

3M Health Information Systems, Inc.

575 West Murray Boulevard
Murray, UT 84123-4611
801-265-4400



REQUEST FOR PURCHASE ORDER

May 14, 2009

MARY MALDONADO, CONTRACT MANAGER
HIDALGO COUNTY
100 E CANO ST FL 4
EDINBURG, TX 78539-4582

Dear Mary Maldonado:

Thank you for your continued use of 3M Health Information Systems, Inc. software and support. This letter serves to notify you that the annual fee for your 3M software/support will be due on **9/21/2009**, according to the terms and conditions of your agreement with 3M Health Information Systems, Inc.

The following process will assist in the proper handling of your upcoming invoice(s):

- Please send a purchase order or similar funding document to cover fees for the period from **9/21/2009 to 9/20/2010**. Your purchase order should be sent to our Murray office by **August 1st**. You can use the enclosed pre-paid envelope or, if you prefer you can email it to hi-3minvoice@mmm.com or fax the purchase order to **(801) 263-3657**.
- The total amount due is **\$4,089.68** plus applicable sales tax. Any applicable discounts have been applied to the pricing on the enclosed attachment(s).
- Your purchase order number will be referenced on the invoice.
- **To ensure uninterrupted use of your 3M software and continued 3M support, you are expected to pay the invoice within 30 days of the date it was issued.**

We appreciate your business and hope to continue our relationship with you for many years to come.

If you have any questions or concerns regarding this notification or would like additional information, please call me at **(801) 265-4694**. I look forward to receiving your documents by **August 1st**.

Sincerely,

Susan Baer
Contract Management

Attachment

Site ID: 2740493



THE 3M COMPANY, MINNAPOLIS, MINN.

SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT is entered into and effective as of the 30th day of July, 1999, between Minnesota Mining and Manufacturing Company (hereinafter referred to as "3M") having an office at 575 West Murray Boulevard, Murray, Utah 84123-4611, ("3M") and Hidalgo County (hereinafter referred to as "Customer") with offices at 100 East Cano, 5th Floor, Edinburg, TX 78539. Customer contracts for and 3M agrees to furnish the Software and related services described in this Agreement under the terms and conditions of this Agreement.

TERM OF THIS AGREEMENT: *Three (3) Years* PAYMENT CYCLE: *Annual*

CPU TYPE: *Single PC*

INSTALLATION SITE(S): *Hidalgo County
Human Services Department
1212 South 28th Street
Edinburg, TX 78539*

PRICING SUMMARY

SOFTWARE LICENSE FEES WITH SERVICE FEES: (Itemized on Software Schedule)	\$	1,144
INSTALLATION & TRAINING FEES: (Itemized on Software Schedule)	\$	<i>2,000</i>
TOTAL SOFTWARE, INSTALLATION & TRAINING FEES:	\$	<i>3,144</i>
DOWN PAYMENT AMOUNT:	\$	<i>0</i>

This Pricing Summary does not include incidental expenses, such as freight, freight insurance, and travel expenses (excluding initial installation and training), which the customer indicates will be billed separately to Customer as they are incurred. It also does not reflect costs of services not obtained through 3M.

Customer has read this Agreement, each exhibit, including the disclosures of warranties, limitations of liability and limitations of remedy which are contained therein. To indicate their acceptance and agreement to be bound by the terms and conditions of this Agreement, 3M and Customer have executed this Agreement on the date(s) indicated below, to be effective as of the date first indicated above.

HIDALGO COUNTY	MINNESOTA MINING AND MANUFACTURING
BY <input checked="" type="checkbox"/> <i>[Signature]</i>	BY <i>[Signature]</i>
NAME <input checked="" type="checkbox"/> <i>Jorge Eloy Pulido</i>	NAME <input checked="" type="checkbox"/> <i>John E. Newhall, Jr.</i>
TITLE <input checked="" type="checkbox"/> <i>Hidalgo County Judge</i>	TITLE <input checked="" type="checkbox"/> <i>Manager, Contract Administration</i>
DATE <input checked="" type="checkbox"/> <i>August 18, 1999</i>	DATE <input checked="" type="checkbox"/> <i>Aug. 30, 1999</i>

ATTENTION: <i>Human Services</i>	ATTENTION: <i>Manager Contract Administration</i>
	3M 575 West Murray Boulevard Murray, Utah 84123-4611

Order Form: 10031-00 Order Date: 08/30/99 3M Contract No. 99-0021



Health Information Systems

AMENDMENT NO. 1 TO SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT is entered into and effective as of the 30th day of July, 1999, between Minnesota Mining and Manufacturing Company (hereinafter referred to as "3M") having an office at 375 West Murray Boulevard, Murray, Utah 84123-4511, ("3M") and Hidalgo County (hereinafter referred to as "Customer") with offices at 100 East Cano, 5th Floor, Edinburg, TX 78539.

Customer and 3M agree that the above referenced Agreement is amended as follows:

◆ = Deletion
Underscored text = Addition

1. ADD Section 9.3 to the terms and conditions:

9.3 Fiscal Non-Appropriation of Funds. Notwithstanding any other term contained herein, Customer shall have the right, in the event that funds are not appropriated in any fiscal year during the term of this Agreement, to terminate this Agreement without charge, effective as of the last day of the fiscal year for which appropriation was made, providing that Customer (i) agrees not to use a competitor's equipment or software during the original term of the Agreement, (ii) pays all charges incurred to the end of the current fiscal period, and (iii) provides sixty (60) days written notice to 3M of non-appropriation of funds. It is understood that Customer is required by law to request this non-appropriation of funds termination provision. Customer hereby agrees to seek funding for each fiscal year.

Except as provided in this Amendment, all terms and conditions of the above referenced Agreement will remain in full force and effect.

HIDALGO COUNTY		MINNESOTA MINING AND MANUFACTURING	
BY	X <u>Jose E. Pulido</u>	BY	X <u>John E. Newhall, Jr.</u>
NAME	X Jose Eloy Pulido	NAME	X John E. Newhall, Jr.
TITLE	X Hidalgo County Judge	TITLE	X Manager, Contract Administration
DATE	X August 16, 1999	DATE	X July 30, 1999

Issue Date: 07/31/99

Rev Date: 07/30/99

3M Contract No. 99-0928



SOFTWARE LICENSE AGREEMENT

Health Information Systems

1.0 DEFINITIONS

- 1.1 "Access Site" means the physical location of Equipment on which the Software shall be accessed and used (other than an Installation Site), or any substitute location first approved by 3M in writing. All Access Sites shall be identified on the face of this Agreement, and if necessary, on the "Additional Access Sites" page of this Agreement.
- 1.2 "Documents" means written reference, operations and/or users manuals and other documents, and all revisions thereto, which provide specifications for or instructions for the use of the Software and which are furnished to Customer by 3M.
- 1.3 "Equipment" means the central processing unit(s), any peripheral equipment and all interconnecting cables and wires physically located at the Installation Site(s) and/or Access Site(s) which have been approved by 3M for processing the Software or substitute or backup equipment first approved by 3M in writing.
- 1.4 "Installation Site" means the physical location of the Equipment on which the Software shall be installed and used, or any substitute location first approved by 3M in writing. All Installation Sites shall be identified on the face of this Agreement, and if necessary, on the "Additional Installation Sites" page of this Agreement.
- 1.5 "Software" means 3M Software and Third Party Software.
- 1.6 "3M Software" means all copies of 3M-owned computer program(s) identified in the Software Schedule to this Agreement and any Updates thereto.
- 1.7 "Software Installation Date" means, with respect to any particular Software, the earliest date on which the Software is loaded on the Equipment and (i) passes 3M's diagnostic tests for such Software under Customer's observation, or (ii) is put into use by Customer for any purpose, whichever occurs first. Customer installed Software will be presumed to be loaded on the Equipment seven (7) days after shipment by 3M.
- 1.8 "Third Party Software" means all copies of non-3M-owned computer programs identified in the Software Schedule to this Agreement and any Updates or diagnostic support aids thereto which are distributed to Customer by 3M.
- 1.9 "Update" means an enhancement or modification to the Software which 3M makes generally available to its customers without an additional or increased license fee.

2.0 SOFTWARE

- 2.1 Ownership. Title to all copies of the Software and Documents (including those made by Customer), and to all related confidential and proprietary information, shall be and remain vested in 3M and/or its suppliers. 3M also retains title to all media used to supply Software to Customer. Whenever 3M supplies Updates to Customer, Customer shall certify in writing to 3M that all copies of media previously furnished by 3M have been returned to 3M or destroyed.
- 2.2 Installation. Software shall be installed by 3M; however, certain Software may be identified in the Software Schedule as Customer-installable ("CI"). Customer shall, at its expense, be responsible to see that all Customer-installable Software is installed and placed in working order. Customer shall provide 3M with all relevant specifications and other documents and shall supply all cables, interface hardware and other Equipment reasonably required to integrate and interface the Software with Customer's instruments and other computer systems.
- 2.3 Customer Acceptance Testing, Software Acceptance. Beginning on the Software Installation Date and continuing until Customer begins regular, productive use of the Software, or for a period of ninety (90) days after the Software Installation Date, whichever occurs first, Customer shall have the right to test the Software ("Acceptance Test Period"). In the event that the Software fails to perform in substantial accordance with the Documents during the Acceptance Test Period, Customer shall report the problem(s) to 3M in writing and 3M shall correct the problem pursuant to Section 3.0. Customer can then retest the Software. Software will be deemed accepted upon the conclusion of the Acceptance Test Period or when all problems that were identified during the Acceptance Test Period have been corrected ("Software Acceptance Date").
- 2.4 Training. 3M shall train Customer's employees in use of the 3M Software. Course descriptions, duration and the number of employees to be trained in each session shall be provided to Customer shortly after the complete execution of this Agreement. Training may be both on-site and off-site as indicated. Customer shall, at its expense: (i) provide the necessary employees for training at the scheduled times and training locations, and (ii) provide the necessary training resources including, but not limited to, rooms, overhead

projectors, video equipment and personal computers for computer based training. Customer shall provide adequate time for training of Customer's personnel, as defined by 3M's installation and training personnel.

2.5 3M Software License. During the term of this Agreement, 3M grants Customer a nontransferable, nonexclusive license ("License") to use the 3M Software solely on Customer's designated Equipment at the Installation Site(s) or at any Access Site(s), and to make such copies of the 3M Software and/or Documents as are necessary to secure the Customer's data or which are essential to the operation of the Equipment.

2.5.1 Temporary License for Equipment Malfunction. Notwithstanding the foregoing, during any period of Equipment malfunction causing the 3M Software to be inoperative, Customer may use the 3M Software on other Equipment; however, Customer shall not remove the 3M Software from the Installation Site without 3M's written consent, which shall not be unreasonably withheld.

2.5.2 Permitted/Prohibited Users. Customer may permit Customer's employees, employees of Affiliated Providers, Admitting Physicians and Consulting Physicians to access the 3M Software by modem, terminal and printer and to use the Documents provided that Customer shall inform and require each person or entity permitted to access and use the 3M Software and Documents to comply with the restrictions of Sections 2.5 and 4. Such access to the 3M Software is permitted solely for use of the 3M Software with respect to processing transactions of the Installation Site(s) and/or Access Site(s) listed in this Agreement, and not for use of the 3M Software with respect to processing transactions related to Affiliated Providers, Admitting Physicians and Consulting Physicians. Customer may also permit a consultant or contractor to access and use the 3M Software on Customer's behalf provided that (i) the consultant or contractor has a legitimate need to access and use the 3M Software, (ii) the consultant or contractor is not, in 3M's reasonable opinion, a competitor of 3M and (iii) Customer requires such consultant or contractor to execute a nondisclosure agreement which is acceptable to 3M and delivers a copy of such agreement to 3M. Customer shall not permit any other hospital, person or entity to access and/or use the 3M Software nor shall Customer use the 3M Software for the benefit of any other hospital, person or entity without 3M's prior written consent. For purposes of this Section 2.5.2:

a. "Affiliated Provider" means (i) a hospital in which Customer has majority ownership or control, or (ii) a clinic, clinical laboratory, surgicenter or nursing home owned or controlled by, under common ownership with or under management contract with Customer, or with any hospital owned or controlled by Customer.

b. "Admitting Physician" means a licensed physician who has the privilege to admit patients at Customer or an Affiliated Provider.

c. "Consulting Physician" means a licensed physician who provides medical consultation at Customer or an Affiliated Provider, or to an Admitting Physician.

2.5.3 Prohibited Uses. The License granted to Customer does not permit Customer to do or permit any of the following without 3M's prior written consent: (i) make extra copies of the 3M Software or Documents (except as set forth in Section 2.5 above), (ii) sublicense, lease, lend, transfer or permit access to the 3M Software or Documents (or any copies thereof) to any third party, or (iii) disassemble, reverse-engineer or create derivative works based upon the 3M Software.

2.6 Third Party Software License. All terms and conditions of this Agreement apply to Third Party Software except as otherwise indicated in this Agreement or where such terms and conditions conflict with the terms and conditions of the applicable Third Party Software license agreement accompanying the Third Party Software which shall control Customer's use of Third Party Software. In the event Customer is permitted by a Third Party Software license agreement to change, modify or make any derivative work from the Third Party Software, Customer assumes total responsibility for any resulting Equipment and/or Software malfunctions.

2.7 Software Security. 3M provides standard industry utilities and functions as part of the Software to limit access to the Software to authorized personnel. The effectiveness of such utilities and functions, however, depends upon the Customer's proper use of such utilities and functions, in addition to Customer's other policies and procedures related to software security. Accordingly, so long as the Software meets the performance warranty set forth in Section 6.3, Customer agrees to indemnify and hold 3M harmless from any demands, claims, or suits by a third party for loss, judgment, damages or expenses (including attorney's fees) arising out of or related to unauthorized access to the Software.

2.8 Operating Results. While 3M makes the Software available for Customer's use, Customer understands and acknowledges that it is solely responsible for the use it makes of the Software including, but not limited to, monitoring and verifying the input to and output from the Software. Accordingly, so long as the Software meets the performance warranty set forth in Section 6.3, Customer agrees to indemnify and hold 3M harmless from any demands, claims, or suits by a third party for loss, judgment, damages or expenses (including attorney's fees) arising out of or related to Customer's use of the Software by Customer or any other person.

3.0 SUPPORT SERVICES

3.1 Scope of Support Services. Beginning on the Software Installation Date and continuing throughout the term of this Agreement, 3M shall provide Customer with the following support services ("Support Services") at no additional charge provided that the Software in use by Customer is the most current or the immediately preceding Update level:

3.1.1 Corrections. 3M shall correct significant deviations between the 3M Software and the applicable Documents and any incompatibility between the 3M Software and the operating system software of any Equipment which has been approved by 3M for use with 3M Software.

3.1.2 Updates. 3M shall furnish Updates to the 3M Software.

3.1.3 Telephone Support. 3M shall provide Customer with telephone assistance to support Customer's use of the 3M Software.

3.2 Availability of Support Services. Support Services will be available during the hours of 8:00 a.m. to 5:00 p.m. (based on Customer's time zone) Monday through Friday, excluding normal business holidays. Support for a critical problem (defined as a problem which is stopping production or adversely affecting patient care, and for which there is no alternative way to operate the system) will also be provided outside such hours 365 days per year. If, at any time, Customer experiences a critical problem with 3M Software, 3M shall provide Support Services within four (4) hours after Customer has notified the designated 3M support center.

3.3 Customer's Obligations. To enable 3M to provide Support Services under this Agreement, Customer shall: (i) notify 3M when support is required and report problems to 3M, (ii) allow 3M full access to Customer's system and the reasonable use of necessary site facilities, utilities, data communications and system resources with ready access at no charge, (iii) when requested by 3M, collect data and other information necessary for 3M to resolve system problems, (iv) maintain the database and program libraries as specified by 3M, (v) obtain any additional reasonable Equipment, updates to Third Party Application Software and Third Party Operating System Software (as specified by 3M) necessary to make an Update operational, and (vi) provide time for installation of all Updates, (vii) perform regular daily backups, (viii) provide qualified personnel to work with 3M personnel.

3.4 Modification of Support Services. After the initial term of this Agreement ("Initial Term") (as set forth on the face of this Agreement), 3M may modify the Support Services offered with respect to the Software by giving Customer written notice ninety (90) days prior to any renewal date, including the first renewal date.

3.5 Customer's Obligations With Respect to Updates. Updates are designed to be Customer-installable. When on-site support for Updates is requested by Customer, 3M reserves the right to charge Customer 3M's then current fees (one hundred and fifty dollars per hour plus travel and per diem) for installation and training in connection with Updates which require 3M personnel to provide support at Customer's site. Such charges are not included in the fees listed on the face of this Agreement. Customer agrees to purchase any additional reasonable Equipment, updates to Third Party Application Software and Third Party Operating System Software (as specified by 3M) which may be required to make an Update operational. 3M will use reasonable efforts to notify Customer of additional charges and/or Equipment necessary to make an Update operational prior to the release of such Update.

4.0 CONFIDENTIAL INFORMATION, TRADENAMES AND COPYRIGHTS

4.1 Customer's Obligations. Customer acknowledges that this Agreement, the Software and the Documents contain information that is confidential and proprietary to 3M and/or its suppliers ("3M Information"). Customer agrees to treat all 3M Information as confidential, to require its employees and all other individuals who Customer permits access to the Software or the Documents pursuant to Section 2.0 to comply with this Section 4.1, and otherwise use its best efforts to prevent unauthorized disclosure of 3M Information. The obligations of this Section 4.1 shall not apply to any 3M Information which is public information on the date this Agreement is completely executed, or becomes public information subsequent to such date through acts not attributable to Customer. The existence of a copyright notice shall not cause or be construed to cause the Software or the Documents to be a published copyrighted work or to be public information or in the public domain. Customer shall not remove the trademarks, trade names or any notice of 3M or 3M's suppliers from any Equipment, Software, Documents or other materials delivered to Customer pursuant to this Agreement, and will cause them to appear on all copies made by Customer pursuant to Section 2.0.

4.2 3M's Obligations. 3M acknowledges that in the course of performing this Agreement it may be given access to Customer's medical records, patient records, hospital and medical systems, financial and billing data and other operational information (collectively, "Customer Information"). 3M agrees to treat all Customer Information as confidential and to use its best efforts to prevent unauthorized disclosure of such items by 3M's employees, agents, representatives and contractors. The obligations of this Section 4.2 shall not apply to any Customer Information which is public information on the date this Agreement is completely executed, or becomes public information subsequent to such date through acts not attributable to 3M or its employees, agents, representatives or subcontractors.

5.0 ACCESS TO 3M BOOKS AND RECORDS

5.1 Access. To the extent required by applicable law (42 U.S.C. 1395x(v) (1) (I) and 42 CFR Sec. 420.300 through 420.304, or any successor statutes or regulations), until the expiration of four (4) years after the furnishing of services under this Agreement, 3M shall make available upon written request to the Secretary of Health and Human Services ("Secretary") or the Comptroller General, or to any of their duly authorized representatives, this Agreement and such books, documents and records of 3M that are necessary to verify or certify the nature and extent of 3M's invoiced charges for services furnished to Customer.

5.2 Subcontracts with Related Organizations. 3M agrees that to the extent required by applicable law, if 3M carries out any of its duties under this Agreement through a subcontract with a related organization with a value or cost of \$10,000 or more over a twelve month period, that subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of services under that subcontract, the related organization will make available, upon written request to the Secretary, or to the Comptroller General, or to any of their duly authorized representatives, the subcontract and such books, documents and records of the related organization that are necessary to verify or certify the nature and extent of the costs incurred by Customer based on 3M's invoiced charges for services furnished by the related organization.

6.0 WARRANTIES AND REPRESENTATIONS

6.1 Authority. 3M represents and warrants to Customer that, during the Initial Term of this Agreement and any renewal thereof, it has and will have full power and authority to enter into this Agreement and perform hereunder; and that such entry and performance does not and will not violate any rights of any third party.

6.2 Noninfringement. 3M further represents and warrants to Customer that, during the Initial Term of this Agreement and any renewal thereof, the 3M Software and Documents do not infringe any patent, copyright, trademark or trade secret rights of any third party. Customer shall immediately notify 3M of any infringement claim and provide 3M with a copy of any pleadings. The selection of counsel, the conduct of the defense of any lawsuit and any settlement shall be within the sole control of 3M, and at 3M's expense. 3M also agrees to indemnify and hold Customer harmless from any damages or expenses (including attorney's fees) actually and finally awarded against Customer in any lawsuit arising out of or related to 3M's alleged infringement of a third party's intellectual property rights. 3M may, at its option and expense, procure for Customer the right to continue using the allegedly infringing 3M Software, replace it with a noninfringing item, modify it so it becomes noninfringing, or require Customer to return all copies of the allegedly infringing 3M Software to 3M and grant Customer a pro rata credit for the unused portion of the prepaid Software license fee for the current year and terminate the applicable Support Services. THIS SECTION 6.2 STATES THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER FOR ANY ALLEGED INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD THERETO. This warranty does not extend to any Third Party Software.

6.3 Performance. 3M further represents and warrants that, so long as Customer has licensed the 3M Software from 3M on a continuous and uninterrupted basis from the Software Installation Date, and is using the then-current or immediately preceding 3M Software Update level, the 3M Software shall perform in substantial accordance with the Documents. Upon receipt of written notice from Customer that 3M Software fails to meet this warranty, 3M shall provide the Support Services set forth in Section 3.0 of this Agreement. In the event 3M is unable to remedy a breach of warranty in this Section 6.3, Customer shall return all copies of the applicable 3M Software to 3M and 3M shall grant Customer a pro rata credit for the unused portion of the prepaid Software license fee for the current year and terminate the applicable Support Services. This warranty does not extend to any Third Party Software.

6.4 Century Date Changes. The 3M Software is year 2000 compliant. 3M Software is designed to accommodate date changes between the 20th and 21st centuries. 3M will correct any non-conformance within the 3M Software associated with date processing; specifically the years 1999, 2000, 2001 and beyond. The Software uses an eight digit date format with two digits indicating the century and will make proper date related calculations if an eight digit date is properly input and communicated.

6.5 Disclaimer. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 6, 3M AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM TRADE USAGE OR COURSE OF DEALING.

7.0 LIMITATION OF LIABILITY

7.1 Lost Data or Information. 3M AND ITS SUPPLIERS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OR DAMAGE RESULTING FROM LOST DATA OR INFORMATION. IN THE EVENT DATA OR INFORMATION IS LOST DUE TO ANY NEGLIGENT ACT OR OMISSION BY 3M, OR DUE TO BREACH OF ANY WARRANTY, 3M'S SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY SHALL BE FOR 3M TO USE ITS BEST EFFORTS TO RECOVER THE LOST DATA OR INFORMATION AT NO CHARGE TO CUSTOMER.

7.2 **Excluded Damages.** NEITHER 3M AND ITS SUPPLIERS, NOR CUSTOMER SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSS, BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY EVEN IF 3M OR ITS SUPPLIERS OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE (EXCEPT FOR LOSS OF PROFITS OR REVENUE TO 3M ARISING FROM CUSTOMER'S FAILURE TO PAY AMOUNTS DUE UNDER THIS AGREEMENT OR CUSTOMER'S BREACH OF SECTION 2.5.2 AND/OR 2.5.3), EQUIPMENT USE, DATA OR INFORMATION OF ANY KIND.

7.3 **Maximum Liability.** 3M'S MAXIMUM CUMULATIVE LIABILITY FOR ACTUAL DAMAGES FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT IS LIMITED TO (i) THE SUM OF THE SOFTWARE LICENSE FEES FOR THE INITIAL TERM OF THIS AGREEMENT, OR (ii) ONE MILLION DOLLARS (\$1,000,000), WHICHEVER IS LESS.

8.0 FEES, INVOICING AND PAYMENTS

8.1 **Software.** License fees for each item of Software are set forth in the Software Schedule and shall be invoiced to Customer as set forth below. Upon execution of this Agreement, Customer shall pay 3M the down-payment set forth on the face of this Agreement. The down-payment shall appear on the initial invoice(s) as a credit against the first year license fees. Notwithstanding anything to the contrary contained in any Third Party Software license agreement, Customer shall pay all license fees to 3M with respect to Third Party Software as provided in this Agreement for the term of this Agreement.

a. **First Year of the Initial Term.** License fees for the first year, set forth in the Software Schedule and summarized on the face of this Agreement, will be invoiced to Customer on or shortly after Software Installation Date.

b. **Second and Subsequent Years of the Initial Term.** License fees for the second and subsequent years of the Initial Term shall be communicated to the Customer at least ninety (90) days prior to the anniversary of the earliest Software Installation Date. For purposes of convenience, 3M shall, each year after the first year of the Initial Term, submit a single invoice to Customer for all license fees by prorating the term of License and the license fee for each individual item of Software, regardless of the Software's Installation Date, to correspond to the next anniversary of the item of Software having the earliest Software Installation Date. The license term for all items of Software shall then terminate with the license term provided for the item of Software having the earliest Software Installation Date. License fee increases, if any, in the second and subsequent years of the Initial Term shall not exceed five percent (5%) of the license fee for the immediately preceding year.

c. **Renewal after the Initial Term.** License fees for years after the Initial Term for which this Agreement is renewed shall be at 3M's then-current license fee which shall be communicated to the Customer at least ninety (90) days prior to the end of the Initial Term and the end of any yearly renewal period hereof.

8.2 **Software Installation and Training.** Charges for Software installation and training are set forth in the Software Schedule and shall be invoiced on or after Software Acceptance Date. If Customer cancels an agreed upon installation and/or training date less than seven (7) days prior to such date, or if Customer is unprepared to go forward with installation and/or training on the agreed upon installation and/or training date, then 3M may invoice Customer for any non-refundable travel-related costs and expenses and one day's installation and/or training (as applicable) at 3M's then current rate.

8.3 **Miscellaneous Charges.** All charges and fees not specified in this Agreement shall be invoiced to Customer shortly after such charges or fees accrue. Customer may approve, in writing, all miscellaneous charges before they are incurred on behalf of Customer.

8.4 **Invoicing Payments.** All charges and fees under this Agreement are due and payable in full in U.S. dollars within thirty (30) days after the date of invoice. 3M may assess a late payment charge at the rate of one percent (1%) per month or the maximum rate permitted by applicable law, whichever is less, on the unpaid amount for each month (or fraction of a month) any payment is late. If Customer becomes thirty days past due on an invoice, 3M may, upon written notice to Customer, immediately suspend the Support Services set forth in Section 3.0 until such past due charges are brought current or until this Agreement is terminated for breach as set forth in Section 9.2.

8.5 **Taxes.** In addition to the charges and fees specified herein, Customer shall pay or reimburse 3M for all taxes, customs duties and amounts levied instead of taxes resulting from this Agreement, except for personal property taxes on the Software and taxes based on 3M's net income. If Customer is exempt from any taxes, Customer shall certify such exemption in a form satisfactory to 3M.



SOFTWARE SCHEDULE

Health Information Systems

<u>ITEM</u>	<u>QTY</u>	<u>DESCRIPTION</u>	<u>1ST YR LICENSE FEES</u>	<u>INSTALL & TRAINING FEES</u>
1.	1	PC HCFA Groupet "CI"	2,145	2,000 2,145

Software use is limited to a maximum of 10,000 covered lives.

TOTAL FIRST YEAR ANNUAL SOFTWARE LICENSE FEES WITH SERVICE FEE: \$ 2,145
 TOTAL INSTALLATION & TRAINING FEES: \$ ~~2,000~~ 2,145
 TOTAL LICENSE, INSTALLATION & TRAINING FEES: \$ ~~4,145~~ 2,145

Issue Date: 07/21/99

Rev Date: 07/30/99

3M Contract No. 99-0928

9.0 TERM, NONRENEWAL AND TERMINATION

9.1 **Term.** This Agreement shall become effective upon complete execution by the parties and shall remain in effect for the period of time set forth on the face of this Agreement commencing on the earliest Software Installation Date. Thereafter, this Agreement shall automatically renew for successive one (1) year terms unless either party gives the other party written notice at least sixty (60) days prior to the renewal date of its election not to renew ("Nonrenewal").

9.2 **Termination and Nonrenewal, Rights and Obligations.** During the Initial Term of this Agreement, or any renewal thereof, either party may terminate this Agreement immediately upon the occurrence of any of the following events: (i) the other party has failed to cure a breach of this Agreement within thirty (30) days after receiving written notice thereof; (ii) the other party institutes proceedings under bankruptcy or insolvency laws, for corporate reorganization, receivership, dissolution or similar proceedings; (iii) proceedings under bankruptcy or insolvency laws, for corporate reorganization, receivership, dissolution or similar proceedings pend against the other party for more than ninety (90) days; (iv) the other party makes a general assignment for the benefit of creditors; (v) the other party becomes insolvent; or (vi) either party ceases to conduct business or to conduct the business relevant hereunder. Upon any termination or nonrenewal of this Agreement, Customer's License to access and use the 3M Software pursuant to Section 2.5 is and shall be automatically and immediately revoked, and Customer shall (i) cease all further use of the 3M Software and, at 3M's option, either return all copies of the 3M Software and Documents to 3M at Customer's expense or destroy all copies of the 3M Software and Documents. Customer shall certify to 3M in writing that all copies have been returned or destroyed; (ii) pay all charges and fees outstanding (and no refund shall be due Customer for any charges or fees paid); (iii) return to 3M any security devices which 3M loaned to Customer. Sections 2.1, 4, 5, 7 and 10 shall survive any termination of this Agreement.

10.0 GENERAL PROVISIONS

10.1 **Effect of Agreement.** This Agreement (including all Schedules, Exhibits and other attachments hereto) embodies the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings, oral or written proposals and communications or other agreements, oral or written, relating thereto. Customer acknowledges that it has not been induced to enter into this Agreement by any representation or statement, oral or written, not contained in this Agreement.

10.2 **Amendments, Modifications.** Except as otherwise provided herein, any amendment hereof must be in writing and signed by both parties. In connection with this Agreement, 3M may from time to time accept receipt of one or more purchase orders from Customer, may acknowledge such receipt by returning one or more acknowledgment copies, and may issue invoices against any such purchase order. Any such act by 3M is for Customer's convenience only. The terms and conditions of this Agreement shall prevail over any conflicting or additional terms and conditions of any order or other document submitted by Customer at any time in connection with this Agreement. All such conflicting and additional terms and conditions are specifically rejected and do not form, and shall not form, any part of this Agreement.

10.3 **Interpretation, Priority.** The headings and captions contained in this Agreement are for convenience only and shall not constitute a part hereof. In the event of any conflict between a provision of this Agreement, any Schedule or Exhibit thereto, or a Document, such conflict shall be resolved in the following order of priority unless specifically stated otherwise (governing provision stated first): terms and conditions of this Agreement, Schedule, Exhibit, Document.

10.4 **Assignment.** This Agreement is binding on successors and assigns of the parties. Neither this Agreement nor any part or portion hereof shall be assigned, sublicensed, or otherwise transferred by Customer without 3M's prior written consent.

10.5 **Force Majeure.** Neither party shall be responsible for failure to comply with this Agreement due to causes beyond its reasonable control.

10.6 **Announcements.** 3M, with Customer's prior approval, may issue announcements concerning this Agreement to the trade press and recognized industry consultants.

10.7 **Notices.** Each party shall appoint a representative from its organization authorized to receive notices hereunder. All notices required to be given shall be given in writing by personal delivery or by certified or registered mail to the other party at the address listed on the face of this Agreement. Any change of address shall be promptly communicated in writing to the other party.

10.8 **Severability, Enforcement.** Any provision of this Agreement which is held to be void, invalid, unenforceable or illegal by a court shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

10.9 **Governing Law.** This Agreement shall be governed by the laws of the state of ♦ Texas.



AMENDMENT NO. 1 TO SOFTWARE LICENSE AGREEMENT

Health Information System

THIS AGREEMENT is entered into and effective as of the 21st day of September, 2002 between 3M Company (hereinafter referred to as "3M") having an office at 575 West Murray Boulevard, Murray, Utah 84123-4611, ("3M") and Hidalgo County Purchasing (hereinafter referred to as "Customer") with offices at 100 East Coma Street, 5th Floor, Edinburg, TX 78539.

Customer and 3M agree that the above referenced Agreement is amended as follows:

o = Deletion
Underscored text = Addition

ITEM	QUANTITY	ACTION	DESCRIPTION	1ST YEAR LICENSE FEES \$	INSTALL & TRAINING FEES \$
------	----------	--------	-------------	--------------------------	----------------------------

			CPU TYPE: Single PC		
1.	1	Delete	PC Grouper		
2.	1	Add	3M™ Core Grouping Software-CMS Grouper	2,252	N/A

Swapping the above mentioned product(s) for 3M™ Core Grouping Software, 3M is honoring your current License Fees under this Agreement.

Software use is limited to a maximum of 10,000 covered lines per year.

For the purpose of this Agreement, the Software Installation Date is deemed to be September 21, 2002.

3. ADD Section 2.5.2.1 to the terms and conditions:

2.5.2.1 Remote Coding. 3M permits access to and use of the Software by Customer's employees from remote locations for the benefit of Customer ("Remote Coding"). Customer is responsible for assuring that such access and use is in accordance with terms and conditions of this Agreement including, but not limited to, the use of the Software solely for the benefit of the Installation and Access Sites listed in this Agreement. Security to detect and/or prevent unauthorized access, disclosure or use of protected health information ("PHI") or Customer's Operational Information (as defined in Section 4.2.2) data is the sole responsibility of Customer, and Customer agrees to indemnify and hold 3M harmless from any demands, claims, or suits by a third party for loss, judgment, damages or expenses (including attorney's fees) arising out of or related to unauthorized access, disclosure or use of PHI or Customer's Operational Information in Remote Coding situations.

4. ADD Section 9.1.1 to the terms and conditions.

9.1.1 License Term Extension. Customer agrees to license the Software listed in this Agreement from 3M for an extended three year term ending September 20, 2005 ("Extended Term"). After the Extended Term, this Agreement, and the License granted under Section 2.5, shall automatically terminate unless Customer, upon sixty (60) days prior written notice, requests renewal. Such renewal, if any, would be priced at 3M's then-current list price, less any applicable discount. 3M, at its option, may elect not to renew the Agreement.

Except as provided in this Amendment, all terms and conditions of the above referenced Agreement will remain in full force and effect.

HIDALGO COUNTY PURCHASING

3M COMPANY

BY X

BY

NAME X JOSE E. PULIDO

NAME John E. Newhall, Jr.

TITLE X COUNTY JUDGE

TITLE Manager, Contract Administration

DATE X SEPTEMBER 16, 2002

DATE May 16, 2002

Issue Date: 5/16/02

3M Contract No. 99-0928

10/12/05 09:52 FAX 988 316 2029

HIDALGO CO. PURCHASING

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AMENDMENT NO. 2 TO SOFTWARE LICENSE AGREEMENT

THIS AMENDMENT to the Software License Agreement dated July 30, 1999 between 3M Company and (Customer) is entered into and effective as of the 21st day of September, 2005 between 3M Company (hereinafter referred to as "3M") having an office at 575 West Murray Boulevard, Murray, Utah 84123-4611, ("3M") and Hidalgo County (hereinafter referred to as "Customer") with offices at 100 East Cano, 5th Floor, Edinburg, TX 78539.

Customer and 3M agree that the above referenced Agreement is amended as follows:

† = Deletion
Underlined text = Addition

ITEM	QUANTITY	ACTION	DESCRIPTION	1ST YEAR LICENSE FEES \$	INSTALL & TRAINING FEES \$
			CPU TYPE: <i>Single PC</i>		
1.	1	Renew	3M™ Core Grouping Software-CMS Groupw (List \$1,800)	3,616	N/A
			<i>For the purpose of this Agreement, the Software Installation Date is deemed to be September 21, 2005.</i>		

2. ~~DELETE Section 4.2 of the terms and conditions in its entirety and REPLACE it with the full original:~~

4.2 3M's Obligations. 3M acknowledges that in the course of performing this Agreement it may be given access to information that is confidential to Customer or to third parties, including Customer's patients. 3M agrees to treat all such information as confidential in accordance with the following provisions:

6.2.1 Protected Health Information. To the extent required by the Health Insurance Portability and Accountability Act of 1996, or "HIPAA," and the regulations promulgated there under, 3M agrees that, with respect to protected health information ("PHI") it will:

- (1) not use or further disclose PHI other than as permitted or required in the performance of this Agreement, or as required by law;
- (2) use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Agreement;
- (3) report to Customer any use or disclosure of PHI not provided for in this Agreement of which 3M becomes aware;
- (4) ensure that any subcontractors or agents to whom 3M provides PHI received from Customer agree to the same restrictions and conditions that apply to 3M with respect to PHI;
- (5) make available PHI in accordance with applicable law;
- (6) incorporate any amendments or corrections to PHI when notified pursuant to applicable law;
- (7) make available the information required to provide an accounting of disclosures pursuant to applicable law;
- (8) make 3M's internal practices, books, and records relating to the use and disclosure of PHI received from Customer available to the Secretary of the United States Department of Health and Human Services for purposes of determining Customer's compliance with applicable law, and
- (9) at termination of this Agreement, if feasible, return or destroy all PHI received from Customer that 3M still maintains in any form and retain no copies thereof.

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HIDALGO CO. PURCHASING

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4.2.2 Operational Information. In addition, 3M agrees to treat all Customer Information other than PHI including, but not limited to, hospital and medical systems, financial and billing data and other operational information (collectively, "Operational Information") as confidential and to use its best efforts to prevent unauthorized disclosure of such items by 3M's employees, agents, representatives and contractors. The obligations of this Section 4.2.2 shall not apply to any Operational Information which is public information on the date this Agreement is completely executed, or becomes public information subsequent in such case through acts not attributable to 3M or its employees, agents, representatives or subcontractors.

3. ADD Section 9.1.1 to the terms and conditions.

9.1.1 License Term Extension. Customer agrees to license the Software listed in this Agreement from 3M for an extended five (5) year term ending September 30, 2010 ("Extended Term"). After the Extended Term, this Agreement, and the License granted under Section 2.1, shall automatically renew for successive one (1) year terms unless either party gives the other party 180 days written notice prior to the applicable renewal date requesting termination of this Agreement.

APPROVED ON COMMISSIONERS' COURT August 2, 2005

APPROVED AS TO FORM
Atlas & Hall, L.L.P.

By: [Signature]

ATTENT:

[Signature]
Juan D. Salinas, III, County Clerk

Except as provided in this Amendment, all terms and conditions of the above referenced Agreement will remain in full force and effect.

HIDALGO COUNTY	3M COMPANY
BY X <u>[Signature]</u>	BY <u>[Signature]</u>
NAME X <u>Ramon Garcia</u>	NAME Heather Bestoni
TITLE X <u>County Judge</u>	TITLE Contract Manager
DATE X <u>9-14-05</u>	DATE <u>July 8, 2005</u>

Issue Date: 7/06/05 3M Contract No. 99-0928

Approved by Commissioners' Court
on 8-2-05