

13.4 **Insurance.** During the Term and for not less than five 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 and cyber security insurance. 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 Indemnitees as contemplated in this Section 13.

14. 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 14. 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, such audits may be performed during the Term and for one year thereafter. 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.

15. 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. 104th Street, Mailstop 600
 Kansas City, MO 64131
 Attn: Vice President of Supply Chain

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

16. Miscellaneous.

16.1 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 this Agreement.

16.2 Publicity. No public disclosures by any party relating to this Agreement, except for internal announcements or disclosures required to meet legal or regulatory requirements beyond the reasonable control of the disclosing party, shall be made without the prior written approval of authorized representatives of its counterparty. Company shall not use Saint Luke's or any Facility's name, trademarks, service marks, logos, any description that would reveal their identity or other forms of identification, whether registered or not, in any way, including any advertisements, press releases, announcements, customer lists (including customer lists on any website), materials of a public or promotional nature or in soliciting other clients or making any direct or indirect public reference to this Agreement or any other contract between the parties, without first obtaining Saint Luke's written permission, which may be withheld or conditioned (including as to content and timing) in Saint Luke's sole discretion. In the event that any such consent should be granted for a particular communication, Saint Luke's shall not be under any further obligation to provide consent in any future request. Company agrees that it shall not negatively reference or disparage Saint Luke's or any Facility.

16.3 Governing Law. Any dispute arising out of, related to or in connection with this Agreement shall be governed by, and this 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.

16.4 Waiver. The failure of a party to enforce any right or provision of this 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.

16.5 Severability. If any term, condition or provision of this Agreement is held to be unenforceable for any reason, it shall be interpreted to achieve the intent of the parties to this Agreement to the extent possible rather than voided. In any event, all other terms, conditions and provisions of this Agreement shall be deemed valid and enforceable to their full extent.

16.6 Approvals. Whenever a party withholds its consent or approval under this 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.

16.7 Cumulative Remedy. All rights and remedies of each party to this 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 this Agreement or applicable law.

16.8 Force Majeure. Any delays in or failure of performance of either party shall not constitute a default under this 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.

16.9 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.

16.10 Assignment. No assignment of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of both parties hereto. Notwithstanding anything herein to the contrary, Saint Luke's shall have the right to assign this Agreement to an entity that is controlled by, under common control with, or that controls it, or that is formed as the result of an internal restructuring of said party and/or its affiliates, by providing written notice thereof to Company.

16.11 Non-Solicitation. Company agrees not to hire, or directly or indirectly solicit or employ, any employee of Saint Luke's for a period of 12 months after the first to occur of the following dates: (a) the date of the employee or independent contractor's termination of employment or service; or (b) the date this Agreement terminates. If this Section is breached,

then Company shall pay Saint Luke's an amount equal to 100% of the hired employee's most recent annual compensation rate.

16.12 Third-party Beneficiaries. Except with respect to the Facilities as contemplated herein, this Agreement shall not be construed as, or deemed to be, an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever.

16.13 Entire Agreement. This Agreement, together with each executed PA, and any other documents, attachments, exhibits, etc. incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. No terms or conditions (including any pre-printed terms and conditions) on any invoices, purchase orders or other documents issued by Company hereunder, or under any PA, shall have any force or effect and shall be null and void. In the event of any inconsistency between the Agreement, any Pas, exhibits, schedules, attachments, and appendices (other than an exception expressly set forth as such therein) and any other documents incorporated herein by reference the terms of this Agreement shall control followed by the PA.

Signatures continue on the following page

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

FORM OF PRODUCT ADDENDUM

**PRODUCT ADDENDUM #[]
TO PURCHASING AGREEMENT DATED [], 20 []**

This Product Addendum #[] (“PA”) to the Purchasing Agreement is entered into as of the date of last signature (“PA Effective Date”), 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 Master Purchasing Agreement dated [], (“MSA”), which outlines the rights and obligations of the Parties with respect to the sale of certain products and the possible conduct of services to be performed by Company in relation to such products; and

WHEREAS, in accordance with Section 2 of the MSA, the Parties wish to enter into this PA for the purpose of describing the products to be made available to Saint Luke’s for purchase and the related services to be performed by Company.

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 MSA.

2. PRODUCTS:

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

[insert products and pricing listing]
[insert any Product specifications]

3. TERM:

The term of this PA will commence as of _____, 20__ (the “Start Date”) and will terminate _____, 20__, unless earlier terminated in accordance with the terms of the MSA (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 Products, the Products 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 12.1 of the MSA, Company shall report to Saint Luke's any and all Product discounts and/or rebates. Company shall provide Saint Luke's the following discounts and rebates:

- (a) Discounts. [insert specific Product 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 PA, Company will also comply with all of the terms and conditions of the MSA, all of which will govern this PA. The MSA 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 PA are inconsistent with the terms and conditions of the MSA, the terms of the MSA [optional - this PA] will govern.
- (b) Each Party hereby represents and warrants that it has fully power and authority to enter into this PA.
- (c) This PA 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 PA #[] 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: _____

EXHIBIT B
SUPPORT SERVICE LEVELS

In connection with the Products Company will provide the following support and maintenance services (the “Support Services”):

1. **Definitions.** In addition to any defined terms in the Agreement, the following terms shall have these meanings:

(a) **“Incident”** means any event that is not part of the standard operation of the Product (or any portion thereof) and that causes, or may cause, an interruption to, or a reduction in, the quality, operation or use of the Product, including, but not limited to, a failure of the Product to comply with the applicable Specifications (as defined herein) Materials and documentation.

(b) **“Priority Level 1 - Major Business Impact”** (“**Priority 1**” or “**P1**”) means an Incident that, in Saint Luke’s opinion, causes significant Product loss of functionality, operation or performance or is a risk of immediate exposure to financial, regulatory, operational, patient service or brand image, and no workarounds to provide all of the functionality of the Product required under the Agreement are possible or cannot be implemented in time to minimize the impact on Saint Luke’s and Facility business. P1 Incidents may include one or more of the following characteristics: (i) critical functionality is not available or is severely degraded, (ii) the Product is down/not operational with loss of unit or floor level base functionality, (iii) the Product or any portion thereof cannot function because a vital feature is inoperable, or (iv) data cannot be secured, recovered or processed as required by the Agreement.

(c) **“Priority Level 2 - Significant Business Impact”** (“**Priority 2**” or “**P2**”) means an Incident that results in a partial loss of Product functionality, operation or performance, such that use or processing can proceed in a restricted fashion but performance is significantly reduced and/or operation of the Product or any portion thereof is considered severely limited and no workaround to provide the affected functionality is possible or cannot be implemented in time to minimize the impact on Saint Luke’s and Facility business. P2 Incidents may include one or more of the following characteristics: (i) severely degraded performance, (ii) loss of Product base functionality to multiple rooms including loss of Integrations (ADT/locating/wireless), or (iii) some important functionality is unavailable, yet the Product continues to operate in a restricted fashion.

(d) **“Priority Level 3 - Minor Business Impact”** (“**Priority 3**” or “**P3**”) means an Incident that results in an important, but not time critical loss of Product functionality, operation or performance. P3 Incidents may include one or more of the following characteristics: (i) a Product or other error for which there is a workaround that is acceptable to Saint Luke’s, (ii) there is minimal performance degradation, or (iii) a Product or other error that requires minor manual repair or editing of configuration or script files to address an Incident.

(e) **“Priority Level 4 - No Business Impact”** (“**Priority 4**” or “**P4**”) means an Incident that causes no loss of Product functionality, operation or performance and in no way impedes Saint Luke’s use of the Product in accordance with the Agreement, but needs to be rectified to avoid impact or improve user experience. P4 Incidents may include one or more of the following characteristics: (i) a Product enhancement for which there is workaround that is acceptable to Saint Luke’s, or (ii) a Materials, Specifications or documentation error.

(f) **“Resolve”** means, with respect to an Incident, that a workaround or fix with respect to such Incident has been implemented by Company and accepted by Saint Luke’s.

(g) **“Resolution Time”** means the time to Resolve an Incident.

(h) **“Response Time”** shall be calculated as the total minutes commencing from the time when (i) Company becomes aware of, or is so notified by Saint Luke’s or any Facility of, a P1, P2, P3, or P4 Incident until (ii) Company commences steps to Resolve such Incident.

(i) **“Service Levels”** means the performance standards set forth in the Service Level Matrix, attached as Schedule 1.

(j) “**Service Level Failure**” means any failure to achieve the Service Levels.

(k) “**Specifications**” means the requirements of this Agreement and, to the extent not inconsistent, Company’s then current Materials and generally applicable documentation for the Product.

2. Support Obligations. Company shall:

2.1 Correct any failure of the Product to perform in accordance with the Specifications and provide such services and repairs required to maintain the Product so that it operates properly, in accordance with the Specifications.

2.2 Provide unlimited telephone support twenty-four (24) hours a day, seven (7) days a week.

2.3 Provide monthly support usage, incident reports and Company’s compliance with the response time service levels, below.

2.4 Respond to Priority Levels, achieve the required Service Levels, and provide the remedies set forth in Service Levels.

2.5 In the event any Priority One Issue or Priority Two Issue occurs during the Term, Company shall promptly investigate the root causes of such Service Level Failure and shall provide to Saint Luke’s within four (4) hours for Priority One and within one (1) day for Priority Two after knowledge of such Service Level Failure an analysis of such root causes and a proposed corrective action plan for Saint Luke’s review, comment and approval (the “Corrective Action Plan”). The Corrective Action Plan shall include, at a minimum: (i) a commitment by Company to Saint Luke’s to devote the appropriate time, skilled personnel, systems support and equipment, and/or resources to remedy, and prevent any further occurrences of, the Service Level Failure; (ii) a strategy for developing any programming/Product updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, the Service Level Failure; and (iii) time frames for implementation of the Corrective Action Plan. There shall be no additional charge (other than those fees set forth in the Agreement) for Company’s implementation of such Corrective Action Plan in the time frames and manner set forth in the Corrective Action Plan. In addition to the foregoing, Company will participate in Saint Luke’s problem management processes and participate in technical support lines or problem management resolution processes, including post mortem analyses. Company shall establish a defined internal escalation process. Company shall not require named contacts for Saint Luke’s personnel contacting Company’s help desk. Company shall provide telephonic support through an operations center available 7x24x365.

2.6 As contemplated in the Agreement, Company may from time to time make material enhancements and changes to Products. In the event of such enhancements or changes, (i) the new version of the Product will include at least the functionality, level or quality of services that Saint Luke’s previously received and shall continue to comply with the Specifications, and (ii) Saint Luke’s shall be provided, at least sixty (60) days in advance of any such changes, written notice and a demonstration of such changes. If such advanced demonstration reveals material adverse effects on functionality or operation of the Product, including, but not limited to, a failure to comply with the requirements of this Agreement, or compatibility with Saint Luke’s business or regulatory requirements, then Saint Luke’s may in its sole discretion reject such changes and remain on the current version of the Product for the remainder of the Term and continue to receive Support Services as required hereunder.

3. Service Levels.

3.1 Response Time. Response Time shall be calculated as the total number elapsed minutes after Company becomes aware of, or is notified by Saint Luke’s or any Facility of, an Incident and responds to the Incident as required. Company shall track and report monthly to Saint Luke’s each P1, P2 and P3 Incident and the time required to Respond to each such Incident. The Response Time Service Level is set forth on the Service Level Matrix attached hereto as Schedule 1.

3.2 Resolution Time. Resolution Time shall be calculated for each Incident occurring in a calendar month as the amount of time required for Company to Resolve each such Incident as determined by Saint Luke's. Company shall track and report monthly to Saint Luke's each P1, and P2 Incident and the time required to Resolve each such Incident. The Resolution Time Service Level is set forth on the Service Level Matrix attached hereto as Schedule 1.

3.3 Reporting. Company shall be responsible for measuring and monitoring Service Level performance and shall provide Saint Luke's with [monthly] reports showing Service Level performance (including Company's actual performance compared against the applicable requirements and any root cause analysis for any Service Level Failures) during the reporting period at a level of detail sufficient, as determined by Saint Luke's, to verify Company's compliance with the applicable Service Levels. All monthly reports due under this Agreement are due on the [] day of the [month] following the [month] for which such report relates; provided, however, that if the [] is a weekend or Saint Luke's holiday, such reports shall be due on the first Saint Luke's business day thereafter. The Reporting Service Level is set forth on the Service Level Matrix attached hereto as Schedule 1.

3.4 Service Level Audits. Saint Luke's or its designee will have the right to audit Company's measurement, monitoring and reporting on all Service Levels, including providing Saint Luke's with access to the data used by Company to calculate its performance against the Service Levels and the measurement and monitoring tools and procedures utilized by Company to generate such data for purposes of audit and verification.

4. Service Level Failures and Service Level Credits.

4.1 Service Level Failures. For each Service Level Failure, Company shall promptly issue Saint Luke's a credit (a "Service Level Credit") in the amount set forth on the attached Service Level Matrix. Company shall promptly notify Saint Luke's of any Service Level Failure.

4.2 Service Level Credits. Upon the occurrence of any Service Level Failure, Company shall pay to Saint Luke's the credits specified in Schedule 1 attached hereto (each a "Service Level Credit"). Under no circumstances shall the imposition of Service Level Credits be construed as Saint Luke's sole or exclusive remedy for any failure to meet the Service Levels. Company acknowledges and agrees that the Service Level Credits shall not be deemed or construed to be liquidated damages. In cases where the Service Level Credits are expressed as a percentage, the percentage represents a percentage of the monthly fees due hereunder. Company acknowledges and agrees that any Service Level Credits assessed pursuant to this Exhibit D shall be payable to Saint Luke's upon demand and may, at Saint Luke's option, be set off against any monies due to Company under this Agreement and are reasonable under the circumstances existing as of the date this Agreement is entered into.

4.3 Termination for Chronic Service Level Failures. In addition to its termination rights under the Agreement, Saint Luke's may, in its sole discretion, terminate this Agreement without further obligation to Company in the event Company fails to achieve any of the required Service Levels twice in a rolling consecutive two (2)-month period, or three (3) times in any rolling five (5)-month period.

Schedule 1 to Exhibit B
Service Level Matrix

<u>Service Level Measurement</u>	<u>Required Metric</u>	<u>Service Level Credit</u>
Response Time and Other Requirements		
P1 Incidents		
Initial Contact with Saint Luke's	<ul style="list-style-type: none"> - Respond to Saint Luke's call for assistance within 15 minutes and immediately join Saint Luke's problem techline. - Initiate work immediately. - Provide updates at least every 15 minutes via the techline until problem resolved. - Escalation at Company will occur after 1 hour of problem detection if not resolved. - Company will provide contact information for senior management after 2 hours. 	
Problem Resolution	<ul style="list-style-type: none"> - Root cause analysis required within 24 hours of problem detection or notification. - Incident report due within 3 days of problem detection or notification. - Company to participate in Saint Luke's problem resolution process on request. 	
Service Level Service Level Failure	<ul style="list-style-type: none"> - Less than 15 minutes of becoming aware of or notified of an Incident. - 15 minutes after becoming aware of or notified of an Incident. 	<ul style="list-style-type: none"> - None. - \$1,000 for initial 15 minutes, such amount doubling for each additional 15 minute increment (e.g., if the delay is 45 minutes, the credit will be \$1,000 for the initial 15 minutes, \$2,000 for the second 15 minutes, and \$4,000 for the final 15 minutes).
Target Resolution	<ul style="list-style-type: none"> - Within 1 hour of becoming aware of or notified of the Incident, unless Saint Luke's agrees in writing that a temporary workaround is acceptable. 	
P2 Incidents		
Initial Contact with Saint Luke's	<ul style="list-style-type: none"> - Respond to Saint Luke's call for assistance within 60 minutes and immediately join Saint Luke's problem techline. - Initiate work immediately. - Provide updates at least every 30 minutes via the techline until problem resolved. - Escalation at Company will occur after 2 hours. - Company will provide contact information for senior management after 4 hours. 	
Problem	<ul style="list-style-type: none"> - Root cause analysis required within 72 hours of problem 	

<u>Service Level Measurement</u>	<u>Required Metric</u>	<u>Service Level Credit</u>
Resolution	detection or notification. - Incident report due within 1 week of problem detection or notification. - Company will participate in Saint Luke's problem resolution process on request.	
Service Level Service Level Failure	- Less than 60 minutes of becoming aware of or notified of, an Incident - 60 more minutes after becoming aware of or notified of an Incident.	- None. - \$1,000 for initial 60 minutes. - \$1000 for each additional 60 minutes.
Target Resolution	- Within 4 hours, unless Saint Luke's agrees in writing that a temporary workaround is acceptable.	
P3 Incidents		
Initial Contact with Saint Luke's	- Respond to Saint Luke's call for assistance within 4 hours of via email or other agreed mechanism. - Initiate work within 1 business day. - Provide updates at least every 4 hours via phone or email for agreed upon negotiated time frame, until problem resolved. - Escalation at Company will occur after 48 hours.	
Problem Resolution	- Root Cause analysis required within 30 days of problem detection or notification. - Incident report due within 2 weeks of problem detection or notification.	
Service Level Service Level Failure	- Within 24 hours after becoming aware of or notified of an Incident. - 24 hours or more after becoming aware of or notified of an Incident.	- None. - \$500 for each additional 4 hour increment.
Target Resolution	- Within 2 business days, unless Saint Luke's agrees in writing that temporary workaround is acceptable until permanent fix is released.	
P4 Incidents		
Initial Contact with Saint Luke's	- Respond to Saint Luke's call for assistance within 24 hours of via email or other agreed mechanism. - Initiate work within 3 business days. - Provide updates at least every 3 business days via email, until problem resolved.	
Problem Resolution	- Root cause analysis required within 60 days of problem detection or notification.	
Service Level	- Within 2 weeks after becoming aware of or notified of an Incident.	
Target Resolution	- To be agreed upon by the parties, but no later than next Service release.	
Reporting		

	<u>Service Level Measurement</u>	<u>Required Metric</u>	<u>Service Level Credit</u>
		<ul style="list-style-type: none"> - All monthly reports submitted on or before 10th of each month. - Late reports. 	<ul style="list-style-type: none"> - \$0. - \$100 per day late per report.

EXHIBIT C
SOFTWARE TERMS

In accordance with Section 2.2 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, browsewrap 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 Equipment 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 PA (or the applicable Purchase Order for the Equipment) 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 PA 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 pursuant to the PA; 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 (or PA) are performed.

Company shall refund all fees paid under the PA if the PA 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 PA if the PA 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 in connection with the PA, 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 in the PA and attach written copies of all applicable terms and conditions to the PA; (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 and PA; (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 PA, 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 PA, 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, the PA, 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 and Equipment 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 D
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 Equipment 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 .
- g. "Recovery Point Objective" or "RPO" means the maximum amount of electronic data that the Products, Equipment 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.