

CAPITAL EQUIPMENT TRIAL EVALUATION AGREEMENT

This Agreement (this "Agreement"), dated as of _____, 201__ (the "Effective Date"), is made by and between Saint Luke's Health System, Inc., a Kansas nonprofit corporation with a place of business at _____ ("Saint Luke's"), and _____, a _____ [corporation] with a place of business at _____ ("Company").

RECITALS

WHEREAS, Saint Luke's is an integrated healthcare delivery system consisting of various acute care hospitals and medical facilities which are subsidiaries or affiliates of Saint Luke's (each a "Facility"); and

WHEREAS, Saint Luke's Facilities provide medical care to patients in the communities they serve, and Saint Luke's has identified a need to obtain and trial/evaluate certain medical equipment in order to allow the Facilities to provide high-quality and efficient patient care services; and

WHEREAS, Company possesses certain medical equipment and is willing to place with Saint Luke's, for evaluation and trial use by the Facilities, rights to use that certain equipment, on the terms and conditions of this Agreement. **NOW, THEREFORE**, for and in consideration of the mutual benefits and covenants set forth herein, the parties hereto, intending to be legally bound hereby, agree as follows.

1. EVALUATION OF EQUIPMENT

1.1. Placement of Equipment. Company hereby provides the equipment set forth on Exhibit A, attached hereto and incorporated herein (the "Equipment"), to Saint Luke's, for use by the Facility identified on Exhibit A, for evaluation and trial use purposes only, at the Facility's location during the Evaluation Period (as defined in Section 4.1 below), on an exclusive basis. Exhibit A shall set forth the Equipment to be evaluated/trialed, and the Facility and location at which the Equipment will be placed. The trial of the Equipment hereunder is further subject to the following:

(a) Company will cause the Equipment to be delivered to the Facility within 3 business days following the issuance of a no charge purchase order at no charge to the Facility. Saint Luke's will cause the Company to promptly remove the Equipment upon termination of this Agreement at no cost to the Facility. Company is responsible for all freight and shipping charges during the Evaluation Period. Under no event may Saint Luke's remove the Equipment from the applicable Facility.

(b) Company may not remove the Equipment from the Facility during the Evaluation Period.

(c) Neither Saint Luke's nor the Facility may sell or separately seek reimbursement from any state or federal program or other third party payer for Equipment trialed pursuant to this Agreement.

1.2. Title and Maintenance. During the Evaluation Period, Company grants to Saint Luke's the right to use the Equipment, on a trial/evaluation basis, on the terms and conditions hereinafter set forth. Title to the Equipment shall be and remain in Company at all times. Saint Luke's agrees to take no action that it

knows would adversely affect Company's title to or interest in the Equipment. At all times, Saint Luke's shall use the Equipment hereunder in a careful and proper manner, and in accordance with all applicable Company written specifications, which Company shall provide to Saint Luke's with the Equipment. Saint Luke's shall not undertake any repairs or modifications to the Equipment; any repairs needed shall be the sole responsibility of Company. Saint Luke's shall promptly notify Company of any defective or malfunctioning Equipment.

1.3. Licenses and Permits. Each party shall obtain and maintain throughout the Evaluation Period all licenses, permits and other registrations required for the performance of their respective functions hereunder, including, but not limited to, the lawful possession and operation of the Equipment under all applicable laws and regulations.

1.4. Liens, Encumbrances. Saint Luke's shall not directly or indirectly create or suffer to exist any mortgage, security interest, attachment, writ or other lien or encumbrance on the Equipment, and will promptly and at its own expense, discharge any such lien or encumbrance which shall arise, unless the same shall have been created or approved by Company.

1.5. Insurance. The parties agree (through either policies of insurance or a program of self-insurance) to carry, and cause its personnel performing services hereunder to carry or be covered by, liability insurance covering liability for claims arising out of activities conducted under this Agreement. Each party shall maintain occurrence form, primary commercial general liability insurance in minimum limits of \$1,000,000.00 each occurrence and \$3,000,000.00 general aggregate, combined single limit on \$1,000,000.00 bodily injury and \$1,000,000.00 property damage and \$3,000,000.00 general aggregate.

1.6. Surrender of Equipment. At the end of the Evaluation Period, Saint Luke's shall return the Equipment to Company, in the same condition as when received by Saint Luke's, reasonable wear and tear excepted.

1.7. Election to Purchase. If during or after the Evaluation Period Saint Luke's elects to purchase, rent or lease the Equipment, a separate agreement shall be negotiated in good faith and executed by the parties. It is expressly understood that this Agreement does not constitute a binding obligation on the part of Saint Luke's to purchase, rent or lease the Equipment and Company shall not be entitled to any recourse, in the form of damages or otherwise, for expenses incurred or benefit conferred before or after the date of this Agreement in the event there is a failure to negotiate and/or execute an agreement to purchase, rent or lease the Equipment.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1. Mutual Representations and Warranties. Each party hereby represents and warrants to the other that at all times during the Evaluation Period: (i) such party is duly organized, validly existing and in good standing under the laws of the State of such party's organization/incorporation; (ii) this Agreement has been duly authorized by all required corporate action of such party; and (iii) neither the execution and the delivery of this Agreement, nor the performance of this Agreement will conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice or approval or consent under any agreement, contract, lease, license, instrument or other arrangement to which such party is a party or by which such party is bound.

2.2. Title to Equipment. Company represents and warrants that it has sufficient right, title and interest in the Equipment to fulfill its obligations under this Agreement.

2.3. Equipment Warranties. Company represents and warrants that its: (i) the Equipment it supplies under this Agreement shall be free from defects in workmanship and material at the time of delivery and conform to the manufacturer's published specifications and Company's representations, warranties and covenants regarding the functions and uses for which the Equipment has been marketed to Saint Luke's and the Facility; (ii) its Equipment shall comply with all applicable federal, state and local laws rules and regulations, and (iii) none its Equipment shall violate any intellectual property or other right of any third party. Company further represents and warrants that throughout the Evaluation Period, Company shall, and all Equipment shall conform to, be and shall remain in compliance with, all applicable federal, state and local laws, regulations, ordinances, regulations and codes, including, but not limited to: (i) those relating to the privacy or security of information including, but not limited to, HIPAA (as hereinafter defined) and corresponding regulations; (ii) Medicare and Medicaid law; and (iii) all laws and regulations relating to the licensing, regulation and accreditation of health care facilities, (inclusive of the requirements of The Joint Commission or other private accreditation organizations that have established standards relevant to medical care). Company further warrants that Equipment provided to Facility, shall if required by law or regulation, have received FDA approval or will have 510K clearance prior to delivery to Facility and that all Equipment delivered to Facility will be in compliance with FDA regulations.

2.4. Compliance. Each party is responsible for compliance with all applicable laws, rules, regulations, or ordinances which may relate to its respective activities and responsibilities under this Agreement. Company agrees to comply with the applicable Facility's policies and with Saint Luke's Code of Business and Ethical Conduct made known to Company, as they may be modified from time to time. All of Company's representatives, agents, employees, and contractors that enter the Facility premises on behalf of Company in the performance of this Agreement must do so only after reasonable advance notice, must be acceptable to Facility in its sole discretion, and must comply with all Facility policies and procedures while on site, including any vendor registration policies. All of Company's representatives, agents, employees, and contractors will be required to, and shall comply with, the terms of this Agreement and Company will take all steps to ensure and be responsible for such compliance.

3. PAYMENT PROVISIONS

3.1. Fee.

The Equipment is provided for evaluation and trial purposes only, and as such shall be provided at no cost to Saint Luke's during the Evaluation Period. The fair market value of the Equipment upon the start date of this Agreement is \$ [REDACTED].

3.2. No amount paid or payable hereunder is intended, nor shall be construed to be, an inducement or payment for referral of or recommending referral of, patients by Saint Luke's to Company (or its affiliates), or by Company (or its affiliates) to Saint Luke's, or for ordering, trialing, or purchasing any item or service covered by any governmental or private health care payment program. In addition, the Fee charged hereunder does not include any discount, rebate, kickback or other reduction in charge.

3.3. Disposable Products. Both parties agree that any disposable products required for use in the evaluation of the Equipment, shall be provided at a mutually agreed upon price to be memorialized in writing by the parties during the Evaluation Period. Only quantities of disposables reasonable and necessary to complete the evaluation will be ordered.

4. TERM AND TERMINATION

4.1. Term. This Agreement shall commence as of the Effective Date and continue for a mutually agreed upon period not to exceed six (6) months (the "Evaluation Period").

4.2. Termination. This Agreement may be terminated as set forth herein:

4.2.1 Change of Law and Material Adverse Financial Effects. This Agreement shall terminate immediately, if, in the opinion (the "Opinion") of the legal counsel of either party, it is determined that it is more likely than not that applicable legislation, regulations, rules or procedures (collectively referred to herein as a "Law") in effect or to become effective as of a date certain, or if a party receives notice (the "Notice") of an actual or threatened decision, finding or action by any governmental or private agency or court (collectively referred to herein as an "Action"), which Law or Action, if or when implemented, would: (a) result in a party's continued performance under the terms of this Agreement to have a material adverse financial effect on such party; or (b) have the effect of subjecting a party to civil or criminal prosecution under state and/or federal laws, or other material adverse proceeding or effect, including without limitation, jeopardizing a party's status as a recipient of governmental or private funds for the provision of health care services or its status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor statute, on the basis of their participation herein.

4.2.2 Without Cause. Either party may terminate this Agreement without cause or penalty upon five (5) days' written notice to the other party.

4. MISCELLANEOUS

5.1. Compliance with Laws. Saint Luke's and Company shall at all times comply with all applicable federal, state and local laws, rules and regulations during the Evaluation Period. The parties intend that the trial and evaluation of the Equipment pursuant to this Agreement, and this Agreement itself, shall comply with the

federal “Stark” law, 42 U.S.C. § 1395nn (and specifically the “fair market value” exception set forth at 42 U.S.C. § 411.357(l)); the federal anti-kickback law, 42 U.S.C. § 1320a-7b; and any applicable state anti-kickback laws, each as amended from time to time. This Agreement shall be construed to comply therewith. The parties shall comply with the reporting requirements of 42 C.F.R. §1001.952(h), regarding “safe harbor” protection for discounts under the Anti-Kickback Statute and the “safe harbor” regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. 1001.952(j), as applicable. The parties acknowledge that there is no obligation of Company (or its affiliates) or of Saint Luke’s to refer patients to the other party, nor any intent to influence the judgment of the other party in any respect that would affect patient care or payment for patient care.

5.2. Non-Exclusion. Company represents and warrants that neither it, nor any of its employees, agents or other contracted staff (collectively referred to in this Section as “employees”) has been or is about to be excluded from participation in any Federal Health Care Program (as defined herein). If at any time during the Evaluation Period, Company: (i) is charged with a criminal offense related to Federal Health Care Program or is proposed for exclusion from participation in Federal Health Care Program or procurement or nonprocurement programs; or (ii) has notice that any of its directors, officers, employees or Agents has been charged with a criminal offense related to Federal Health Care Program or is proposed for exclusion, Company agrees to notify Saint Luke’s immediately. In the event of any such notification, Saint Luke’s shall have the right to terminate the Agreement immediately upon notice to Company. For the purpose of this paragraph, the term “Federal Health Care Program” means the Medicare program, the Medicaid program, TRICARE, any health care program of the Department of Veterans Affairs, the Maternal and Child Health Services Block Grant program, any state social services block grant program, any state children’s health insurance program, or any similar program. Further, in the event that Saint Luke’s becomes aware that any criminal charges or exclusions as described above are pending or proposed against Company, or that any director, officer, employee or agent of Company may otherwise be in violation of (or put Company in violation of) the Agreement, Saint Luke’s reserves the right in its sole discretion to terminate the Agreement or to exclude such individual/party or parties from participation in the Agreement, or to take other appropriate steps to protect patients and state and Federal program funds.

5.3. Indemnification; Limitation of Liability. Company agrees to indemnify, defend and hold harmless Saint Luke’s, its subsidiaries, agents, directors, officers, trustees, medical staff, employees and volunteers (collectively referred to as “Indemnitees”) from and against any and all claims, fines, costs, suits, damages, losses, and expenses, including, but not limited to, reasonable attorney’s fees, which may be alleged, claimed, or recovered against Indemnitees that may arise in connection with (i) Company’s material breach of any provision of this Agreement, (ii) any violation of or noncompliance with any federal or state law, rule, regulation, statute or ordinance by Company or by Company’s subcontractors, agents, directors, officers, trustees, or employees, and/or (iii) any negligent act or omission by Company including, without limitation, Company’s subcontractors, agents, directors, officers, trustees, and employees. This indemnification shall be in addition to the warranty obligations of Company and shall survive termination of this Agreement.

5.4. Access of the Government to Records. If applicable, the parties agree to make books and records available and to require any subcontractor to make books and records available, upon request of the Secretary of the U.S. Department of Health and Human Services or the Comptroller General of the United States or their duly authorized representatives for up to four (4) years following the furnishing of goods or services under this Agreement pursuant to Section 1861(v) (1) (I) of the Social Security Act.

5.5. Entire Agreement; Amendments. This Agreement contains the complete and full understanding of the parties with respect to the subject matter hereof. All amendments or additions hereto must be in writing and signed by both parties to the Agreement.

5.6. Non-Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to that term or any other term of this Agreement.

5.7. Assignment. Neither this Agreement nor any of the rights or duties under this Agreement may be assigned or delegated by either party without the express written consent of the other party hereto.

5.8. Independent Contractors. The relationship of the parties hereunder shall at all times be that of independent contractors.

5.9. Notices. Any notice given pursuant to this Agreement shall be in writing and shall either be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by means of another regularly scheduled delivery service customarily utilized for business correspondence that provides equivalent proof of delivery and receipt, fees prepaid, addressed to the appropriate party as set forth in the preamble hereto, or to such other address as a party shall designate by notice to the other, given in accordance with this Section. Notice shall be deemed to have been given (i) when received if personally delivered, or (ii) on the delivery date indicated on the return receipt.

5.10. Severability. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable, then the invalidity, illegality, or unenforceability of such specific provision herein shall not be held to invalidate any other provision herein, which other provision shall remain in full force and effect unless the removal of the invalid, illegal, or unenforceable provision destroys the legitimate purposes of this Agreement in which event this Agreement shall be null and void.

5.11. Counterparts. This Agreement may be executed in more than one counterpart, and each executed counterpart shall be considered as the original.

5.12. Further Actions. Each of the parties agrees that it shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.

5.13. Confidentiality. During discussions leading up to the execution of the Agreement, and during the course of performance of the Agreement, it is expected that each party hereto ("Receiving Party") will learn confidential and proprietary information and/or trade secrets ("Confidential Information") of the other party ("Disclosing Party"). Confidential Information includes, by way of example, all technical, marketing, financial, and clinical information, as applicable, of Disclosing Party that the Receiving Party knows or reasonably should know are to be treated as confidential, as well as all materials that are marked by Disclosing Party as confidential or proprietary. Except as authorized by Disclosing Party in writing, Receiving Party will not, directly or indirectly, (a) use any Confidential Information for any purpose that is not directly related to the performance of its obligations under the Agreement or (b) publish or disclose any Confidential Information to any third party. Receiving Party shall maintain the Confidential Information in a secure manner that is at least as protective as



that which Receiving Party uses with respect to its own confidential and proprietary information, but in no event shall Receiving Party provide Confidential Information less than reasonable protection. Receiving Party will take such action as necessary, including agreements with or instructions to its employees and agents, to enable it to perform its obligations with respect to Confidential Information. Receiving Party's obligations with respect to Confidential Information shall cease to apply with respect to Confidential Information that: (i) is or becomes part of the public domain other than by breach of the Agreement by Receiving Party; (ii) is developed by Receiving Party independent of any Confidential Information; (iii) is rightly received by Receiving Party from a third party who is not under an obligation of confidentiality with respect to such information; (iv) must be disclosed by law; or (v) is required to be disclosed under court order or subpoena. In the event Confidential Information is required to be disclosed by a court order, to the extent allowed by law, Receiving Party shall notify the Disclosing Party of such court order prior to disclosing the Confidential Information (if permitted by law, but in any case as soon as possible) and cooperate with Disclosing Party to obtain a protective order to contest the disclosure of such Confidential Information. Both parties acknowledge that a breach or attempted breach of the Agreement will cause irreparable damage and that damages at law will be an insufficient remedy. Accordingly, both parties agree that, notwithstanding the arbitration clause in the Agreement, the Disclosing Party shall be entitled as a matter of right to: (i) injunctive relief in the Sixteenth Circuit Court of Jackson County, Missouri or the United States District Court for the Western District of Missouri solely in order to restrain the breach or threatened breach of Confidential Information; and (ii) it's reasonable attorney's fees and costs in obtaining such relief or specific enforcement.

5.14. HIPAA. Company agrees to comply with all applicable current and future regulations of the Health Insurance Portability and Accountability Act of 1996 as codified at 42 USC§1320(d) ("HIPAA") as may be amended from time to time as specified in the Business Associate Addendum which is attached hereto and incorporated by reference into this Agreement. Company shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services to the extent required for determining compliance with HIPAA.

5.15. Governing Law. The laws of the State of Missouri govern this Agreement and venue shall be in the state courts located in Jackson County, Missouri or, if applicable, the federal courts located in the Kansas City, Missouri

IN WITNESS WHEREOF, the parties have signed this Agreement on the date set forth above.

SAINT LUKE'S HEALTH SYSTEM, INC.

COMPANY

Signature

Signature

Name

Name

Title

Title



Exhibit A
EQUIPMENT

1. Company shall provide to Saint Luke's the equipment and disposables listed below.

[List all Equipment to be placed]

2. The Equipment shall be placed at [insert Facility name and address].