



## CONSIGNMENT INVENTORY AGREEMENT

This **Consignment Inventory Agreement** (this "Agreement") made effective as of the [redacted] day of [redacted], 20[redacted] (the "Effective Date") by and between [redacted] ("Company") and, Saint Luke's Health System, Inc. a Kansas nonprofit corporation ("System") on behalf of its Facilities (as defined herein).

**WHEREAS**, Company and System have entered into a [Master Purchasing Agreement –or- a Purchase Agreement –or- Pricing Agreement] dated [redacted], 20[redacted] ("Purchase Agreement") pursuant to which the System and Facilities may purchase from Company certain products listed in the Purchase Agreement ("Products"); and

**WHEREAS**, the Purchase Agreement contemplates that Company may offer Products to Facilities on a consignment basis pursuant to a written agreement addressing such consignment; and

**WHEREAS**, System so desires for certain of its Facilities to be able to receive products on a consignment basis as provided for in the Purchase Agreement and herein; and

**WHEREAS**, Company is willing to provide an inventory of products to Facilities on a consignment basis in accordance with the terms of this Agreement and the Purchase Agreement.

**NOW THEREFORE**, in consideration of the foregoing and the covenants contained herein, the parties hereto agree as follows:

### **1. Definitions; Facilities:**

1.1 Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Purchase Agreement.

1.2 Company acknowledges and agrees that this Agreement is entered into by System for its benefit and for the express, intended benefit of its subsidiaries, Affiliates and for such entities for which it performs contracting services (where System, 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 System or is under common control with System, 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 System subsidiary, System 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 in the Purchase Agreement, and each of the Facilities shall be entitled to enforce the terms and provisions of this Agreement and the Purchase Agreement to the same extent as System. Company acknowledges that System 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 System or any other Facility. Company acknowledges and agrees that the Facility named on each Consignment Schedule shall be solely responsible to Company for payments associated with such Consignment Schedule, and that each Facility is solely responsible for its

compliance with all of the terms herein. Nothing contained herein shall be considered a guarantee of purchase by System or any Facility. Herein all rights of System, and all warranties made by Company and all Company obligations hereunder and under and pursuant to the Purchase Agreement, shall apply equally to each Facility that is the purchaser or recipient of Products hereunder.

## **2. Initial Consignment Inventory:**

2.1 The purchase of Products (including pricing), warranties for such Products and other terms not addressed herein (for illustration purposes only, indemnification and regulatory compliance) shall be governed by the Purchase Agreement, all the terms of which are hereby incorporated herein. Without limitation, the parties expressly acknowledge that the terms in the Purchase Agreement addressing indemnification, confidentiality, compliance with laws, regulatory compliance, insurance, warranties and product recalls are all incorporated herein. If there is a conflict between the terms of the Purchase Agreement and this Agreement, the terms of this Agreement shall supersede and control.

2.2 Company agrees to provide Products to the Facilities on a consignment basis as set forth in individual consignment schedules (each a "Consignment Schedule"), substantially in the form of the sample Consignment Schedule attached hereto as Exhibit A. Each Consignment Schedule shall be incorporated into this Agreement and be governed by its terms, be independently numbered, be separate and distinct from one another and set forth: (i) the applicable Facility and such Facility's Consignment Location, (ii) a listing of the Company's Products that will be included in the Consignment Inventory ("Products") and the quantities of such Products (the "Consignment Inventory"), and (iii) the term of the Consignment Schedule. Herein references to Facility shall apply to each individual Facility named on a Consignment Schedule. Each Consignment Inventory shall be delivered to the Facility named in the applicable Consignment Schedule and placed by Company, at no charge to the Facility, in the Facility's areas and departments identified by the Facility (the "Consignment Location"). All Consignment Inventory must be shipped to the applicable Facility on a no charge purchase order provided to the Company by the Facility. Company represents and warrants that it shall provide Facility with not less than thirty (30) days advance written notice in the event there are any material changes to its Product packaging to allow sufficient time for proper notification to appropriate users within the System and Facility.

2.2.1 The Consignment Inventory is provided solely for each Facility's internal use. The Products and volume of Products within a Consignment Inventory may be altered only upon the mutual agreement of the applicable Facility's (or the System's) Director of Materials Management, or his or her designee and Company. Documentation of the Consignment Inventory will be held in the Facility's (or System's) Materials Management Department and updated as changes are made.

2.2.2 Company, absent the Facility's written agreement, may only place Products in the Consignment Inventory and in the Consignment Location for use by the Facility. Except as otherwise provided herein, Products placed in the Consignment Inventory at a Facility may not be taken from the Consignment Inventory and used by Company with other customers. If Company has a need to remove any Products from the Consignment Inventory, the Company may contact the Facility's (or System's) Director of Materials Management, or his or her designee, to make the request. Upon written consent from the Facility's (or System's) Director of Materials Management, or his or her designee, the Facility and Company shall make any necessary arrangements for the Product removal, and Company will execute

documentation as requested by Facility to evidence the removal of any Product. Upon written consent from the Facility's (or System's) Director of Materials Management, or his or her designee, which consent will not be unreasonably withheld, the Facility and Company shall make any necessary arrangements for the Product removal, and Company will execute documentation as requested by the Facility to evidence the removal of any Product.

3. **Inventory Replacements:** Company shall maintain a level of Consignment Inventory at each Facility such that the Facility will have at hand a supply of Products sufficient to satisfy the customary volume and types of Products inventory used at the Facility. Within two (2) days of Products within a Consignment Inventory being opened, Accepted (as hereinafter defined) and used, the Facility (or System) will, if desired and/or necessary, order replacement Products from Company to be placed in the Consignment Inventory using a Purchase Order (“PO”) issued by the Facility's (or System's) Materials Management Department. Company, upon receipt of a PO, will invoice the Facility for the Products within a Consignment Inventory that are opened, Accepted and used by the Facility. Company shall ship to the Facility the replacement Products in accordance a timely manner as additional Consignment Inventory. Shipment of replacement Products will be FOB Destination. Company is responsible for the risk of loss of any Consignment Inventory and Products that are lost or destroyed during shipment to the Facility. The delivery of any Consignment Inventory to a Facility must take place during the times and at the locations designated by the Facility.
4. **Ownership and Inspection:** Company shall retain all title to and rights in the Consignment Inventory until Products are removed from the Consignment Inventory and Accepted and used by the Facility. Each Facility agrees to give Company's representative reasonable access, subject to Section 7 herein, upon advance notice and during normal business hours, to its Consignment Inventory to verify the quantity and condition of the Consignment Inventory. Company representatives may not enter the location of the Consignment Inventory without the Facility's permission. Company representatives while on site at a Facility or any of its facilities must comply with the System's and Facility's policies and procedures, as required per Section 7 herein. Company and the Facility will jointly count and reconcile Consignment Inventory on a quarterly basis. Representatives for Company and the Facility will each acknowledge the results of the Consignment Inventory count. Company will submit a detailed report of this inventory reconciliation to System and the Facility within one week after the inventory count has been conducted. Failure by Company to conduct any quarterly physical inventory with Facility during the term of this Agreement shall relieve the System and Facility of any obligation to make payment for any quantity variances from the initial Consignment Inventory for the duration of this Agreement and subsequent expiration. Excess Consignment Inventory will result in a credit being issued by Company to the Facility within thirty (30) days of the inventory. A Facility will issue a PO to Company for identified inventory shortages.
5. **Risk of Loss:** A Facility is responsible for any of the Consignment Inventory that is lost or destroyed while stored on the Facility's premises (except for any damage or losses caused in whole or in part by Company's or its agent's, employee's, representative's acts, omissions, negligence or misconduct). Facility shall pay Company for any such Consignment Inventory lost. Invoices generated for Consignment Inventory lost are due and payable within sixty (60) days of issue.
6. **Acceptance and Returns:** Notwithstanding anything in the Purchase Agreement regarding Product acceptance to the contrary (the parties agree that this Section 6 shall supersede Product acceptance

language in the Purchase Agreement with respect to Products in the Consignment Inventory), Facility shall be deemed to have accepted Products when they are taken from the Consignment Inventory, opened, inspected and used with a patient/client (“Accepted”). In the event that any Products within the Consignment Inventory dispensed to a Facility is/are (i) rejected by the Facility, its physicians or patients, (ii) rejected for (a) any nonconformance with the terms and conditions of this Agreement or the Purchase Agreement, (b) shipping damage, and/or (c) failure of the Product(s) to comply with law or to meet the quality or safety rules or procedures of the Facility, and/or (iii) returned by a client and such return accepted by a Facility for any reason (e.g., product is defective), such Consignment Inventory shall be returned and the Facility (or System) shall promptly notify Company of the return and provide Company with information necessary for Company to process such rejection or return. Products so rejected will be returned to Company and Company shall pay all costs of shipping. The Facility (or System as applicable) shall receive, at Facility’s 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. Neither System nor any Facility is responsible (financially), and bears no responsibility for any Products within the Consignment Inventory that have expired. A Facility shall return such expired Products to Company at Company’s expense and Company shall promptly replace the expired Product.

7. **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 Facility’s policies and the System’s Code of Business and Ethical Conduct made known to Company, as they may be modified from time to time. System and each Facility has the right to require Company to pay third-party imposed fines and/or penalties, and damages that may arise out of or may be imposed because of, Company’s breach or failure to comply with provisions of this Agreement or applicable law. All of Company’s representatives, agents, employees, and contractors (“Representatives”) intending to enter any Facility’s premises may do so only if all of the following conditions are met: (i) the Representative logs in through System’s vendor credentialing system (Rep Trax), (ii) reasonable advanced notice of the intended visit is given (iii) the Representative must be acceptable to the Facility, and (iv) the Representative must comply with all of the Facility’s policies and procedures while on site. 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.
  
8. **Term and Termination:** This Agreement shall have an initial term of one (1) year from the Effective Date (“Initial Term”), and may be renewed for successive one (1) year terms (each a “Renewal Term” and collectively with the Initial Term, the “Term”) upon the mutual agreement of the parties. This Agreement will automatically terminate in the event the Purchase Agreement expires or is terminated. This Agreement, and any individual Consignment Schedule, may be terminated at any time and without cause upon sixty (60) days’ advance written notice by either party to the other. Termination of an individual Consignment Schedule will not serve to terminate this Agreement; termination of this Agreement will cause all individual Consignment Schedules, then in effect, to be terminated. This Agreement, and/or any individual Consignment Schedule, may be terminated immediately by either party upon material breach of this Agreement (or the individual Consignment Schedule) by the other party, if such breach is not cured to the reasonable satisfaction of the non-breaching party within thirty (30) days’ from the date of notice of breach. Upon termination or expiration of this Agreement for any reason all rights and obligations of the parties shall cease, except for those rights and obligations that

accrue prior to termination and except as otherwise contemplated by this Agreement. Upon termination or expiration of this Agreement or any Consignment Schedule for any reason each Facility shall, in Facility's sole discretion, either purchase the Consignment Inventory in its possession, or return to Company all of the Consignment Inventory remaining in the Facility's possession or under the Facility's control, at Company's cost and expense or allow Company's representative to retake possession of the Consignment Inventory.

If any law is enacted or becomes effective, any regulation is promulgated or becomes effective, any court or administrative agency decision is rendered, any administrative agency interpretation is issued, or similar action is taken that, in the opinion of legal counsel to System, is likely to cause any of the Agreement's provisions to be in violation of law or compromise System's or any Facility's tax-exempt status, then the parties will use their best efforts, proceed with dispatch and without unnecessary delay, to reform this Agreement or negotiate a new agreement(s) so as to achieve, as nearly as possible, the original goals the parties reflected in this Agreement. If such reformation is not possible after a period of not less than six (6) months, the parties agree that this Agreement shall terminate without penalty.

9. **Miscellaneous.** This Agreement and any exhibits and Consignment Schedules properly incorporated herein from time to time, together with the Purchase Agreement, represents the entire agreement between the parties regarding the subject matter hereof, and its provisions shall supersede all prior oral and written commitments, contracts, courses of dealing, and understandings regarding the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any amendment or modification to this Agreement must be in writing and signed by the parties. Notwithstanding any language to the contrary in any purchase order, invoice, acknowledgement of order, contract or other document that Company submits to System or any Facility, System and the Facilities reject any additional or different terms stated in any such document from Company unless System expressly accepts such terms in a signed writing. Neither party may assign or transfer this Agreement or any of its obligations hereunder to a third party without the written consent of the other party. 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. The failure of either party to strictly enforce any provision of this Agreement will not be construed as a waiver thereof or as excusing the defaulting party from future performance. Any waiver of any of the covenants, conditions or provisions of this Agreement must be in writing and signed by a duly authorized representative of the party against whom enforcement of such waiver is sought. One or more waivers of any covenants, condition or provision of this Agreement shall not be construed as a waiver of a subsequent breach or of any other covenant, condition or provision.

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

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



With a copy to:

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

If to Saint Luke's:

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

With a copy to:

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

*Signatures on Following Page*



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

**Saint Luke's Health System, Inc.**

**[Company Name]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date





**EXHIBIT A**  
**Form of Consignment Schedule**

**Consignment Schedule #[ ] to**  
**Consignment Inventory Agreement**

This Consignment Schedule #[ ] to the Consignment Inventory Agreement, entered into by and between Saint Luke's Health System, Inc. ("Saint Luke's"), a Kansas nonprofit corporation, and [Company Name] ("Company") a [entity type] ("Agreement") is hereby incorporated into the Agreement and is governed by the terms therein. Terms not otherwise defined herein shall have the meaning set forth in the Agreement.

This Consignment Schedule shall be for and apply to the Facility named herein and is subject to the terms of the Agreement and the Purchase Agreement.

**Term:** This Consignment Schedule shall commence on the \_\_\_ day of \_\_\_\_\_, 20\_\_ and continue for a period of one (1) year, unless terminated as provided for in the Consignment Inventory Agreement.

**Facility:**

**Consignment Inventory Location:**

**Part Number, Description and Quantity of Consignment Inventory:**