

CONSULTING AND SERVICES AGREEMENT

This Consulting and Services Agreement (this "Agreement") is made as of the ___ day of _____, 20__ ("Effective Date") by and between [Saint Luke's entity], [a ___ nonprofit corporation] ("Saint Luke's"), and _____, a [_____ Corporation/Individual], maintaining offices at _____ ("Consultant"). Saint Luke's and Consultant are sometimes referred to individually as a "Party" or collectively as the "Parties."

WITNESSETH

WHEREAS, Consultant has certain experience, knowledge, and unique abilities that Saint Luke's wishes to utilize in connection with Saint Luke's business and overall strategic planning; and

WHEREAS, Consultant is willing to provide consulting services to Saint Luke's and to accept such engagement upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. SERVICES

- 1.1. Consultant shall, in accordance with the terms herein, perform the consultation, supervisory, and/or advisory services set forth on Exhibit A, attached hereto and incorporated herein (the "Services"). Services shall be performed on the dates and during the times as set forth on Exhibit A. Exhibit A shall set forth any specifications, requirements, timelines, and milestones relating to the Services, as well as any and all Deliverables to be produced or provided to Saint Luke's. "Deliverables" means any and all materials, items, products or information including, but not limited to, documents, reports, concepts, products, results, samples, or data required to be produced and/or produced in the course of, or as a result of, performing the Services. Each Deliverable shall be subject to acceptance by Saint Luke's to verify that the Deliverable satisfies the requirements of the Deliverable and Consultant's representations regarding the Deliverable. If Saint Luke's discovers a non-conformity in a Deliverable, Consultant shall either correct the non-conformity at no additional charge in a timely, professional manner, or, at Saint Luke's sole discretion, refund monies paid by Saint Luke's for the Services attributable to or affected by the non-conforming Deliverable.

2. COMPENSATION

- 2.1. During the term of this Agreement, Saint Luke's agrees to pay to Consultant, as full and complete payment for the performance of the Services, the amount indicated in Exhibit A. Consultant acknowledges that Consultant is not entitled to any other compensation or remuneration of any kind whatsoever unless specifically indicated in Exhibit A. The compensation provided above shall be Consultant's sole form of compensation provided by Saint Luke's for the Services provided, and Consultant waives any right to royalties, additional fees or any other form of compensation whatsoever from Saint Luke's. The Parties acknowledge that the compensation paid hereunder has been determined through good faith and arms-length negotiation to be commercially reasonable and reflect the fair market value of the Services rendered.
- 2.2. If specified in Exhibit A, Saint Luke's will reimburse Consultant for reasonable travel and business expenses incurred by Consultant related to any Saint Luke's requested business. Actual out-of-pocket travel expenses incurred will be reimbursed upon submission of Consultant's statement for such items, subject to Saint Luke's review and approval as to reasonableness and necessity. Air travel is expressly limited to coach class.

3. CONSULTANT'S REPRESENTATIONS AND OBLIGATIONS

- 3.1. Consultant represents and warrants that Consultant is not now nor shall be during the Term a party to any other agreement or under any obligation to or restriction by any third party which would prevent Consultant from entering into this Agreement or which would adversely affect this Agreement, Consultant's performance of the Services or any of the undertakings set forth herein. Consultant represents and warrants that it shall perform all Services in a diligent, workmanlike, and professional manner. Consultant warrants that the provision of any Deliverables and Services hereunder shall be in compliance with all applicable federal, state and local laws, rules, statutes including any law, order or regulatory provision, including, but not limited to, any laws and regulations concerning equal employment opportunities by federal contractors.
- 3.2. Consultant shall provide all qualified personnel ("Personnel") necessary to fulfill its obligations hereunder and shall be responsible and liable for the performance, acts and omissions of all such Personnel. Saint Luke's may, in its discretion, request removal from performance of Services any Personnel for any reason, effective upon written notice from Saint Luke's. Consultant warrants that it has enforceable written agreements with all Personnel that (i) assign to Consultant ownership of all patents, copyrights and other proprietary rights created in the course of their employment or engagement, and (ii) obligate such Personnel, upon terms and conditions no less restrictive than contained herein, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement, including, without limitation, any Deliverable(s) hereunder.
- 3.3. Consultant represents and warrants that all Deliverables produced under this Agreement (a) will perform in accordance with all documentation, representations and statements provided or made by Consultant and (b) along with all Consultant Intellectual Property, shall be of original development or licensable by Consultant, as the case may be and shall not infringe or violate any patent, copyright, trade secret, trademark, or other third party intellectual property right. Consultant Intellectual Property" means any and all patents, patent applications, copyrights, know-how, inventions, trade secrets, and any other intellectual property rights owned, licensed, or controlled by Consultant as of the Effective Date; Consultant Intellectual Property does and will not include Deliverables or any intellectual property rights in or derived from Deliverables. Consultant represents and warrants that in the provision of Services, it will limit the flow of all Saint Luke's data and information (inclusive of patient information, Confidential Information and Saint Luke's Intellectual Property) to the geographic limits of the United States of America.

4. CONFIDENTIALITY & PRIVILEGE

- 4.1. 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, and all information concerning operations and plans, patient information, operational information, pricing and purchasing policies, marketing plans or materials, scientific information, clinical development data, formulations, methods and processes, specifications, know-how and any other intellectual property, and information of the 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. In addition, "Confidential Information" may include material, non-public information concerning Saint Luke's or its affiliates. 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.

- 4.2. Consultant and Saint Luke's acknowledge that in the event of a breach of this Section 4, Saint Luke's (i) will be irreparably harmed; (ii) will be entitled to injunctive relief; and (iii) without the requirement for posting bond or proving actual, irreparable damages that may not be fully remedied by monetary damages. Consultant and Saint Luke's therefore agree that Saint Luke's shall be entitled to seek injunctive relief against any such breach in the Sixteenth Circuit Court of Jackson County, Missouri or the United States District Court for the Western District of Missouri and Consultant shall be responsible for all costs associated with such injunctive relief, provided that Saint Luke's prevails in the action. Saint Luke's rights under this Section 4 shall not in any way be construed to limit or restrict its rights to seek other damages or relief available under this Agreement or applicable law.

5. TERM OF AGREEMENT

- 5.1. This Agreement shall become effective as of the Effective Date and shall continue until the completion of the Services, but in no event less than one (1) year (the "Term").
- 5.2. Either Party may, upon written notice to the other Party, terminate this Agreement for default or breach of a material provision or obligation under this Agreement which breach or default has not been cured within 30 days following receipt of written notice.
- 5.3. Either Party may terminate this Agreement without cause upon ninety (90) days prior written notice to the other Party. In such event, Consultant's compensation will be pro-rated based on the Services performed up to the effective date of termination as specified in the notice of termination.
- 5.4. Upon termination of this Agreement for any cause or for no cause, or at any earlier time upon the demand of Saint Luke's, Consultant shall, without cost to Saint Luke's, (a) deliver to Saint Luke's in an orderly and expeditious manner all Saint Luke's Confidential Information and all data, records, documentation, and other property belonging to Saint Luke's then in the possession of Consultant, including, but not limited to, the Deliverables and all copies, extracts, summaries, and portions thereof, on whatever media rendered; (b) purge from its computer systems any Saint Luke's Confidential Information and Deliverables and all copies, extracts, summaries, and portions thereof; and (c) upon request of Saint Luke's, certify in writing that it has complied with these requirements.

6. INDEMNIFICATION AND INSURANCE

- 6.1. Consultant agrees to defend, indemnify and hold harmless Saint Luke's and its subsidiaries and affiliates, together with their respective officers, directors and employees, (each, a "Saint Luke's Indemnitee") and collectively the "Saint Luke's Indemnitees") against any and all losses, claims, demands, suits, actions, judgments, awards, damages, liabilities, costs, reasonable attorneys' fees (and all actions in respect thereof and any reasonable expenses in giving testimony or furnishing documents in response to a subpoena or otherwise), caused by, relating to, or asserted by a third

party, based upon or arising out of (a) Consultant's breach of this Agreement; (b) any Claim that any Saint Luke's Indemnitees' use, copying, or distribution of Deliverable(s), Consultant Intellectual Property, or any portion thereof infringes or violates any patent, copyright, trade secret, trademark, or other third party intellectual property right; (c) any negligent act or omission by Consultant or any Personnel in connection with the performance of its Services or obligations under this Agreement; and/or (d) Consultant's or any Personnel's failure to comply with any applicable federal or state or local laws, rules or regulations.

- 6.2. During the Term, Consultant shall maintain commercial general liability insurance written on an occurrence form, insuring against damages because of bodily injury, including death, property damage and personal and advertising injury and include without limitation, coverage for blanket contractual liability, broad form property and fire damage legal liability, premises and operations liability. The minimum limits of insurance shall be sufficient to cover Consultant's obligations and potential liabilities herein. Consultant shall maintain workers' compensation insurance as required by law.

7. OWNERSHIP OF DATA, PATENTS, INVENTIONS, AND TECHNOLOGY

- 7.1. Consultant acknowledges that Saint Luke's Intellectual Property is the exclusive property of Saint Luke's or its licensors. "Saint Luke's Intellectual Property" means any and all patents, patent applications, copyrights, know-how, inventions, trade secrets, and any other intellectual property rights owned, licensed, or controlled by Saint Luke's. Saint Luke's Intellectual Property will also include any and all Deliverables, and any and all intellectual property rights arising from or relating to Deliverables. Consultant further acknowledges that the Deliverables and any and all other intellectual property rights developed, derived from, or otherwise generated by Consultant in performing Services hereunder, will be owned by and belong exclusively to Saint Luke's. Consultant hereby assigns to Saint Luke's the ownership of all rights, titles, and interests in all patents, trade secrets, or other intellectual property rights in, relating to, or arising from the Deliverables and/or Services. Consultant further agrees to give Saint Luke's and its designees or assignees all assistance reasonably required to perfect such rights, titles, and interests. Consultant will not attack, dispute, or challenge Saint Luke's right, title, and interest in and to Saint Luke's Intellectual Property or assist others in so doing. These obligations will survive and continue beyond the termination of Consultant's engagement with Saint Luke's under this Agreement and will be binding upon Consultant's assigns, executives, administrators, and other legal representatives.
- 7.2. Consultant will not use Saint Luke's trademarks, trade names, service marks, logos, and symbols ("Marks") without prior written authorization from Saint Luke's. The Marks are, and will remain, Saint Luke's sole and exclusive property, and Consultant has not acquired, and will not acquire (by operation of law, this Agreement, or otherwise), any right, title, or interest in any of Saint Luke's Marks.
- 7.3. Consultant is not permitted to publish, present, display, otherwise disclose, or submit for publication, presentation, display, or other disclosure any Deliverable without prior written permission from Saint Luke's. To the extent any Deliverable contains copyrightable material that can be "work made for hire" as the term is defined under 17 U.S.C. §101, such material will be deemed "work made for hire" and Saint Luke's will be considered the author. If such material is not deemed "work made for hire," Consultant hereby assigns all copyrights in such material to Saint Luke's.
- 7.4. Consultant Intellectual Property will not be included in any Deliverable unless and until Consultant identifies in writing to Saint Luke's the Consultant Intellectual Property proposed to be included in the Deliverable, and obtains the prior written consent of Saint Luke's. Any Deliverable that includes Consultant Intellectual Property in violation of this Section 7.4 is hereby automatically and perpetually licensed to Saint Luke's, its affiliates, or their designees, in connection with such

Deliverable and any products, services, materials, or information related thereto or arising therefrom, at no charge.

8. AUDITS AND INSPECTIONS

Consultant 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 8. Consultant 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 products and services provided or used by Consultant under the Agreement. The foregoing audit rights shall include, without limitation, and when applicable, audits (A) of practices and procedures, (B) of systems, (C) of general controls and security practices and procedures, (D) of disaster recovery and backup procedures, (E) of costs and procurement practices, (F) of charges hereunder, (G) as necessary to enable Saint Luke's to meet applicable regulatory requirements, and (H) for any reasonable purpose as determined by Saint Luke's. Consultant shall provide full cooperation to such auditors, inspectors, regulators, and representatives, including the installation and operation of audit software.

9. NOTICES

Any notice required or permitted to be given hereunder shall be in writing and shall be (i) delivered personally by hand, (ii) sent by registered or certified mail, or (iii) sent by a recognized qualified overnight delivery service (e.g., Federal Express). All such notices shall be sent postage prepaid to the addresses of each Party set forth below or to such other address or addresses as shall be designated in writing in the same manner:

To Saint Luke's:

Saint Luke's Health System

Attn:

Fax: (____) _____

To Consultant:

[Name]

Attn: _____

Fax: (____) _____

With a copy to:

Saint Luke's Health System

901E 104th Street

Kansas City, Missouri 64131

Attn: Senior VP and Chief Legal Officer

10. REGULATORY AND COMPLIANCE

10.1. Consultant shall maintain all documents and records in connection with the Services provided under the Agreement relating to reimbursement from Federal health care programs, or which may be necessary to verify the nature and extent of the cost of the Services provided by the Consultant hereunder, until the expiration of four (4) years after the furnishing of any, or any longer period as may be required by law, and shall make such documents and records available to upon request by the Secretary of Health and Human Services, the Comptroller General of the United States, or any other governmental authority, or their duly authorized representatives. If Consultant uses a permitted subcontractor to perform Services with a value of \$10,000 or more during any year, Consultant shall cause such subcontractor to agree in writing to assume the same obligations as described above with

respect to maintenance of documents and records in connection with Services and any Services provided and cooperation with governmental audits and investigations.

- 10.2. 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. Neither Saint Luke's nor Consultant 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.
- 10.3. Consultant represents and warrants that neither it, nor any of its Personnel has been or is about to be excluded from participation in any Federal Health Care Program. Federal Health Care Program means the Medicare program, the Medicaid program, TRICARE, any health care program of the Department of Veterans Affairs, the Maternal and Child Health Services Block Grant program, any state social services block grant program, any state children's health insurance program, or any similar program. If at any time during the Term, Consultant: (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 Personnel has been charged with a criminal offense related to Federal Health Care Program or is proposed for exclusion, Consultant 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 Consultant.

11. MISCELLANEOUS PROVISIONS

- 11.1. Consultant is retained by Saint Luke's only for the purposes and to the extent set forth in this Agreement, and Consultant's relation to Saint Luke's shall, during the period of its rendering of the Services, be that of an independent contractor. Consultant shall be free to dispose of such portion of its time, energy and skill as Consultant sees fit to accomplish the Services. Consultant shall be fully and solely responsible for the compensation and performance of all Personnel hereunder and the filing of any and all returns and reports and the withholding and/or payment of all applicable federal, state and local wage tax, or employment related taxes. The status of Personnel shall be that of independent contractor and no such Personnel shall, at any time or for any purpose, be deemed employees or agents of Saint Luke's. Neither Consultant nor any Personnel shall be entitled to participate in any Saint Luke's employee benefit plan.
- 11.2. This Agreement is personal in nature, and Consultant shall not, without the prior written consent of Saint Luke's, assign or transfer this Agreement or any rights or obligations hereunder. Saint Luke's may assign or transfer this Agreement to a successor or affiliate.
- 11.3. This Agreement may be executed simultaneously in one or more counterparts, but all such counterparts taken together will constitute one and the same Agreement.
- 11.4. Any dispute arising out of, related to or in connection with the Agreement shall be governed by, and the Agreement shall be construed under, the laws of the State of Missouri, without giving effect to any choice of law or conflict of laws principles that would result in the application of the laws of any other state.
- 11.5. The invalidity or unenforceability of any term, provision, clause, or any portion thereof, of this Agreement shall in no way impair or affect the validity or enforceability of any other provision of this Agreement, which remains in full force and effect.

- 11.6. No failure or delay by a Party to insist upon the strict performance of any term or condition under this Agreement or to exercise any right or remedy available under this Agreement at law or in equity, and no course of dealing between the Parties, shall imply or otherwise constitute a waiver of such right or remedy, and no single or partial exercise of any right or remedy by any Party will preclude any other or further exercise thereof. All rights and remedies provided in this Agreement are cumulative and not alternative and are in addition to all other available remedies at law or in equity.
- 11.7. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof. This Agreement supersedes all prior understandings, negotiations and discussions, written or oral, of the Parties relating to the transactions contemplated by this Agreement.

Signature page follows

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

Saint Luke's Health Sytem

[Consultant]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
SERVICES