

PURCHASE ORDER FOR CONSTRUCTION
GENERAL TERMS AND CONDITIONS

SCOPE OF THE WORK: The Contractor shall provide the labor, materials, supplies, tools, equipment, products, appliances, and facilities necessary to construct the Work described in the Contract Documents. The Contractor will construct the Work in accordance with the terms, conditions, obligations, and provisions of these Terms and Conditions (hereinafter the "Agreement"). The Term "Work" includes, but is not limited to, all necessary labor, materials, tools, equipment, supplies, and services.

PRECEDENCE: These terms and Conditions apply to St. Jude's purchase from Contractor of all goods or services in the Order to the exclusion of all other terms and conditions, including any terms or conditions which are implied by trade, custom, practice or course of dealing or which Contractor may purport to apply or which are endorsed upon any correspondence, invoice or documents issued by Contractor irrespective of their date of communication to St. Jude. By accepting St. Jude's purchase order or providing goods or services, Contractor is deemed to have accepted these Terms and Conditions to the exclusion of any other terms and conditions in, or referenced in, any other Contractor documents (including but not limited to quotations, acceptance notifications, bills of lading, and invoices). Such additional terms and conditions in Contractor documentation are hereby deemed material alterations to these Terms and Conditions, and notice of objection to that material alteration is hereby given, notwithstanding anything to the contrary contained in Contractor documentation. Contractor's acceptance of St. Jude's purchase order or providing goods or services, shall constitute, and is expressly conditioned upon, Contractor's acceptance of these Terms and Conditions, including to the extent that these Terms and Conditions are additional or different terms. The terms of the purchase order expressly limit acceptance to the terms stated herein. Any additional or different terms proposed by Contractor are hereby rejected unless otherwise expressly agreed to in writing. To the extent that these the purchase order is construed as an acceptance, but only if it is so construed, this acceptance is expressly conditioned upon assent to its terms, and St. Jude does not wish to proceed unless Contractor assent to these terms. Contractor may assent by commencing performance. Notwithstanding the foregoing, the terms and conditions in any separately negotiated and signed written contract entered into by the parties in respect of the goods or services identified in the Order will overrule these Terms and Conditions, but only to the extent that the separately negotiated and signed written contract conflict or contradict the terms and conditions herein.

PROGRESS OF THE WORK: The Contractor shall commence the Work within three (3) calendar days following receipt of this Agreement. Contractor shall substantially complete the Work not later than any date specified in the Contract Documents (the "Substantial Completion Date") or if no date is specified, within a reasonable time. The Substantial Completion Date may be altered only by agreement of the St. Jude Representative or Project Manager and the Contractor. For purposes of this Agreement, Substantial Completion shall occur when the Work has been constructed to the point that only minor punch list items remain to be performed and the Work can be used for the purpose for which it was intended. Time is of the essence for purposes of this Agreement.

CONTRACT DOCUMENTS: For purposes of this Agreement, Contract Documents include plans, specifications, quotes, accepted proposals, price terms as agreed in writing between the parties, and this Agreement, but do not include any legal terms or conditions which contradict or conflict with this Agreement that are contained in any proposal, quote, or other document of the Contractor.

PAYMENT TERMS: Subject to the terms and conditions hereof, St. Jude shall pay to Contractor the purchase price reflected in the Contract Documents according to the payment schedule, if any, in the Contract Documents. Any prices that are a direct result of quotations solicited by the Contractor, whether verbal or written, are firm, and are not subject to change. Other prices may be changed only with the express permission of St. Jude Materials Management Department. Each payment to be made hereunder shall be invoiced to St. Jude by Contractor in advance, and St. Jude shall make said payment(s) within forty-five (45) days following St. Jude's receipt of Contractor's complete, accurate, and undisputed invoice or on its due date, whichever shall occur later.

PAYMENT NOT A WAIVER: Neither the approval or making of any payment to the Contractor, nor the partial use of the Work by St. Jude, shall be an acceptance of any portion of the Work.

FINAL PAYMENT: Final payment for the Work shall occur only after all Work (including punch list items) has been finally completed and accepted in writing by St. Jude. Acceptance of final payment by the Contractor shall constitute a waiver and release of any and all claims which the Contractor may then have or have in the future arising from the work performed pursuant to this Agreement. The Contractor represents that within seven (7) days from receipt of final payment, it will pay all of its subcontractors, suppliers, employees and laborers who furnished labor or materials in connection with the Work.

MATERIAL PROVIDED BY CONTRACTOR: (1) The Contractor shall provide and pay for all equipment, materials, labor, tools, light, transportation, supplies, products, appliances, and other facilities necessary for the performance of the Work. (2) All equipment, machinery, material, and articles incorporated in the Work shall be of good quality, new, and of the most suitable grade and quality for the purposes intended.

NON-CONFORMING MATERIALS: (1) Equipment, machinery, products, materials, or articles installed or used in the Work which do not comply with the requirements of any applicable Contract Documents, and which have not been previously approved in writing by St. Jude, shall be installed or used at the risk to the Contractor of subsequent rejection by St. Jude. (2) The Contractor shall be fully and solely responsible for quality control in connection with all materials, machinery, equipment, products, supplies, appliances, tools, and articles used in the performance of the Work.

CHANGES IN THE WORK: (1) St. Jude, without invalidating the Agreement, may order extra Work or make changes by altering, adding to or deducting from the Work by executing a Change Order in a form provided by St. Jude. All work performed pursuant to a valid Change Order shall be performed under the terms and conditions of any applicable Contract Documents and this Agreement. (2) St. Jude shall have authority to make changes in the Work not involving extra costs, but otherwise, no extra Work or change in the Work shall be made unless pursuant to a written Change Order. No claim by Contractor for additional compensation, cost or fee, or any extension of the Substantial Completion Date shall be valid unless so ordered in a written Change Order.

CHANGE ORDER PROCEDURE: Upon receipt of a request from St. Jude for extra Work or changes in the Work, the Contractor shall furnish to St. Jude a statement setting forth in detail the proposal of the Contractor for performing the extra Work or changes and the effect of the extra Work or changes, if any, on the purchase price. If St. Jude approves in writing the proposal of the Contractor, a Change Order in the form provided by St. Jude shall be executed by the parties.

FORCE ACCOUNT: In the event that St. Jude and the Contractor cannot agree on the amount that is due to the Contractor for a Change Order or for work considered by the Contractor to be outside the scope of Work, St. Jude may direct the Contractor to proceed with the performance of such Work by a directive given by St. Jude.

UNCONDITIONAL OBLIGATION TO PROCEED: Notwithstanding anything herein to the contrary, the Contractor will proceed with the Work so as to complete the Work on or before the Substantial Completion Date even if it has a dispute with St. Jude concerning the amount to be paid to the Contractor pursuant to a Change Order, a directive or otherwise.

EXAMINATION OF WORK SITE AND OTHER CONDITIONS: The Contractor acknowledges that it has, by careful examination, satisfied itself as to the nature and location of the Work ("Site" or "Work Site"), the character, quality and quantity of the materials, equipment, tools, supplies, appliances, and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which could reasonably affect the Work.

NO ORAL MODIFICATIONS: No oral agreement or conversation with any officer, agent, or employee of St. Jude or its representatives, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations contained in this Agreement or any applicable Contract Documents. No extra compensation will be due from St. Jude as a result of the Contractor not being aware of any matter which it should have known of that might affect the Work. The silence, action, or failure to act by the Contractor or St. Jude shall not affect or modify any of the terms or obligations contained in this Agreement or any applicable Contract Documents.

THE REPRESENTATIVE OF ST. JUDE: John Curran or his designee as identified in writing shall be the Representative of St. Jude. The Representative of St. Jude shall have full authority to stop the Work whenever in the best judgment of the Representative of St. Jude, such stoppage may be necessary to insure the proper execution of the Work. The Representative of St. Jude shall have authority to reject any Work and materials which do not conform to any applicable Contract Documents or that is not good quality work, and to decide questions which arise during the execution of the Work. The Representative of St. Jude shall also designate in writing all persons affiliated with St. Jude who are authorized to have access to the Work. St. Jude shall have the right to replace the Representative of St. Jude at any time with or without cause.

THE PROJECT MANAGER OF THE CONTRACTOR: The Contractor shall designate in writing to St. Jude and keep on the Work during its progress a competent Project Manager satisfactory to St. Jude. The Project Manager shall be changed upon written request of St. Jude, but shall not be changed by the Contractor except with the consent of St. Jude, unless the Project Manager ceases to be in its employ. The Project Manager shall represent the Contractor, and all directions given to the Project Manager by St. Jude shall be binding as if given to the Contractor directly. The Project Manager shall direct, coordinate and supervise all Work, inspect all materials delivered to the Project to ascertain whether or not they comply with the requirements of any applicable Contract Documents, and reject all non-conforming materials or workmanship.

ORDER AND DISCIPLINE: The Contractor shall at all times be responsible for enforcing strict discipline and good order among its employees. If any person on the Work Site shall appear to be incompetent, disorderly or intemperate, in any way disrupts or interferes with the Work, or is in any other way disqualified for or unfaithful to the job entrusted to him, such person shall be discharged immediately.

CLEANING UP: During and after the performance of the Work, the Contractor shall keep the site of the Work clean and free of all rubbish, waste materials, debris, and other materials. All materials delivered to the site of the Work shall be stored and handled as to preclude inclusion of any foreign substances, and to prevent any discoloration or damage which might reduce its effectiveness as part of the Work.

SAFETY AND SECURITY: The Contractor shall provide for and oversee all job site security, safety orders, precautions, and programs necessary for the safety and security of the Work and the Work Site. The Contractor shall use its best efforts to insure the safety and the security of all persons involved in the Work, all other persons whom the Work might affect, all equipment and materials incorporated or used in the Work, all property on the Work Site or adjacent to the Work Site, and St. Jude's business operations which are functioning on the Work Site or the St. Jude campus. The Contractor shall adhere to and follow faithfully any reasonable additional security procedures, programs, rules, and orders that may be established by St. Jude, including but not limited to those adopted in order to comply with the Joint Commission standards for construction and infection control.

ST. JUDE'S RIGHT TO REVIEW THE WORK: (1) St. Jude and persons designated by St. Jude shall at all times have access to the Work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for a detailed review of the Work by St. Jude. If St. Jude discovers any defective Work in connection with any review, it shall report such defective Work to the Contractor, and the Contractor shall, at its cost, correct the defective Work. (2) If any laws, ordinances, rules, or regulations, or any public authority require any of the Work to be specifically tested or inspected, the Contractor shall give St. Jude timely notice of its readiness for inspection and testing, and, if the test or inspection is performed by an authority other than St. Jude, of the date set for such test or inspection. Inspections by St. Jude shall be promptly made and, where practicable, at the source of supply. If any of the Work should be covered up without the approval or consent of St. Jude or any necessary authority, it shall be uncovered for examination, if required by St. Jude or such other authority, at the sole expense of the Contractor. (3) Re-examination of questioned Work that has been previously inspected by St. Jude may be ordered by St. Jude and, if so ordered, the questioned Work shall be uncovered by the Contractor. If such Work is found to be in compliance with any applicable Contract Documents and/or of good quality, St. Jude shall pay the actual documented and verified cost of the re-examination. If such Work is found not to be in compliance with any applicable Contract Documents or not good quality work, the Contractor shall bear the costs of the re-examination.

COMPLIANCE WITH LAWS: The Contractor shall give all notices and shall comply with all applicable federal and state laws (including the Fair Labor Standards Act), orders, rules, regulations, requirements, and executive orders, including but not limited to the requirements of The Joint Commission pertaining to construction and infection control, of any public authority having jurisdiction over the Work which have any bearing on the execution of the Work. If the Contractor discovers or should have discovered that any applicable Contract Documents are at variance in any respect with any such laws, ordinances, rules, regulations, orders, or requirements, it shall promptly notify St. Jude in writing. Contractor and its officers, employees, agents, contractors, and subcontractors shall perform all duties under these Terms and Conditions in strict compliance with international and U.S. Federal, state, and local laws, rules, regulations, and ordinances, and shall comply with all applicable laws, rules, regulations, and policies of all governmental authorities and accrediting agencies having jurisdiction over physicians, allied health professionals, or these Terms and Conditions, including the Foreign Corrupt Practices Act, Bribery Act, the applicable standards of the World Medical Association, and the prevailing community standard of care. If, after the

Contractor discovers or should have discovered any variances, the Contractor fails to give such notice or executes any of the Work in a manner contrary to any such laws, ordinances, rules, regulations, orders, or requirements, Contractor shall bear all resulting costs to correct said Work to comply with such laws ordinances, rules, regulations, orders, and requirements and shall be liable for any resulting fines, penalties, judgments, settlements, or damages imposed on or incurred by St. Jude.

ANTI-TERRORISM. Contractor is familiar with the U.S. Executive Orders and laws (including but not limited to E.O. 13224, P.L. 107-56, and FAR 52.225-13) that prohibit provision of resources and support to sanctioned persons or individuals or organizations associated with terrorism and terrorist related lists promulgated by the U.S. Government, the United Nations, and the European Union, and shall use reasonable efforts to ensure that none of the funds that St. Jude provides under this Agreement will be used in support of or to promote violence, terrorist activity or related training, or money laundering. To the best of Contractor's knowledge, Contractor has not provided during the previous ten (10) years, and will take reasonable steps to ensure that Contractor does not and will not knowingly during the term of this Agreement, provide support or resources to any individual or entity that is or has been sanctioned or has committed, attempted to commit, advocated, facilitated, or participated in violence, terrorist acts, or money laundering.

EXPORT CONTROL. Contractor, its affiliates, agents, and subcontractors agree to comply with all U.S. export control laws, rules, and regulations. If Contractor is providing any goods, data or services that are controlled by the Departments of State, Commerce, Treasury, or Homeland Security regulations related to export control, as modified from time to time, it must notify St. Jude (by fax at 901-595-3963), and receive prior authorization from, St. Jude before delivery. St. Jude must be notified before Vendor ships export-controlled material to St. Jude. The notification provided by Contractor must identify each export-controlled commodity, provide the associated U.S. Munitions List (USML) category number(s), and indicate whether or not the determination was reached as a result of a commodity jurisdiction or self-classification process. Contractor agrees that if it fails to notify St. Jude that it is providing export-controlled items, data or services, it shall reimburse St. Jude for any fines, legal costs and other fees imposed by the above-named regulatory agency for any violation of export controls regarding the provided items, data or services.

PAYMENT OF TAXES BY CONTRACTOR: Any usual and customary taxes, excise, duties and assessments in any manner levied, assessed or imposed upon a contractor or a subcontractor by any government subdivision, public corporation or agency having jurisdiction over the Work (other than taxes on the real property owned by St. Jude) shall be paid for by the Contractor without reimbursement from St. Jude. The Contractor shall promptly pay and discharge when due, unless the validity or application is being contested by the Contractor in good faith, any usual and customary taxes, excises, duties and assessments, together with any interest and penalties, if any.

AUDITS:

(1). St. Jude's Right to Audit: The Contractor shall keep full and accurate records of all costs incurred and items billed in connection with the Work, which records shall be open to audit by St. Jude, or any authorized representative of St. Jude, during the course of the Work and until five (5) years after Final Payment by St. Jude. In addition, the Contractor shall make it a condition of all subcontracts and sub-subcontracts entered into in furtherance of the Work that any and all subcontractors and sub-subcontractors will keep accurate records of costs incurred and items billed in connection with the subcontract (or sub- subcontract), and that such records shall be open to audit by St. Jude, or any authorized representative of St. Jude,

during the course of the Work of the subcontractor (or sub-subcontractor) and until five (5) years after Final Payment by St. Jude to the Contractor.

(2). Health And Human Services Audit: Should the provisions of section 952 of the Omnibus Reconciliation Act of 1980 [42 U.S.C. 1395X (V) (1)] (the "Act") apply to this Agreement, then Contractor agrees to abide by the terms of the Act and its interpretive regulations including, but not limited to, maintenance of records concerning services and costs incurred under this Agreement. Pursuant to the foregoing, Contractor agrees that until the expiration of four (4) years after the furnishing of any goods and services pursuant to this Agreement, it will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of this Agreement, all Contract Documents, and any books, documents, records and other data of Contractor that are necessary to certify the nature and extent of the costs incurred by St. Jude in purchasing such goods and services. If Contractor carries out any of its duties under this Agreement through a subcontract with a related organization involving a value or cost of ten thousand dollars (\$10,000) or more over a 12-month period, Contractor will cause such subcontract to contain a clause to the effect that, until the expiration of four (4) years after the furnishing of any good or service, pursuant to said contract, the related organization will make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of this Agreement, the Contract Documents, and any books, documents, records and other data of said related organization that are necessary to certify the nature and extent of costs incurred by St. Jude for such goods and services. Contractor shall give St. Jude notice immediately upon receipt of any request from the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives for disclosure of such information.

THE RIGHT OF ST. JUDE TO AWARD SEPARATE CONTRACTS: St. Jude reserves the right to award other contracts at or in the vicinity of the Work, and the Contractor agrees to cooperate fully and not to unreasonably interfere with the work of such other contractors.

COOPERATION: The Contractor shall afford the other contractors of St. Jude the opportunity for the introduction and storage of their materials, products, and equipment and the execution of their work, and shall properly coordinate the Work with the work of other contractors.

INSPECTION OF WORK OF OTHER CONTRACTORS: If any part of the Work depends for proper execution or results upon the work of any other contractor of St. Jude, the Contractor shall inspect and promptly report to St. Jude any known discrepancies or defects in such work that the Contractor discovers or should have discovered that render it unsuitable for such proper execution or results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the work of the other contractor as fit and proper to receive the Work.

WARRANTY OF TITLE: The Contractor warrants and guarantees that title to all Work, materials, products and equipment covered by an invoice or request for payment, whether incorporated in the Work or not, will pass to St. Jude free and clear of all liens, claims, security interests or encumbrances and that none of the Work, materials, products or equipment covered by an invoice or request for payment will have been acquired by the Contractor, or by any other person performing any part of the Work or furnishing materials and equipment for the Work, subject to an agreement under which a lien is retained by the seller or supplier.

ASSIGNMENT OF WARRANTIES: The Contractor hereby assigns to St. Jude any and all existing assignable warranties, service life policies, and indemnities, including indemnities for infringement or misappropriation of intellectual property of or relating to manufacturers of equipment or items incorporated in the Work. Upon the request of St. Jude, the Contractor shall enforce such rights of St. Jude on behalf of St. Jude and give St. Jude assistance in enforcing the rights of St. Jude arising under such warranties, service life policies and indemnities. At the request of St. Jude, the Contractor shall give notice (with copies to St. Jude) to any such manufacturers of the assignment of such warranties, service life policies, and indemnities.

GENERAL WARRANTY AND CORRECTION OF WORK: (1) In addition to any special guarantees or warranties contained in any applicable Contract Documents, the Contractor warrants to St. Jude that all materials, products, appliances, supplies, and equipment furnished in performance of the Work will be new unless otherwise specified, and that all Work will be performed according to the standard of care for the industry, and will be of good quality, free from faults and defects, and in conformance with this Agreement and any applicable Contract Documents. All work not so conforming to these standards shall be considered defective and shall be corrected by the Contractor at no cost to St. Jude. (2) The Contractor shall promptly correct all defective or non-conforming Work whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such defective Work. (3) If, within one (1) year after the completion of the Work or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee or warranty in or required by any applicable Contract Documents, any of the Work is found to be defective, the Contractor shall correct such Work promptly after receipt of a written notice from St. Jude to do so.

RIGHT OF ST. JUDE TO DO WORK: If the Contractor should neglect to prosecute the Work properly or fail to do anything required by any applicable Contract Documents, and St. Jude does not receive assurances from the Contractor of due performance satisfactory to St. Jude within three (3) days after written demand is made, then St. Jude may, without prejudice to any other remedy it may have under this Agreement or at law or in equity, make good any deficiencies in the Work and deduct all costs of doing so from the payment then due, or any payment thereafter due the Contractor.

DEDUCTION FOR UNCORRECTED WORK: If St. Jude deems it inexpedient to correct deficiencies in the Work, St. Jude may deduct the reasonable cost of such corrections from the payment then due, or any payment thereafter due the Contractor, but the making of such deduction shall in no way be deemed an election of remedies by St. Jude.

LIABILITY INSURANCE: Prior to the commencement of any operations by or on behalf of the Contractor relating to the Work, and with respect to any and all such operations, the Contractor shall procure and thereafter maintain in full force and effect with insurers acceptable to St. Jude, insurance coverage as follows, and provide evidence thereof to St. Jude. (A) **Contractor's Comprehensive Automobile Liability Insurance.** A certificate of insurance and copy of endorsement shall be provided as evidence of: (1) coverage for St. Jude, its officers, directors and employees as additional insureds; (2) coverage to apply to all liability arising out of the ownership or use of an automobile; (3) coverage to include provision for not less than thirty (30) days' notice of cancellation for non-renewal by certified mail to St. Jude and Contractor; (4) coverage to be provided by Contractor's primary general liability insurance carrier. This insurance shall be for an amount not less than \$1,000,000 combined single limit liability. (B) **Contractor's Workers' Compensation and Employer's Liability Insurance.** A certificate of insurance or, at St. Jude's request, a certified policy copy, shall be provided as evidence of: (1) coverage for claims for damages arising out of bodily injury, occupational sickness or disease or death of Contractor's employees under any applicable workers' compensation statute or any other applicable employers' liability law; (2) a waiver of subrogation by the insurer

against St. Jude, its officers, directors and employees; (3) a policy requirement that not less than thirty (30) days' notice of cancellation or non-renewal be provided by St. Jude by certified mail. This insurance shall include employers' liability limits of not less than \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease each employee, and \$3,000,000 bodily injury by disease in the aggregate. (C) Evidence of Contractor's Primary and Excess Liability of Umbrella Liability Insurance. Certificates of insurance and copies of endorsements to Contractor's primary comprehensive general liability policy and umbrella policy shall be provided as evidence of: (1) coverage for St. Jude, its officers, directors and employees as additional insureds; (2) coverage shall be primary and non-contributing with any coverage or program of self-insurance St. Jude maintains in its own name and on its own behalf; (3) coverage shall include Broad Form Comprehensive General Liability Endorsement or its successor; (4) waivers of subrogation by insurers against St. Jude, its officers, directors and employees; (5) Contractual Liability Insurance applicable to the indemnification agreement contained herein; (6) policy requirements that not less than thirty (30) days' notice of cancellation or non-renewal be provided to St. Jude by certified mail. The umbrella insurance shall be for an aggregate amount of not less than \$2,000,000 excess of the amounts of primary Comprehensive General Liability Coverage in the amount of \$1,000,000.00, and it shall specify that it is primary after Contractor's CGL policy with respect to St. Jude.

CONTRACTOR'S INSURANCE PRIMARY: Any coverage applicable to St. Jude under Contractor's insurance policies shall be primary and non-contributing with any insurance coverage or program of self-insurance maintained by St. Jude in its own name and on its own behalf. Copies of endorsements to Contractor's policies shall be provided to St. Jude.

NO CANCELLATION: All insurance obtained by the Contractor pursuant to this Agreement shall be written by insurance companies licensed to do business in Tennessee and acceptable to St. Jude. All such insurance shall be in form and substance satisfactory to St. Jude and shall provide that it will not be subject to cancellation, termination or change except after thirty (30) days' prior written notice to St. Jude.

INSURANCE CERTIFICATES: The Contractor shall furnish to St. Jude prior to commencement of the Work certificates of insurance reflecting policies in force, and shall also provide certificates evidencing all renewals of such policies.

THE RIGHT OF ST. JUDE TO MAINTAIN INSURANCE: In the event the Contractor fails to furnish and maintain the required insurance or to furnish certificates of insurance, St. Jude shall have the right, at its option, to terminate this Agreement or to take out and maintain such insurance, and hold the Contractor liable for the cost. Compliance by the Contractor with these requirements shall in no way relieve the Contractor from liability under any provision of this Agreement or any applicable Contract Documents.

PROPERTY WHILE OUTSIDE THE UNITED STATES AND CANADA: If any property related to the Work is in transit or is located outside the continental United States or Canada for any reason, Contractor shall arrange to insure such property for its full replacement value separately from and primary to any Builders Risk, Owners Protective, or other insurance provided by St. Jude or any program of St. Jude for self-insurance. Contractor shall comply with all applicable import laws, statutes, ordinances, and regulations.

NO LIMITATIONS ON LIABILITY: Nothing in this Agreement, including St. Jude or Contractor furnished insurance, is to be construed as either a limitation or release of the Contractor's liability to St. Jude.

INDEMNIFICATION BY THE CONTRACTOR: To the fullest extent permitted by law, Contractor, on behalf of itself, its subcontractors, sub-subcontractors, their agents, their employees or any entity or person for which the Contractor is or may be responsible (all of said parties are herein sometimes collectively referred to as the "Indemnitors") shall fully indemnify, save and hold St. Jude, its agents, employees, officers, directors, partners and related entities (all of said parties herein collectively referred to as the "Indemnitees") harmless from and against all liability, damage, loss, claims, demands, actions, and expenses of any nature whatsoever, including, but not limited to reasonable attorney's fees and costs which arise out of or are connected with: (i) any negligent act, any wrongful act, or any error or omission by any Indemnitor in the performance of this Agreement; or (ii) the failure of any Indemnitor to comply with the laws, statutes, ordinances, or regulations of any governmental or quasi-governmental authority; or (iii) the material breach of any term or condition of this Agreement by any of the Indemnitors; or (iv) injury to Contractor's employee, agent, contractor, subcontractor, or representative while performing the Work related to this Agreement even if such Work is being performed off St. Jude's campus. Without limiting the generality of the foregoing, the indemnity hereinabove set forth shall include all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss to any third party, any Indemnitee, any of Indemnitee's employees, agents, licensees or invitees relating to the Work. The indemnity set forth herein shall survive any termination of this Agreement. Consistent with Tenn. Code. Ann. § 62-6-123, this Agreement does not require Contractor to indemnify or hold harmless St. Jude for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of St. Jude, its agents or employees.

EVENT OF DEFAULT: (A) For the purposes of this Agreement, an event of default shall be if: (1) At any time there shall be filed by or against the Contractor in any court a petition in bankruptcy or insolvency or for reorganization of Contractor or for the appointment of a receiver or trustee of all or a portion of the property of the Contractor, and within twenty (20) days from the filing date the Contractor fails to secure a discharge; or (2) The Contractor makes an assignment for the benefit of creditors or petitions for or enters into an agreement or arrangement with its creditors; or (3) The Contractor fails to timely and properly prosecute the Work, or fails to complete the Work entirely on or before any date established for partial, substantial or final completion; or (4) The Contractor fails to make prompt and timely payment to its subcontractors or for materials or labor used in the Work; or (5) The Contractor fails to supply sufficient labor, material, services and/or equipment so as to complete the Work timely and in accordance with any applicable Contract Documents; or (6) The Contractor performs defective Work and fails to promptly and properly correct such defective Work; or (7) Without limitation, the Contractor fails to properly or timely perform any provision of this Agreement or any applicable Contract Documents. (B) Upon the occurrence of an Event of Default, St. Jude may, after seven (7) days' prior written notice to the Contractor, and without prejudice to any other remedy St. Jude may have, terminate this Agreement and take possession of all or some of the materials, tools, equipment and appliances of the Contractor, and complete the Work by such means as St. Jude deems appropriate. In such case, the Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid amount owed to Contractor hereunder shall exceed the aggregate of: (1) the expenses of St. Jude completing the Work, including compensation for additional managerial, architectural and administrative services; and, (2) the losses and damages of St. Jude, including reasonable attorneys' fees and litigation expense because of the default of Contractor, such excess shall be paid to the Contractor. If the expense of completing the Work and the losses and damages of St. Jude, including reasonable attorneys' fees and litigation expenses, shall exceed the unpaid amount owed to the Contractor hereunder, the Contractor shall pay the difference to St. Jude promptly on demand.

TERMINATION FOR CONVENIENCE: St. Jude may terminate this Agreement for its convenience without cause, by giving seven (7) days' prior written notice to the Contractor. In such event, St. Jude will pay the Contractor for that portion of the amount to be paid hereunder, less the aggregate of previous payments, allocable to the Work completed by the Contractor as of the date of termination. St. Jude will also reimburse the Contractor for its documented costs paid by the Contractor, but not including any loss of profits, or any loss of profits of its subcontractors, suppliers, Contractors and materialmen, necessarily incurred by the Contractor for organizing and carrying out the stoppage of the Work. St. Jude will not be responsible to reimburse the Contractor for any of its continuing contractual commitments to subcontractors, suppliers, Contractors and materialmen or for penalties or damages for canceling such contractual commitments, and the Contractor shall make all of its subcontracts and other commitments subject to this provision.

HAZARDOUS MATERIAL COVENANTS: (A) Contractor hereby represents and warrants to and for the benefit of St. Jude that the Work Site will not be used or operated in any manner that will result in the storage, use, treatment, manufacture and disposal of any Hazardous Materials (hereinafter defined) upon the St. Jude Campus, Work Site or any portion thereof or which will result in Hazardous Materials contamination (hereinafter defined). For purposes hereof, the term "Hazardous Materials" shall mean and refer to (i) any "hazardous waste" as defined by Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et. seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) urea formaldehyde; (vi) any substance the presence of which on the premises is prohibited by any applicable environmental laws or regulations including but not limited to the Hazardous Material Transportation Act, as amended (49 U.S.C. § 1801, et seq.), the Toxic Substance Control Act amended (15 U.S.C. § 2601, et seq.) or by any other federal, state, or local legal requirements affecting the Work or the Work Site or the air or water at and adjacent to it (hereinafter referred to as "Laws"); (vii) petroleum-based materials (with the exception of tires affixed to vehicles); (viii) lead, including lead based paints; and (ix) any other substance which is defined as hazardous, toxic, infectious, or radioactive by any Laws or any other law relating to chemicals, the environment, radioactive materials, or medical waste or by any other legal requirements affecting the Work Site. The term "Hazardous Materials Contamination" shall mean and refer to the contamination of or presence on the Work Site or the St. Jude Campus, soil, surface water, ground water, air, or other elements on, or of, the buildings, facilities, soil, surface water, ground water, air or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating from the Work Site or brought upon the St. Jude Campus by Contractor. (B) In addition to and without limiting the generality of any other provision of this Agreement, Contractor shall and hereby does agree to defend, indemnify and hold St. Jude, its agents, employees, officers, directors, partners and related entities, harmless from and against any and all losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs and liabilities, including, but not limited to, attorney's fees and costs of litigation, and costs and expenses of response, remedial and corrective work and other cleanup activities, arising out of or in the manner connected with (i) the "release" or "threatened release" (as those terms are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) caused or contributed to by Contractor or Contractor's employees, agents, delegates, invitees, licensees, concessionaires, subcontractors, sub-subcontractors, or representatives, of any Hazardous Materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Work or Work Site. The provisions of this Section shall survive any payment or satisfaction of this Agreement and shall remain in full force and effect.

NO WAIVER: No consent or waiver, express or implied, by either party to or of any breach or default by the other in the performance of any of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party. Neither the silence of St. Jude nor St. Jude's failure to complain of any act or failure to act of the Contractor or to declare the Contractor in default, irrespective of how long such failure continues, shall constitute a waiver of any right of St. Jude.

CONFLICTS: In the event of any conflict between the terms, conditions, obligations or provisions expressed in this Agreement and any term, condition, obligation or provision in any applicable Contract Documents, the term, condition, obligation or provision of this Agreement shall govern to the extent of the conflict.

ASSIGNMENT: This Agreement shall not be assigned, delegated or transferred in whole or in part by the Contractor nor shall the Contractor assign any monies due or to become due to it without the prior written consent of St. Jude, and in no event shall an assignment of monies due or to become due waive any claims or defenses of St. Jude against Contractor.

CHOICE OF LAW, JURISDICTION, AND VENUE: This Agreement is entered into in Tennessee and shall be governed by and construed according to the laws of Tennessee. Contractor agrees that the Work under this Agreement is provided in Shelby County, State of Tennessee. Any dispute arising from or out of this Agreement shall be resolved in a federal or state court of competent jurisdiction and venue in Memphis, Tennessee.

PARTIES IN INTEREST: This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors, assigns and legal representatives.

SEVERABILITY: If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but it shall be construed as closely as possible to effect the original intent of the parties as manifested by the stricken provision.

NOTICES: All notices, requests, consents and other communications under this Agreement shall be in writing and provided to the designated representative of the entity notified.

ENTIRE AGREEMENT: This Agreement, together with the Contract Documents, constitutes the entire agreement between St. Jude and the Contractor and supersedes all prior written or oral agreements, understandings, representations, negotiations and correspondence between the parties. This Agreement shall not be supplemented, amended, or modified by the silence of St. Jude, a failure of St. Jude to act, any course of dealing, course of performance, or usage of trade, and this Agreement may only be amended or modified by a written instrument signed by authorized representatives of both parties.

NON-DISCRIMINATION AND AFFIRMATIVE ACTION: The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) ii and 41 C.F.R. § 60-741.5(a), if applicable. St. Jude, as a government contractor, and Contractor, to the extent applicable, shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). 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 (including pregnancy and transgender status), 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 (including pregnancy and transgender status), sexual orientation, gender identity, national origin, protected veteran status, or disability. Contractor also shall not discriminate based upon age, genetic information, payment source, or marital status, as applicable. Contractor affirms that it is an equal opportunity and affirmative action employer and complies with all applicable federal, state, and local laws and regulations. Contractor will maintain a work environment free from discrimination, disruption, intimidation, coercion, and harassment. Upon Contractor's request, Contractor will notify St. Jude promptly of incidents in which the rights of St. Jude employees, patients, visitors, or physicians may have been violated.

MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION: (A) St. Jude and Contractor recognize the positive benefits of initiatives to encourage the development of minority and women business enterprises and local business in general. Therefore, the Contractor affirmatively covenants that, in the selection of all employees and consultants who perform services related to the Work, significant minority and women business enterprises and local business participation will be sought commensurate with the availability of such qualified businesses in the relevant markets. (B) **Subcontract Diversity/Small Business Requirements.** The Contractor further agrees to the extent possible to award subcontract work to small businesses and diversity Contractors. St. Jude is a member of the Mid-South Minority Business Council (MMBC) and St. Jude will provide the Contractor with MMBC's list of certified diversity partners. St. Jude is also a member of the Small Business Administration and the Memphis Chamber of Commerce. The following definitions apply: (1) **Small Business:** St. Jude uses the Small Business Administration's definition: A small business is one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding 12 months or on sales volume averaged over a three-year period. (2) **Local Small Business:** St. Jude uses the Small Business Administration's definition: A local small business is a small business as defined above located in the Memphis Metropolitan Statistical Area (MSA), as defined by the United States Census Bureau. This includes the five-county area consisting of Fayette, Shelby and Tipton Counties in Tennessee, DeSoto County in Mississippi and Crittenden County in Arkansas. (3) **Small Disadvantaged Business:** St. Jude uses the Small Business Administration's definition: A small disadvantaged business is a small business, unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and must demonstrate potential for success. Economically disadvantaged individuals are: Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands [Republic of Palau], Commonwealth of the Northern Mariana Islands, Laos, Cambodia [Kampuchea], Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru; Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal), or members of other groups designated by the SBA. (4) **Women Owned Small Business:** St. Jude uses the Federal Acquisition Regulation's (FAR) definition: A women-owned small business is a small business concern which is at least 51 percent owned by one or more women in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women. (5) The Contractor shall provide St. Jude with a list of diversity/small business contractors used and shall state the dollars spent with each such subcontractor. The Contractor shall provide written documentation to St. Jude of their efforts toward compliance. It is understood and agreed that the Contractor's

obligation under this section is to use its best efforts and that no minimum amount of diversity/small business contractor participation is required.

TAX EXEMPTION: Contractor recognizes that St. Jude is a non-profit organization, exempt from federal and state income tax, federal transportation taxes and certain state and local sales and use taxes. St. Jude is not required to pay such taxes and such taxes should not be charged. Proper certification will be furnished as required. In the event that a third party asserts that St. Jude must pay taxes pursuant to this Agreement, St. Jude agrees that it will work directly with the third party to resolve the matter.

CONFIDENTIALITY: (1) Contractor shall hold confidential whether or not marked, and shall not without St. Jude's written consent, use, copy or disclose to any persons, except its personnel with a need therefore in the course of performance of Contractor's obligations hereunder, any confidential information, including but not limited to designs, drawings, specifications, technical data, models, manufacturing processes or methods, trade secrets, or other proprietary data, or any other information relating to St. Jude's operations, which have been delivered or disclosed to Contractor by St. Jude, or observed by Contractor, its agents and employees, or any patient information to which Contractor, its agents and employees may have access, and Contractor shall inform any person to whom any such information is disclosed in the performance of the Work of Contractor's obligation of confidentiality with regard thereto. In addition, Contractor shall not, without St. Jude's written consent, advertise, publish or release any statement mentioning St. Jude or the fact that Contractor has furnished or contracted to furnish St. Jude with the goods or services described herein or otherwise use the name of St. Jude or disclose to any third party any information related to this Agreement, the Contract Documents, or the terms thereof. (2) St. Jude shall have the right to disclose pricing and other terms of this Agreement to St. Jude's attorneys, accountants, group purchasing organizations, and other third parties retained by St. Jude (collectively "St. Jude's Consultants") provided any such St. Jude Consultant agrees to the same level of confidentiality set forth herein. (3) Both parties acknowledge that the restrictions relating to confidential information contained in this Agreement are reasonable and necessary, that violation of these restrictions could cause damage to St. Jude, and that St. Jude will be entitled to injunctive relief against, and damages for, each violation. Contractor shall require all subcontractors to comply with the requirements of this paragraph. The Contractor agrees to reimburse St. Jude for any damages and expenses, including but not limited to attorneys' fees and costs incurred due to or because of any violation by the Contractor or its subcontractors this paragraph. This obligation of confidentiality shall survive the termination or expiration of this Agreement.

CONFIDENTIALITY OF HEALTH INFORMATION: Contractor and its employees and agents may not disclose or share the identity of any St. Jude patient or any protected health information of St. Jude to which Contractor or its employees or agents may gain access."

O.S.H.A. (OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION): All chemicals, equipment and materials proposed and/or used in the performance of the Work shall conform to the standards required by O.S.H.A.

COMPLIANCE WITH LAWS AND REGULATIONS: Contractor represents and warrants that all products and/or services furnished hereunder have been or will be manufactured or furnished in accordance with, and Contractor agrees to comply with, the provisions of all applicable federal and state laws (including the Fair Labor Standards Act), all lawful orders, rules, and regulations issued thereunder, and all executive orders or regulations of any Executive Department of the Government.

INTENT OF THE PARTIES: If it not the intent of St. Jude or Contractor that any payments made under this Agreement or the Contract Documents be in return for the referral of ongoing business, if any, or in return for the purchasing, leasing, or ordering of any services described in this Agreement. All payments specified in the Contract Documents are consistent with what the parties reasonably believe to be a fair market value for the goods or services provided.

DISCLOSURE OF DISCOUNTS: Contractor acknowledges that St. Jude may report the cost of goods or services purchased from Contractor to government agencies. Contractor will provide accurate and complete information to St. Jude on the purchase price of the goods, including any discounts and rebates, so that St. Jude may fulfill such obligations

EXPORT CONTROL: Contractor, its affiliates, agents, and subcontractors agree to comply with all U.S. export control laws, rules and regulations with respect to its use and any permitted distribution of the materials.

INDEPENDENT CONTRACTOR: (A) The relationship of Contractor and St. Jude shall be and is that of independent contractor. It is not intended that any employer-employee, joint venture or partnership be established hereby, expressly or by implication, nor shall any employee, agent or contractor of Contractor be deemed to be the employee or agent of St. Jude or vice versa. Neither party nor any of its employees or agents shall have the right to bind the other, to transact any business in the other's name or on behalf of the other, or to make any promises or representations on behalf of the other. (B) All employees or agents of Contractor providing or performing services at the St. Jude premises shall be required to be familiar with and comply with the St. Jude Children's Research Hospital Contractor Code of Conduct which can be found at: www.stjude.org/vend.

DEFICIT REDUCTION ACT COMPLIANCE: Contractor is referred to the DRA Notice to Vendors available at www.stjude.org/vend.

CONDUCT: The Contractor agrees that while it, its employees, agent, officers, and assigns are on the St. Jude premises, if applicable, they will, the rules, regulations, policies and procedures, and standards of conduct, including ethical and professional standards and including St. Jude's Vendor Code of Conduct, available at www.stjude.org/vend. The Contractor, its employees, agents, officers, and assigns shall abide by St. Jude's rules, regulations, policies and procedures, and standards of conduct, including ethical and professional standards, and conduct themselves in a professional manner. The Contractor, its employees, agents, officers, and assigns shall wear appropriate attire and display proper identification at all times while on St. Jude's premises. The Contractor, its employees, agents, officers, and assigns shall comply with St. Jude's non-smoking policy. Upon St. Jude's request, Contractor will certify in writing its ongoing commitment to St. Jude's Code of Conduct.

EXCLUSION: Contractor represents and warrants that neither it nor any of its employees are or have been excluded, terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs. Contractor further represents that no final adverse action by the federal or a state government is threatened or pending, or has occurred, against Contractor, its affiliates, or to its knowledge, against any employee, or any agent employed to provide goods or services pursuant to this transaction. Contractor further represents and warrants that it neither it nor any employee has been convicted of a criminal offense as set forth in 42 U.S.C. § 1320a-7,

including but not limited to an offense related to the provision of healthcare items or services. Contractor will immediately notify St. Jude of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give St. Jude the right to terminate the Agreement and the Work immediately for cause.

USE OF ST. JUDE'S NAME: Contractor may not use St. Jude's name, trade or service marks, or logos, except upon the prior written consent of the American Lebanese Syrian Associated Charities' Chief Executive Officer, Chief Operating Officer, or his designee, in concurrence with St. Jude's Chief Executive Officer. Contractor shall take such actions as are necessary to ensure that the limitations contained in these provisions are communicated to employees and Board members and that the limitations are observed. Contractor and its employees or representatives may not approach a St. Jude patient or family for purposes of stories, profiles, testimonials, news, public awareness, or any other publicity. St. Jude will initiate and manage any St. Jude patient or family publicity that is appropriate, according to St. Jude's standards and patient protections.

AUTHORIZATION TO WORK IN THE UNITED STATES: Contractor represents and warrants that its personnel performing work under this Agreement are legally authorized to work in the United States.

BACKGROUND CHECK: Contractor recognizes that St. Jude is a pediatric research hospital whose patients are primarily children. Contractor represents and warrants that it has ensured that its personnel performing work on the St. Jude premises under this Agreement are not listed in the Tennessee Sex Offender Registry, National Sex Offender Registry, or Tennessee Abuse Registry (links to which are available at <http://health.state.tn.us/PublicChapter1084.htm>).

SET OFF: St. Jude may set off against any amounts due Contractor hereunder any amounts (or claims for amounts) due by Contractor to St. Jude or any of its partners or their affiliates arising either in connection with the goods or services to be provided hereunder or in connection with matters unrelated to this Agreement.

CONTRACTOR'S LICENSE: The Contractor represents and warrants to St. Jude that it is properly licensed to perform the Work as required by Tenn. Code Ann. § 62-6-103, et seq.

SUNSHINE ACT REPORTING. St. Jude is not a teaching hospital under the Patient Protection and Affordable Care Act's "Sunshine Act" provisions, and therefore this is not a reportable transfer of value under the Patient Protection and Affordable Care Act.

BUSINESS CONTINUITY. Notwithstanding the Force Majeure terms in these Terms and Conditions, whenever, due to fire, accident, local labor dispute, or other disaster, crisis, or emergency that affects St. Jude ("Emergency"), Contractor shall use its best efforts to treat St. Jude as first priority in Contractor's performance. It is Contractor's responsibility to anticipate, prepare for, and fulfill all contract obligations in an Emergency and respond to St. Jude's needs promptly.