



St. Jude Children's Research Hospital Terms and Conditions for Goods Purchased

These Terms and Conditions are incorporated into the St. Jude Children's Research Hospital, Inc. (SJCRH) Purchase Order and apply to the exclusion of any other agreements, whether oral or written, between SJCRH and Vendor. These Terms and Conditions may not be varied, superseded, modified, or waived except with the express written agreement of SJCRH. These Terms and Conditions along with the purchase order and transaction(s) which they govern are referred to variously as the "Terms and Conditions" or the "Agreement."

PRECEDENCE. These terms and Conditions apply to SJCRH'S purchase from Vendor 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 Vendor may purport to apply or which are endorsed upon any correspondence, invoice or documents issued by Vendor irrespective of their date of communication to St. Jude. By accepting SJCRH's purchase order or providing goods or services, Vendor is deemed to have accepted these Terms and Conditions to the exclusion of any other terms and conditions in, or referenced in, any other Vendor documents (including but not limited to quotations, acceptance notifications, bills of lading, and invoices). Such additional terms and conditions in Vendor 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 Vendor documentation. Vendor's acceptance of SJCRH's purchase order or providing goods or services, shall constitute, and is expressly conditioned upon, Vendor'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 Vendor 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 SJCRH does not wish to proceed unless Vendor assent to these terms. Vendor 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.

NO WAIVER. SJCRH's failure to enforce its rights under these Terms and Conditions at any time, for any period of time, is not a waiver of those rights

SHIPPING TERMS. Shipping terms for all products covered by these Terms and Conditions shall be net F.O.B. St. Jude Children's Research Hospital, Memphis, Tennessee, Freight Prepaid and Allowed (unless otherwise stated in SJCRH's Purchase Order). Regardless of the F.O.B. point named in the invoice, bill of lading, or any other document, the Vendor will bear the risk of loss until the goods are delivered to, and inspected and accepted by SJCRH. Goods shipped that are not priced in accordance with the Purchase Order or for which permission has not been granted to ship, are subject to return to the Vendor at the Vendor's expense. SJCRH shall not assume responsibility for goods shipped under these circumstances.

DELIVERY. In its acceptance of any quotation offer, SJCRH relies on the promised delivery, installation, or service performance date as material and basic to its acceptance. Because time is of the essence with respect to the delivery of goods and/or services provided under these Terms and Conditions, if Vendor fails to deliver, install, or perform as and when promised, SJCRH may cancel its order, or any part of it, and Vendor agrees that SJCRH may return all or part of any shipment so made, and Vendor will pay for the cost of shipping, return, and any other loss or expense sustained as a result of Vendor's failure to deliver as promised.

INSPECTION AND ACCEPTANCE. No goods received by SJCRH pursuant to these Terms and Conditions are accepted until SJCRH has had reasonable opportunity to inspect, and, if appropriate, test the operation of the goods. All goods which are discovered to be defective or which do not conform to any warranty of the Vendor upon initial inspection or testing at any later time if the defects were not reasonably ascertainable upon the initial inspection or testing, may be returned at the Vendor's expense for full credit or replacement. No goods returned as defective shall be replaced without SJCRH's authorization, but all goods shall be replaced at SJCRH's request. Returns shall in no way affect SJCRH's discount privileges. SJCRH retains any other remedies provided for in these Terms and Conditions and by applicable law, including the Uniform Commercial Code.

INTENT OF THE PARTIES. It is not the intent of either SJCRH or Vendor that any payments made under this Agreement be in return for the referral of ongoing business, if any, or in return for the purchasing, leasing, or ordering of any goods or services. All payments made pursuant to this Agreement are consistent with what the Parties reasonably believe to be fair market value for the goods or services provided.

PAYMENT TERMS. Subject to these Terms and Conditions, SJCRH shall pay to Vendor the purchase price reflected in the SJCRH Purchase Order according to the payment schedule, if any, reflected in the Purchase Order. A price that results from Vendor's oral or written quotation is firm and not subject to change. Other prices may be changed only with the express written permission of SJCRH Materials Management Department. Vendor shall invoice SJCRH for payment in advance, and SJCRH shall make payment within forty-five (45) days following SJCRH's receipt of Vendor's complete, accurate, and undisputed invoice, or on its due date, whichever is later.

GPO AFFILIATION: If SJCRH is a member of a Group Purchasing Organization ("GPO") which has entered into GPO Agreement with Vendor for any or all of the goods provided hereunder, Vendor warrants that SJCRH may access and is receiving pricing at a tier for which SJCRH is eligible, or better. In the event there is a change in SJCRH's GPO at any time during the term of this Agreement, SJCRH may use another GPO Agreement to which SJCRH and Vendor are both parties or may enter into a local agreement for any or all of the products or services provided hereunder. SJCRH will have the right to terminate this Agreement without penalty upon sixty (60) days prior written notice at which time SJCRH and Vendor may enter into a new GPO or local agreement for any or all products or services provided hereunder.

TAX EXEMPTION. SJCRH is a nonprofit organization, exempt from federal and state income tax, federal transportation taxes, and certain state and local sales and use taxes. SJCRH is not required to pay such taxes and such taxes should not be charged. SJCRH will provide proper certification of its tax-exempt status on Vendor's request. If a third party asserts that SJCRH must be charged taxes pursuant to these Terms and Conditions, SJCRH will work directly with the third party to resolve the matter.

TERMINATION. If Vendor fails to deliver as and when specifically promised, SJCRH reserves all rights in the section entitled DELIVERY and also the right to cancel this Agreement or any part of it, without prejudice to its other rights, and Vendor agrees that SJCRH may return all or part of any shipment so made and charge Vendor for the shipment and for any other loss or expense

sustained as a result of such failure to deliver as promised.

Either party may terminate this Agreement if the other party refuses or fails to perform or otherwise breaches any of its obligations under these Terms and Conditions and does not cure the breach or failure to perform within thirty (30) days after receiving written notice specifying the nature of the breach or failure to perform. The cure period does not apply to failure Vendor's to deliver when and as promised. St. Jude may terminate this Agreement without cause upon forty-five (45) days' written notice.

WARRANTIES. SJCRH shall have the right to all Buyer's remedies and all Seller's warranties to the fullest extent provided under the Uniform Commercial Code, including but not limited to warranties of merchantability and fitness, and all such remedies and warranties shall survive inspection, test, acceptance, and payment. All provisions and remedies of the Tennessee Uniform Commercial Code, Tennessee Code Annotated Section 47-1-101 et seq. or successor statute, relating to both implied and expressed warranties are incorporated by reference into these Terms and Conditions. Vendor also warrants that all goods covered by these Terms and Conditions which are of Vendor's design or are Vendor's standard product are in accordance with Vendor's specifications, and will be fit and sufficient for the purpose intended. Vendor further warrants that it has title to the goods being sold; the goods are genuine and not counterfeit, adulterated, misbranded, falsely labeled or advertised or falsely invoiced within the meaning of any applicable local, state or federal laws or regulations; the goods have been labeled, advertised and invoiced in accordance with the requirements any applicable local, state or federal laws or regulations; and Vendor does not and will not violate any law in the sale of the goods.

RECALLS. If goods under this Agreement are the subject of a recall, whether initiated by Vendor, a manufacturer, other vendor, or a government entity (including the issuance of safety notices), Vendor shall promptly notify SJCRH of the recall. Vendor shall specify what goods (or components or parts of them, or kits, packs and groups in which they are sold) are subject to the recall. Vendor shall be responsible for all matters and costs associated with the recall, including but not limited to consumer notification and contact; all expenses and losses incurred by SJCRH in connection with the recall, including but not limited to refunds to SJCRH, lost profits, shipping costs, and all other costs associated therewith; and initial contact and reporting of the recall to any government agency having jurisdiction over the affected goods. If a government agency initiates any inquiry or investigation relating to the goods or similar goods manufactured or supplied by Vendor, Vendor shall notify SJCRH immediately and take reasonable steps to resolve the matter without exposing SJCRH to any liability, risk, or adverse publicity.

CONFIDENTIALITY. Vendor shall hold confidential, whether or not so marked, any oral or written information, regardless of format, that Vendor obtains or uses in connection with performing this Agreement, including but not limited to designs, drawings, specifications, technical data, models, operations information, manufacturing processes or methods, trade secrets or other proprietary data delivered, disclosed, or made available to Vendor by SJCRH, and any patient information to which Vendor, its agents and employees may have access at any time. Vendor shall not without SJCRH written consent use, copy, or disclose this or any other SJCRH confidential information, except to its personnel with a need to know it in order to perform Vendor's obligations hereunder. Vendor shall inform any person to whom any such information is disclosed that Vendor and that person are obligated to strictly maintain the confidentiality of the information. Except upon permission as provided in the section titled "USE OF NAME," Vendor shall not, disclose to a third party, advertise, publish, or release any statement mentioning SJCRH, Vendor's relationship or agreement with SJCRH, any terms contained herein, the fact of discussions between Vendor and SJCRH, or the fact that Vendor has furnished or contracted to furnish SJCRH with goods or services, or otherwise use the name of SJCRH. 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 SJCRH, and that SJCRH will be entitled to injunctive relief against each violation.

SJCRH shall have the right to disclose pricing and other terms of these Terms and Conditions to SJCRH's attorneys, accountants, group purchasing organizations, and other third parties retained by SJCRH provided they agree to hold this information confidential.

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

QUANTITY. SJCRH determines the amount of goods purchased based solely on SJCRH's research, clinical or operational needs. SJCRH is not required to purchase any particular amount or type of goods.

CONFIDENTIALITY OF HEALTH INFORMATION. The parties recognize that SJCRH is a covered entity under 45 C.F.R. Parts 160, 162 and 164 of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its applicable regulations. The parties further acknowledge that Vendor may be a "business associate" of SJCRH as that term is used and defined in HIPAA. In order to enable SJCRH to meet its obligation under HIPAA, if Vendor is a "business associate" (as defined under HIPAA) of SJCRH, the parties agree to comply with the provisions of the Addendum (Business Associate Agreement) attached as Exhibit A to these Terms and Conditions. Even if Vendor is not a Business Associate, Vendor and its employees and agents may not disclose or share any protected health information of SJCRH to which Vendor or its employees or agents may gain access, and with respect to any protected health information of SJCRH, Vendor will ensure that any agents or subcontractors, agree to the same restrictions and conditions that apply to the Vendor under the Agreement.

WARRANTY OF NON-EXCLUSION. Vendor 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, and that neither Vendor nor its employees or agents is listed, and they will not, during the term of this agreement, become listed on the databases at <https://www.sam.gov/portal/public/SAM/#1> or https://oig.hhs.gov/exclusions/exclusions_list.asp or any state exclusions or sanctions databases. Vendor further represents that no final adverse action by the federal or a state government is threatened or pending, or has occurred, against Vendor, its affiliates, or to its knowledge, against any employee, or any agent employed to provide goods or services pursuant to this transaction. Vendor 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. Vendor will immediately notify SJCRH of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give SJCRH the right to terminate this transaction immediately for cause.

COMPLIANCE WITH LAWS AND REGULATIONS. Vendor represents and warrants that all goods and services it furnishes to SJCRH have been or will be manufactured and furnished in accordance with, and Vendor agrees to comply with, all applicable federal and state laws (including the Fair Labor Standards Act), orders, rules, regulations, and executive orders. Vendor 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. Upon SJCRH's request, Vendor will certify in writing [its] ongoing commitment to SJCRH's Code of Conduct.

O.S.H.A. (Occupational Safety and Health Administration). Vendor will ensure that all goods, including chemicals, equipment, and materials delivered, sold, or used in the performance of these Terms and Conditions conform to O.S.H.A. standards.

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. **SJCRH, as a government contractor, and Vendor, 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. Vendor also shall not discriminate based upon age, genetic information, payment source, or marital status, as applicable. Vendor affirms that it is an equal opportunity and affirmative action employer and complies with all applicable federal, state, and local laws and regulations. Vendor will maintain a work environment free from discrimination, disruption, intimidation, coercion, and harassment. Upon SJCRH's request, Vendor will notify SJCRH promptly of incidents in which the rights of SJCRH employees, patients, visitors, or physicians may have been violated.

ANTI-TERRORISM. Vendor 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 SJCRH 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 Vendor's knowledge, Vendor has not provided during the previous ten (10) years, and will take reasonable steps to ensure that Vendor 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. Vendor, its affiliates, agents, and subcontractors agree to comply with all U.S. export control laws, rules, and regulations. If Vendor 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 SJCRH (by fax at 901-595-3963), and receive prior authorization from, SJCRH before delivery. SJCRH must be notified before Vendor ships export-controlled material to SJCRH. The notification provided by Vendor 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. Vendor agrees that if it fails to notify SJCRH that it is providing export-controlled items, data or services, it shall reimburse SJCRH 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.

HEALTH AND HUMAN SERVICES AUDIT. Until the expiration of four (4) years after the furnishing of any services under this Agreement, Vendor shall make available upon written request of the Secretary of the Department of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, this Agreement and the books,

documents and records of Vendor which are necessary to certify the nature and extent of costs incurred under this Agreement. If Vendor carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a 12 month period with a related organization, such subcontract shall include a clause to the effect that until the expiration of four (4) years after the furnishing of any services under the subcontract, the related organization shall make available upon written request of the Secretary of the Department of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, the subcontract and the books, documents and records of the related organization that are necessary to certify the nature and extent of costs incurred under that subcontract.

INDEMNIFICATION. Vendor agrees to defend, indemnify and hold harmless SJCRH, its parent(s), subsidiary(ies), affiliated and related companies, and its respective directors, officers, employees, and agents from any and all claims, demands, liabilities, lawsuits, settlements, judgments, actions, damages and expenses, whether or not litigation is commenced (including without limitation, reasonable attorneys' fees) arising from or related to. (i) any negligent act or omission of Vendor, its employees, agents, contractors, officers, or directors, exclusive of that portion of any liability resulting from the negligence SJCRH, its agents or employees; (ii) any material breach or violation of its representations and warranties contained herein; (iii) any failure of performance of its duties and responsibilities under this Agreement; or (iv) any product defect or product failure.

INFRINGEMENT AND MISAPPROPRIATION. Vendor will defend, indemnify and hold harmless SJCRH, its directors, officers, employees, and agents, from any and all claims, demands, liabilities, lawsuits, settlements, judgments, actions, damages, and expenses, whether or not litigation is commenced (including without limitation, reasonable attorneys' fees) arising from or related to alleged or actual misappropriation or infringement of any copyright, trademark, trade name, trade dress, trade secret, patent, or any other third party intellectual property right as to any goods or services subject to this Agreement. Vendor will be given adequate notice and control of the defense of such claims.

INSURANCE. During the term of this Agreement Vendor agrees to carry, at Vendor's own expense, general liability and errors and omissions, and professional liability coverage for Vendor and Vendor's employees and agents, upon such terms and conditions as SJCRH deems appropriate, in an amount of coverage of not less than \$1,000,000 for a single claim, and not less than \$3,000,000 for aggregate claims during a twelve (12) month period, and Vendor will indemnify SJCRH against all liability, loss, and damage arising out of any injuries to persons and property caused by the Vendor, or Vendor's employees or agents. At SJCRH's sole discretion, the amount of coverage may be adjusted from time to time. If any work related to the goods purchased pursuant to these Terms and Conditions, including deliveries of goods, will take place on SJCRH's campus or property, Vendor will add SJCRH as an additional named insured to this insurance policy and provide SJCRH with a certificate of insurance showing this, and Vendor will carry automobile liability insurance with the same or higher limits. Upon the termination or expiration of these Terms and Conditions, to the extent that Vendor's insurance is or at any time during the term of the Terms and Conditions has been "claims made" insurance rather than "occurrence" insurance, Vendor will (i) purchase "tail" coverage to continue the liability insurance coverage for the period during which Vendor rendered services hereunder, or (ii) continue in full force and effect the same level of liability insurance coverage on a claims made basis, in either case upon such terms and conditions as SJCRH deems appropriate and until the longest statute of limitations for professional, general, or errors and omissions liability for acts committed by Vendor and Vendor's employees or agents has expired. Vendor shall notify SJCRH within fifteen (15) days of any nonrenewal or cancellation of said insurance. Additionally, Vendor agrees to obtain and maintain through the term of the Agreement worker's compensation insurance for its employees in accordance with applicable statutes and regulations. Inadequate insurance or lack of insurance shall be grounds for SJCRH to immediately terminate this Agreement for cause. Upon request, Vendor shall deliver to SJCRH certificates of insurance evidencing the required coverage, both during the term of the Agreement and thereafter. These insurance

requirements shall be deemed continuing and shall survive any termination or expiration of this Agreement or any Addendum. Vendor will ensure that any of its contractors performing work related to this Agreement will carry insurance as set forth above. Vendor will indemnify SJCRH for the acts and omissions of Vendor's contractors.

CONDUCT AND ADHERENCE TO POLICIES. Vendor agrees that in performance of this Agreement it and its officers, employees, agents, contractors, and subcontractors will adhere to the rules, regulations, policies and procedures, and standards of conduct, including ethical and professional standards and including **SJCRH Vendor Code of Conduct, available at www.stjude.org/vend**. Vendor agrees that while Vendor, its employees, agents, officers, and assigns are on the SJCRH campus or property each will follow all policies and procedures, including those set forth in the Vendor Code of Conduct and will conduct themselves in a professional manner. Vendor, its employees, agents, officers, and assigns shall wear appropriate attire and display proper identification at all times while on SJCRH campus or property. The Vendor, its employees, agents, officers, and assigns shall comply with SJCRH's non-smoking policy while on SJCRH campus or property.

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

GOVERNING LAW, JURISDICTION AND VENUE. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Tennessee regardless of the choice of law rules of any jurisdiction. Vendor agrees that goods and services covered by these Terms and Conditions are provided in the State of Tennessee. For that reason, each party irrevocably agrees that the courts located in Shelby County, Tennessee, shall have the sole and exclusive jurisdiction with respect to any action or proceeding at law or in equity arising out of or relating to this Agreement. Each party submits to the personal jurisdiction of, and venue in, the Tennessee court(s) and waives any claim of lack of jurisdiction, improper venue, or that Tennessee venue constitutes an inconvenient forum.

FORCE MAJEURE. Whenever, due to fire, accident, local labor dispute, or other circumstances beyond SJCRH's control, delivery, acceptance, or payment on the prescribed date is impossible, SJCRH may extend delivery, acceptance, or payment until such circumstances or condition has been remedied. Conversely, whenever, due to fire, accident, local labor dispute, or other circumstances beyond Vendor's reasonable control, delivery on the prescribed date is impossible, Vendor shall notify SJCRH and SJCRH may extend delivery until such circumstances have been remedied. The parties shall work diligently to perform as soon as practicable.

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 SJCRH ("Emergency"), Vendor shall use its best efforts to treat SJCRH as first priority in vendor's delivery of goods, services, or supplies. It is Vendor's responsibility to anticipate, prepare for, and fulfill all contract obligations in an Emergency and respond to SJCRH's needs promptly.

INDEPENDENT CONTRACTOR. The relationship of Vendor to SJCRH is that of independent contractor. No employer-employee, joint venture, or partnership is established, expressly or by implication, nor shall any employee, agent, or contractor of Vendor be deemed to be the employee or agent of SJCRH or vice versa. Neither party nor 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, except as is reasonably necessary for the parties to perform services in accordance with these Terms and Conditions. Vendor is responsible for providing benefits, withholding taxes, and complying with labor and tax requirements with respect to its personnel and workers. Vendor shall indemnify, defend, and hold

harmless SJCRH for any failure to do so that contributes to losses, penalties, fines or expenses on the part of SJCRH.

ASSIGNMENTS. These Terms and Conditions shall not be construed as permitting assignment of any right or obligation hereunder, and such assignment by either party is prohibited without the express written consent of the other party.

USE OF SJCRH NAME. Neither Vendor nor any of its employees, agents, officers, directors, or affiliates, shall use the SJCRH Name, Trade or Service Marks, or Logos, or the names of current or former SJCRH employees or affiliated physicians or faculty, except upon the prior written consent of the American Lebanese Syrian Associated Charities' CEO, or his or her designee, in concurrence with the SJCRH CEO. Vendor will not make public or announce these Terms and Conditions or its relationship or dealings with SJCRH. Vendor 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. . Any limitations of liability set forth in the Agreement shall not apply to any breach or violation of the restrictions relating to disclosure of confidential information or use of St. Jude's name, logo, marks, or other trademarks. Vendor shall indemnify St. Jude for any violation of this provision by Vendor or its employees, agents, officers, directors. Vendor may not approach a SJCRH patient or family for purposes of stories, profiles, testimonials, news, public awareness, or any other publicity. SJCRH will initiate and manage any SJCRH patient or family publicity that is appropriate, according to SJCRH standards and patient protections.

SUNSHINE ACT REPORTING. SJCRH 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.

AMBIGUITIES. Ambiguities in this Agreement will not be construed against the drafter of the contract language; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.

INVALIDITY. If any provision of these terms and conditions is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired.

ENTIRE AGREEMENT. These Terms and Conditions along with the Purchase Order constitute the full understanding of, and the entire agreement between, the parties. All prior agreements, negotiations, dealings and understandings regarding the goods or services that are the subject of this transaction, whether written or oral, are superseded by these Terms and Conditions and the Purchase Order. Terms, conditions, or other provisions contained in any prior or subsequent document, including terms, conditions, or other provisions contained in the quote or invoice, are expressly rejected and are not a part of the agreement between the parties. Any changes shall be in writing and executed by both parties.

ST. JUDE CHILDREN'S RESEARCH HOSPITAL BUSINESS ASSOCIATE AGREEMENT

In order to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") the American Recovery and Reinvestment Act of 2009 ("ARRA") and specifically, the Health Information Technology for Economic and Clinical Health Act provisions of ARRA ("HITECH") and its implementing regulations, 45 C.F.R. Parts 160, 162 and 164 ("Privacy Rule") and ("Security Rule"), **ST. JUDE CHILDREN'S RESEARCH HOSPITAL, Inc.** ("Covered Entity") and _____ ("Business Associate"), agree as follows:

1. DEFINITIONS

a. Administrative Safeguards: "Administrative Safeguards" shall mean administrative actions and policies and procedures used to manage the selection, development, implementation, and maintenance of security measures to protect electronic Protected Health Information and to manage the conduct of the Business Associate's workforce in relation to the protection of that information, as more particularly set forth in 45 C.F.R. § 164.308.

b. Breach: "Breach" shall mean the acquisition, access, use, or disclosure of Protected Health Information not permitted by HIPAA which compromises the security or privacy of Protected Health Information as stated in 45 C.F.R. §164.402

c. Business Associate: "Business Associate" shall mean a person or entity that performs functions on behalf of the Covered Entity which meet the definitions of "Business Associate Activities" in 45 C.F.R. §160.103. In order for Business Associate to perform its obligations, Covered Entity must disclose certain Protected Health Information that is subject to protection under HIPAA.

d. Catch-all Definition: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy Rule and Security Rules or the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) ("ARRA") and its applicable regulations defined below.

e. Covered Entity: "Covered Entity" shall mean ST. JUDE CHILDREN'S RESEARCH HOSPITAL, Inc.

f. Individual: "Individual" shall mean "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

g. Physical Safeguards: "Physical Safeguards" shall mean the physical measures, policies and procedures used to protect Business Associate's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion, as more particularly set forth in 45 C.F.R. § 164.310.

h. Privacy Rule: “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164.

i. Protected Health Information: Protected Health Information (“PHI”) shall mean Individually Identifiable Health Information that is (i) transmitted by electronic media; (ii) maintained in any medium constituting electronic media, or (iii) transmitted or maintained in any other form or medium. For example, PHI includes information contained in a patient’s medical and billing records, as more particularly set forth in 45 C.F.R. § 160.103.

j. Required by Law: “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

k. Secretary: “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

l. Security Incident: “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system containing Covered Entity’s PHI, pursuant to 45 C.F.R. § 164.304.

m. Security Rule: “Security Rule” shall mean the Security Standards for the Protection of Electronic PHI at 45 C.F.R. part 160 and part 164.

n. Technical Safeguards: “Technical Safeguards” shall mean the technology and the policy and procedures for its use that protect electronic PHI and control access to it, as more particularly set forth in 45 C.F.R. § 164.312.

o. Unsecured Protected Health Information: “Unsecured Protected Health Information” shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary, as stated in 45 C.F.R. §164.402.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Business Associate agrees not to use or disclose PHI other than as permitted or required by the Agreement or as required by Law.

b. Business Associate agrees to use reasonable and appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to comply with the Security Rule, to prevent the use or disclosure of the PHI other than as provided for in this Agreement.

c. Business Associate agrees to mitigate, to the extent practicable, and will act in good faith with Covered Entity, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

d. Business Associate agrees to report promptly, and no later than two (2) business days, to the Covered Entity any use or disclosure of the PHI not provided for by

this Agreement of which it becomes aware, including Breaches of unsecured PHI as required by 45 CFR 164.410, and any Security Incident of which it becomes aware.

e. In the event of a Breach, Business Associate shall be financially responsible to Covered Entity for all resulting costs and fees incurred by Covered Entity in fulfilling Breach notification requirements, including, but not limited to, labor, materials, or supplies. Business Associate shall make payment to Covered Entity (or a third party as applicable) within thirty (30) days from the date of Covered Entity's written notice to Business Associate.

f. Business Associate agrees to ensure, in accordance with 45 CFR 164.502 (e)(1)(ii) and 164.308 (b)(2), if applicable, that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.

g. Business Associate agrees to make its internal practices, books, and records including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary, in a prompt and timely manner as designated by the Secretary, for purposes of determining compliance with the Privacy Rule, Security Rule, and other applicable ARRA and HITECH provisions.

h. Business Associate agrees to make available PHI in a designated record set to the Covered Entity as necessary to satisfy the covered entity's obligations under 45 CFR 164.524.

i. Business Associate agrees to maintain and make available the information required to make an amendment to PHI to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526.

j. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.528.

3. HIPAA SECURITY RULE REQUIREMENTS

Business Associate agrees to:

a. Implement and document, as set forth in 45 C.F.R. § 164.316, Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity, as required by 45 C.F.R. Part 164, and specifically, but not exclusively, including the following:

(1) Ensure the confidentiality, integrity, and availability of all electronic PHI the Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity;

(2) Protect against any reasonably anticipated threats or hazards to the security or integrity of such information;

(3) Protect against any reasonably anticipated uses or disclosures of such information that are not permitted under this Agreement or required under the HIPAA Privacy Rule, HIPAA Security Rule or ARRA and its implementing regulations; and

(4) Ensure compliance with these sections by its workforce.

b. Ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement and document reasonable and appropriate Administrative Safeguards, Physical Safeguards, and Technical Safeguards, including at least the requirements set forth in this section for the Business Associate;

c. Report to the Covered Entity within two (2) business days of becoming aware of or discovering any of the following, and in order to be in compliance with 45 C.F.R. §164.410 beginning as of the effective date of 45 C.F.R. Part 164: any Security Incident, any Breach, any use or disclosure of PHI not permitted by this Agreement by the Business Associate, its contractors and agents and any Red Flag (as defined at 16 CFR 681.2(b)).

The content of such a report of the Business Associate to the Covered Entity shall include, but is not limited to:

(1) A brief description of what happened, including date of the Breach or Security Incident(s) or other inappropriate or impermissible or unlawful use or disclosure of PHI, if known; and

(2) A description of the types of PHI that were involved (e.g. SSN, name, DOB, home address, account number or disability code).

d. Assist the Covered Entity and act in good faith and to mitigate potential or actual harms or losses and to assist and protect PHI, if appropriate, and to further protect any known suspected or actual Breaches, Security Incidents, or known inappropriate or unlawful use or disclosure of PHI;

e. In the event of a Breach, Business Associate shall be financially responsible to Covered Entity for all resulting costs and fees incurred by Covered Entity in fulfilling Breach notification requirements, including, but not limited to, labor, materials, or supplies. Business Associate shall make payment to Covered Entity (or a third party as applicable) within thirty (30) days from the date of Covered Entity's written notice to Business Associate.

f. Make its policies, procedures, and documentation required by this section relating to such safeguards, available to the Secretary and to Covered Entity for purposes of determining the Business Associate's compliance with this section; and

g. Authorize termination of the relationship with Covered Entity if Covered Entity notifies the Business Associate of a pattern of an activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligation under this Agreement and the Business Associate has failed to cure the breach or end the violation in accordance with Section 6.b. hereof.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement between the parties, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by Covered Entity.

4. SPECIFIC USE AND DISCLOSURE PROVISIONS

Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate, or to carry out the legal responsibilities of the Business Associate; and the Business Associate may disclose the PHI for its proper management and administration or to carry out the legal responsibilities of the Business Associate if the Business Associate obtains reasonable written assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the Business Associate and the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached, or impermissibly used or disclosed in violation of this Agreement.

Business associate is authorized to use PHI to de-identify the information in accordance with 45 CFR 164.514 (a)-(c) upon the mutual written agreement of both parties.

5. OBLIGATIONS OF COVERED ENTITY

a. Covered Entity shall make available to Business Associate a copy of its Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice to the extent that such change may affect Business Associate's use or disclosure of PHI.

b. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures of PHI.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to if such restriction affects Business Associate's permitted or required uses and disclosures in accordance with 45 C.F.R. § 164.522.

6. TERM AND TERMINATION

a. Term: The Term of this Agreement shall be effective as of date first written below, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this section.

b. Termination for Cause: Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines that Business Associate has violated a material term of this Agreement and Business Associate has not cured the breach or ended the violation within thirty (30) days. Covered Entity may require Business Associate to submit reports to demonstrate that the breach has been cured or the violation has ended.

c. Effect Upon Termination: Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible; Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. MISCELLANEOUS

a. Regulatory References: A reference in this Agreement to a section in the HIPAA Privacy Rule, HIPAA Security Rule, and Notification in the case of Breach of Unsecured PHI means the section as in effect or as amended, and for which compliance is required.

b. Amendment: The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act, Public Law 104-191, U.S.C. §§ 1320d through 1320d-8 and the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and its applicable regulations.

c. Survival: The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement until all PHI received from Covered Entity has been returned or destroyed.

d. Construction of Terms and Interpretation: The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and / or the Privacy Rule and Security Rule or ARRA issued by the U. S. Department of Health and Human Services (HHS) or the Office For Civil Rights and the Center for Medicare and Medicaid Services at HHS and the U.S. Federal Trade Commission from time to

time. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy Rule and Security Rule or ARRA and its applicable regulations.

e. Contradictory Terms: Any provision of the Underlying Agreement that is directly contradictory to one or more terms of this Agreement (“Contradictory Term”) shall be superseded by the terms of this Agreement as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity’s compliance with the HIPAA Privacy Rule and Security Rule or ARRA and its applicable regulations and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.

f. Ownership of PHI: The PHI to which Business Associate, or any agent or subcontractor of Business Associate has access under this Agreement shall be and remain the property of Covered Entity.

g. Notices: Any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and will be deemed to have been given when actually delivered (by whatever means) to the party designated to receive such notice, or on the next business day following the day sent by overnight courier with delivery confirmation, or on the third (3rd) business day after the same is sent by certified United States mail, postage and charges prepaid, directed to the addresses noted below, or to such other or additional address as any party might designate by written notice to the other party.

h. Severability: If any provision of this Agreement is rendered invalid or unenforceable by the decision of any court of competent jurisdiction, that invalid or unenforceable provision shall be severed from this Agreement and all other provisions of this Agreement shall remain in full force and effect if it can reasonably be done in conjunction with the original intent of this Agreement.

i. Assignment: No assignment of the rights or obligations of either party under this Agreement shall be made without the express written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, a party may assign this Agreement to a party taking assignment of the Underlying Agreement in accordance with its terms.

j. Successors and Assigns: This Agreement shall be binding upon, and shall inure to the benefit of, the parties, their respective successors and permitted assignees.

k. Waiver of Breach: Waiver of breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or different provision.

l. Governing Law, Jurisdiction, and Venue: These Terms and Conditions shall be governed by, construed and enforced in accordance with the laws of the State of Tennessee regardless of the choice of law rules of any jurisdiction. Each party irrevocably agrees that the courts of the State of Tennessee located in Shelby County shall have the sole and exclusive jurisdiction with respect to any action or proceeding at law or in equity arising out of or relating to these Terms and Conditions. Each party hereby submits to the personal jurisdiction of, and venue in, such court(s) for the

purposes thereof, and expressly waives any claim of lack of jurisdiction, improper venue, or that such venue constitutes an inconvenient forum.

m. Customer's Name and Logo: Business Associate may not use the Covered Entity's name, trade or service marks, or logos except upon the prior written consent of the American Lebanese Syrian Associated Charities' (ALSAC) CEO, or his designee, in concurrence with Covered Entity's CEO.

n. Prohibition of Offshore Disclosure: Nothing in this Agreement shall permit the Business Associate to share, use or disclose PHI in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without express written authorization from the Covered Entity.

o. Merger and Integration: This Agreement contains the entire agreement of the parties with respect to the subject matter and supersedes all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of _____ **2015**.

ST. JUDE CHILDREN’S RESEARCH HOSPITAL

By: _____
Robyn Diaz / Chief Legal Officer

(“Business Associate”)

By: _____
Signature

Printed Name

Title

If to Covered Entity: St. Jude Children’s Research Hospital, Inc.
Attn: Robyn Diaz, Chief Legal Officer
262 Danny Thomas Place
Mail Stop 280
Memphis, TN 38105

If to Business Associate: _____

