


C-20-451-08-11



FILED
AT 11:00 O'CLOCK A M
AUG 18 2020
ARTURO GUAJARDO, JR. COUNTY CLERK HIDALGO COUNTY, TEXAS
BY  DEPUTY

CIMS MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (the "Agreement") between Clinical Image Management Systems, LLC ("CIMS") and Hidalgo County, Texas ("Customer"), a political subdivision of the State of Texas on behalf of its Medical Examiner, is made effective as of the last date indicated below on the signature page.

1. OVERVIEW.

1.1 *General.* This Agreement states the terms and conditions by which CIMS will sell and Customer will purchase the X-Ray Radiology Equipment with any necessary, related services provided by CIMS, including delivery, installation, training, warranty, configuration components, trolley/gurney. If Customer purchases any equipment from CIMS, the terms and conditions by which Customer purchases and CIMS sells such equipment are specifically stated in Addendum A attached hereto and fully incorporated herein by this reference. The specific services and/or products to be provided hereunder are also identified in the purchase order submitted by Customer and accepted by CIMS. The CIMS proposal and each purchase order submitted, accepted and executed by both parties, are hereby incorporated by reference to this Agreement.

1.2 Definitions.

(a) "Customer Location" means the location(s) specified on the Purchase Order where CIMS Supplied Equipment is to be installed during the term of this Agreement and the Service(s) is to be used.

(b) "CIMS Supplied Equipment" means the computer equipment, hardware, software and other tangible equipment and intangible computer code contained therein, together with all substitutions, replacements, repairs, updates, upgrades, parts and attachments, improvements and accessories thereto, to be provided by CIMS for use by Customer as set forth on the purchase order.

(c) "CIMS Technology" means CIMS' proprietary technology, including CIMS Services, software tools, hardware designs, algorithms, software (in source and object forms), data bases, user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by CIMS or licensed to CIMS from a third party) and also including any derivatives, improvements, enhancements or extensions of CIMS Technology conceived, reduced to practice, or developed during the term of this Agreement by either party that are not uniquely applicable to Customer or that have general applicability in the art.

(d) "Initial Term" means the minimum term for which CIMS will provide the Service(s) to Customer, as indicated on the Purchase Order. Except as otherwise expressly



provided in this Agreement, CIMS is obligated to provide and Customer is obligated to pay for each Service satisfactorily delivered through its Initial Term and any Renewal Term.

(e) "Renewal Term" means any service term following the Initial Term, as specified in Section 2.2.

(f) "Guidelines" means the CIMS general rules and regulations governing Customer's use of Services which will be provided to Customer.

(g) "Service(s)" means the specific service(s) and/or product(s), including, but not limited to, any CIMS Supplied Equipment or CIMS Technology, provided by CIMS as described on the Purchase Order.

(h) "Service Commencement Date" means the date CIMS will begin providing the Service(s) to Customer, as indicated on the Purchase order.

2. DELIVERY OF SERVICES; TERMS; FEES.

2.1 *Delivery of Services.* By submitting an Purchase order, Customer agrees to take and pay for, and, by accepting the Purchase order, CIMS agrees to provide, the Services(s) satisfactorily delivered during the Initial Term and for any Renewal Term, as specified in Paragraph 2.2(b) below.

2.2 Term.

(a) *Term Commencement.* The term for this Agreement commences upon full execution, and the term for each Service will commence on the Service Commencement Date.

(b) *Renewal Term(s).* Upon expiration of the Initial Term, the contract may be extended for two (2) additional 12-month terms upon mutual agreement of CIMS and Tarrant County.

3. FEES AND PAYMENT TERMS.

3.1 *Fees and Expenses.* Customer will pay all undisputed fees due according to the prices and terms listed in the purchase order. The prices listed in the purchase order will remain in effect during the Term indicated in the purchase order and will continue thereafter, unless modified in accordance with Section 2.2.



3.2 **Payment Terms** - Customer will be billed an amount equal to all non-recurring charges indicated in the Purchase Order and the monthly recurring charges for the first month of the term. Monthly recurring charges for all other months will be billed in advance of the provision of Services. Payment for all undisputed fees is due 30 days after receipt of each CIMS invoice. All payments will be made in the United States in U.S. Dollars. Upon reasonable prior written notice to Customer, CIMS may alter, change or amend its billing practices, in its reasonable discretion, including, but not limited to, the date on which such billing will occur and the types of charges that will be included in such bills.

3.3 **Late Payments.** As concerns any late payments by Customer, the Texas Prompt Payment Act at Texas Government Code Sec. 2251.001 et seq. applies under this Agreement and Addendum A.

3.4 **Taxes.** Customer is a tax exempt political subdivision of the State of Texas that will not be liable for any taxes from which it is exempt.

4. CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY OWNERSHIP; LICENSE GRANTS.

4.1 Confidential Information.

(a) **Nondisclosure of Confidential Information.** Each party acknowledges it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party ("Confidential Information"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to, CIMS Technology. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information, as it protects its own Confidential Information.

(b) **Exceptions.** Customer is subject to the Public Information Act at Chapter 552 of the Texas Government Code, and any confidentiality or other provisions to the contrary do not apply to Customer. Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation to confidentiality to the disclosing party; (ii) becomes known (independently or disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law,



provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

4.2 *Intellectual Property.*

(a) *Ownership.* Except for the rights expressly granted herein, this Agreement does not transfer from CIMS to Customer any CIMS Technology, and all right, title and interest in and to CIMS Technology will remain solely with CIMS. Customer agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from CIMS.

(b) *General Skills and Knowledge.* Notwithstanding anything to the contrary in this Agreement, CIMS may use any skills or knowledge of a general nature acquired during the course of providing the Services, such as information publicly known or available or that it reasonably and legally acquired in similar work performed for another customer of CIMS.

4.3 *License Grants.* CIMS hereby grants to Customer a nonexclusive royalty-free license, during the term of this Agreement, to use the CIMS Technology solely for purposes of using the Service(s). Specifically, without limitation, Customer shall not copy, reverse engineer, modify, rent, lease, transfer, or create other versions of the CIMS Technology; and will not copy to share with third parties any of the printed materials accompanying the CIMS Technology. Upon receipt of a copy of such terms, Customer will observe the terms of any license and/or applicable end user agreement for any third party software included in the CIMS Technology. Each third party supplier of any software included in the CIMS Technology may be a third party beneficiary of the preceding two sentences to the extent of any material or information delivered to Customer originated with or derived from materials or information supplied by such third party supplier.

5. CIMS REPRESENTATIONS AND WARRANTIES.

5.1 *Authority and Performance of CIMS.* CIMS represents and warrants (i) it has the legal right to enter into this Agreement and perform its obligations hereunder, and (ii) the performance of its obligations and delivery of the Services to Customer will not cause a breach of any licenses or agreements with any third parties. In the event of a breach of warranties set forth in this Paragraph 5.1 and Addendum A, Customer's remedy, in addition to other remedies available at law or in equity, is termination pursuant to Section 9 of the Agreement.

5.2 *Service Performance Warranty.* CIMS warrants that its Equipment, Services, and performance under this Agreement will all be consistent with applicable industry standards. See Addendum A for additional warranty provisions.

5.3 *Compliance with Law.* CIMS shall comply at all times with all applicable laws and regulations concerning CIMS operations, equipment, product, services, and obligations under this Agreement and Addendum A. CIMS will maintain its ability to do business in the State of Texas and keep any required certificate and/or registration current for any of its operations, equipment, products, or services.



5.4 *No Other Warranty.* EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5 AND ADDENDUM A, CIMS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. CIMS DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE, DEFECT FREE OR COMPLETELY SECURE. THE SERVICE(S) AND THE CIMS TECHNOLOGY MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SERVICE(S) AND/OR CIMS TECHNOLOGY COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. CUSTOMER ACKNOWLEDGES THAT CUSTOMER IS RESPONSIBLE FOR MAINTAINING ADEQUATE BACKUP OR OTHER ARRANGEMENTS FOR PROVIDING CONTINUOUS MEDICAL COVERAGE DURING ANY FAILURE OF THE SERVICE(S) AND/OR CIMS TECHNOLOGY.

5.5 *Disclaimer of Actions Caused by and/or Under the Control of Third Parties.* CIMS DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM CUSTOMER'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF TELECOMMUNICATIONS AND NETWORK SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO ITS NETWORK OR THE INTERNET (OR PORTIONS THEREOF). TO THE EXTENT SUCH EVENTS ARE NOT WITHIN CIMS CONTROL, CIMS DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

6. CUSTOMER OBLIGATIONS.

6.1 Representations of Customer.

(a) *General.* Customer represents it has the legal right and authority to enter into this Agreement for purchase of the X-Ray Radiology Equipment and related necessary services pursuant to the Customer award and CIMS proposal

(b) *Governmental Entity.* Customer is a governmental entity. This Agreement is contingent on sufficient funding appropriated by Customer in any fiscal year; therefore, any termination, liability, indemnity, or other provision to the contrary does not apply to Customer. Nothing in this Agreement modifies or waives any sovereign immunity, lien or indemnity prohibition, or limitation of liability enjoyed by Customer, its elected officials, or employees at common law or under Texas tort or other law.



(c) *Breach.* In the event of any breach by Customer, CIMS will provide Customer reasonable notice and opportunity to cure (within 120 days'), before declaring a default and resorting to any remedies available at law or in equity.

6.2 *Compliance with Law and Rules and Regulations.* Customer agrees it will use the Service(s) only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with applicable laws and regulations

6.3 *Restrictions on Use of Services.* Customer shall not, without the prior written consent of CIMS (which may be withheld in its sole discretion), resell the Services to any third parties.

6.4 CIMS Supplied Equipment.

(d) *Delivery and Term.* On or prior to the Service Commencement Date, CIMS shall timely deliver to Customer, at the Customer Location(s), the CIMS Supplied Equipment. Customer shall have the right to use the CIMS Supplied Equipment solely in connection with the Services for the Initial Term set forth in the Purchase Order and any additional period agreed to in writing by Customer and CIMS. Except when title belongs to Customer, Customer shall not remove any CIMS Supplied Equipment from the Customer Location(s) without the prior written consent of CIMS.

(f) *Use, Delivery, Installation, Maintenance and Repair.* If included in the Services, CIMS will keep the CIMS Supplied Equipment in good repair, appearance and condition, other than normal wear and tear. If not included in the Services and if applicable, Customer shall obtain, pay for and keep in effect through the Initial Term, a hardware and



software maintenance agreement with the manufacturer or other party acceptable to CIMS. All parts furnished in connection with any repair and maintenance shall immediately become components of the CIMS Supplied Equipment and the property of CIMS. Customer shall use the CIMS Supplied Equipment in compliance with the manufacturer's, supplier's or CIMS' suggested guidelines. Customer shall use the CIMS Supplied Equipment solely in the conduct of its operation or business and in connection with the Service(s), in the manner and for the use contemplated by the manufacturer thereof and/or CIMS, and in compliance with the laws, rules and regulations of every governmental authority having jurisdiction over the CIMS Supplied Equipment or Customer and with the provisions of all policies of insurance carried by Customer pursuant to Section 7.1. CIMS shall be responsible, at its own expense, for (a) the delivery of the CIMS Supplied Equipment to Customer, (b) the packing, rigging and delivery of the CIMS Supplied Equipment back to CIMS, as applicable, upon expiration or termination of the Initial Term and (c) the installation and de-installation of the CIMS Supplied Equipment. CIMS' personnel or agents will install the CIMS Supplied Equipment. Only CIMS personnel or agents will attempt to remove any CIMS Supplied Equipment requiring installation from its packaging following delivery. Installation will include configuration and calibration for operation of CIMS Supplied Equipment in accordance with CIMS specifications. Unless expressly stated otherwise in the Purchase Order, Customer will be responsible for design and installation of all network telecommunications for transmission of images. CIMS may condition shipment and installation of CIMS Supplied Equipment upon inspection and confirmation that the telecommunications facilities are adequate to operate the CIMS Supplied Equipment and that Customer site preparation has been completed. If CIMS attempts installation on a scheduled installation date, and telecommunications facilities differ from specifications previously provided by CIMS, site preparation is not completed or CIMS is prevented for any reason from completing installation, additional reasonable installation charges may be imposed.

(g) *Upgrades and Additions.* Customer may not affix or install any accessory, addition, upgrade, equipment or device on to the CIMS Supplied Equipment (other than electronic data) ("Additions") without CIMS' prior written consent which shall not be unreasonably withheld. At the end of the Initial Term and as applicable, Customer shall remove any Additions which (i) were not provided by CIMS and (ii) are readily removable without causing material damage or impairment on the intended function, use, or value of the CIMS Supplied Equipment, and restore the CIMS Supplied Equipment to its original configuration. Any Additions, which are not so removable, will become the property of CIMS (lien free).

(h) *Personal Property.* Customer understands the CIMS Supplied Equipment shall be and remain personal property, notwithstanding the manner by which it may be attached or affixed to realty. If requested by CIMS with respect to any CIMS Supplied Equipment owned by CIMS, Customer shall obtain and deliver to CIMS equipment access agreements from all persons claiming any interest in the real property on which such item of CIMS Supplied Equipment is installed or located.

(i) *Training.* Upon completion of installation and included in the purchase price, CIMS will provide up to 3 business days of training at the Customer Location(s). CIMS and Customer will establish a detailed training schedule before installation commences, so Customer may arrange for the appropriate trainees to be available for training. If after



completion of this training, additional Customer personnel require training or if designated trainees are not available at the times previously agreed by CIMS and Customer, additional training is available at CIMS' then current reasonable charges.

7. INSURANCE.

7.1 *CIMS Coverage.* CIMS shall obtain and maintain for any term at its own expense, insurance to cover property damage, general liability, and other such risks of loss as are normally maintained for CIMS type operations and business, in such amounts as required by and with such insurers as shall be satisfactory to Customer in the applicable industry. Each insurance policy shall name CIMS as insured and Customer as additional insured and loss payee thereof as their interest may appear, and shall provide that it may not be cancelled or altered without at least 30 days' prior written notice thereof being given to Customer (or 10 days', in the event of non-payment of premium).

8. LIMITATIONS OF LIABILITY AND OTHER DISCLAIMERS.

8.1 *Consequential Damages Waiver.* IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, LIQUIDATED, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

8.2 *No Practice of Medicine by CIMS; Professional Standards.* The parties acknowledge CIMS is not competent or authorized to engage in the practice of medicine and that nothing in this Agreement, the Purchase Order or any other document incorporated by reference herein is intended to authorize CIMS to engage in the practice of medicine. Customer shall at all times be solely responsible for the quality of professional services it provides or are provided at Customer's facilities. Services provided by CIMS hereunder cannot and will not supersede a physician's primary responsibility with respect to qualifications, communication, quality control, improvement, and supervision of teleradiology, as described in professional standards such as the American College of Radiology Standards for Teleradiology. While training provided hereunder will cover the matters necessary to enable a qualified technician to utilize the Services and equipment in the normal course, CIMS cannot be responsible, and hereby disclaims all responsibility or liability, for the qualifications or performance of any technician or other person employed or allowed by Customer to perform services at Customer's facilities.



9. TERMINATION.

9.1 The contract may be terminated by either party upon written (30) day notice prior to cancellation. *No matter which party terminates the Agreement pursuant to this Section 9, any and all undisputed payment obligations of Customer under this Agreement for Service(s) satisfactorily provided through the date of termination will become due. Customer and CIMS will cooperate to address/resolve any matters concerning termination of their business relationship under this Agreement.*

9.2 **No Liability for Termination.** Neither party will be liable to other party for any termination or expiration of any Service or this Agreement in accordance with its terms. Upon the effective date of termination of this Agreement, Customer shall make available all CIMS Supplied Equipment, if still CIMS property, to an authorized representative of CIMS.

10. MISCELLANEOUS PROVISIONS

10.1 **Force Majeure.** Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute or governmental act, provided the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

10.2 Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

10.3 **Governing Law; Dispute Resolution.** This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Texas (except that body of law controlling conflicts of law). The parties will endeavor to settle amicably by mutual discussions any disputes, claims, or actions whatsoever related to this Agreement. Notwithstanding the foregoing, any disputes, claims, or actions between the parties may be brought in a state or federal court in Tarrant County, Texas. CIMS and Customer consent to the exclusive jurisdiction of such courts located in Tarrant County, Texas for the resolution of any such disputes, claims, or actions.



10.4 *Severability; Waiver.* In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect, to the extent practicable. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

10.5 *Assignment.* Customer may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Customer may not otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of CIMS, and any attempted assignment or delegation without such consent will be void. With Customer's prior written consent, CIMS may assign this Agreement in whole or part or delegate the performance of certain Services to qualified third parties, including CIMS' wholly owned subsidiaries; any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

10.6 *Notice.* Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email, confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party listed on the Purchase Order or at such other address as may be hereafter furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered, mailed, emailed, faxed or sent, whichever is earlier.

10.7 *Relationship of Parties.* CIMS and Customer are separate independent contracting parties, and this Agreement will not establish any partnership, joint venture, employment, franchise or agency between CIMS and Customer. Neither CIMS nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

10.8 *Entire Agreement; Counterparts; Originals.* This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understanding and agreements, written and oral, regarding such subject matter. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original. This Agreement may be changed only by a written document signed by authorized representatives of CIMS and Customer. For the purposes of this Agreement, the term "written" means anything reduced to a tangible form by a party, including a printed or hand written document, e-mail or other electronic format.

Customer: Hidalgo County
Printed Name: Richard F. Cortez
Signature: Richard F. Cortez
Title: County Judge
Date: 8/17/20

**Clinical Image Management
Systems**

Signature: *alan cox*
Printed Name: Alan Cox
Title: Chief Executive Officer
Date: 8/01/2020



Arturo Guajardo, Jr.
Arturo Guajardo, Jr., Hidalgo County Clerk

APPROVED BY
COMMISSIONERS' COURT
ON: 8/11/20 *js*



EQUIPMENT PURCHASE TERMS AND CONDITIONS

Addendum A

1. **SHIPPING AND HANDLING.** ALL EQUIPMENT PURCHASED BY CUSTOMER (THE "EQUIPMENT") IS PROVIDED FOB CUSTOMER FACILITY. SHIPMENT WILL BE MADE AS SPECIFIED BY CUSTOMER AND CIMS IS SOLELY RESPONSIBLE FOR ALL EXPENSES IN CONNECTION WITH GOOD COMMERCIAL PACKING, TIMELY SHIPPING AND DELIVERY OF THE EQUIPMENT. THE EQUIPMENT WILL BE ACCEPTED BY CUSTOMER UPON SATISFACTORY DELIVERY/ INSTALLATION AND INSPECTION WITHIN 15 BUSINESS DAYS OF COMPLETED INSTALLATION.
2. **PURCHASE PRICE AND TAXES.** CUSTOMER SHALL PAY TO CIMS THE PURCHASE PRICE, SET FORTH IN THE APPLICABLE Purchase Order ("PURCHASE PRICE") FOR THE EQUIPMENT, AS DESCRIBED HEREIN. ONLY TO THE EXTENT ALLOWED BY LAW, CUSTOMER GRANTS AND CIMS RESERVES A PURCHASE MONEY SECURITY INTEREST IN THE EQUIPMENT AND PROCEEDS THEREOF AS A SECURITY FOR ITS OBLIGATIONS HEREUNDER UNTIL PAYMENT OF THE FULL PURCHASE PRICE TO CIMS.
3. **TITLE.** CUSTOMER SHALL ACQUIRE TITLE TO THE EQUIPMENT UPON FULL PAYMENT OF THE PURCHASE PRICE(S) SET FORTH HEREIN. NOTWITHSTANDING THE FOREGOING, CIMS AND ANY LICENSOR OF RIGHTS TO CIMS SHALL RETAIN TITLE TO AND RIGHTS IN THE INTELLECTUAL PROPERTY (WHETHER OR NOT SUBJECT TO PATENT OR COPYRIGHT) AND CONTENT CONTAINED IN THE MATERIALS SUPPLIED UNDER THE TERMS OF THIS AGREEMENT.
4. **LIABILITY AND WARRANTY.** CUSTOMER ACKNOWLEDGES IT SELECTED THE EQUIPMENT. THE LODOX PRODUCTS ARE WARRANTED AGAINST SUBSTANTIAL DEFECTS IN MATERIALS AND WORKMANSHIP FOR TWELVE (12) MONTHS FROM DATE OF FIRST CLINICAL USE. ALL GLASSWARE IS WARRANTED FOR TWELVE (12) MONTHS FROM DATE OF FIRST CLINICAL USE. DURING THE APPLICABLE WARRANTY PERIOD, WARRANTY SERVICE, INCLUDING PARTS AND LABOR, WILL BE PERFORMED BY A CIMS AUTHORIZED SERVICE AGENT WITHOUT CHARGE TO CUSTOMER DURING REASONABLE BUSINESS HOURS. CIMS RESERVES THE RIGHT TO DETERMINE AND SHALL DISALLOW CLAIMS FOR DEFECTS CAUSED BY CUSTOMER'S MODIFICATION, ABUSE, MISUSE, EXCESSIVE AMBIENT TEMPERATURES, OR OTHER ABNORMAL CONDITIONS OF OPERATION.



CIMS' RESPONSIBILITY SHALL BE TO REPAIR OR REPLACE EQUIPMENT, PARTS, OR PROGRAMS WHICH IT SELLS, FURNISHES, OR LICENSES AND WHICH ARE FOUND TO BE DEFECTIVE OR NOT PERFORMING TO INDUSTRY STANDARD WITHIN THE APPLICABLE WARRANTY PERIOD, OR UPON FAILURE OF SUCH REMEDY, TO PROMPTLY REFUND TO CUSTOMER THE FULL PURCHASE PRICE OF THE EQUIPMENT, PART, OR PROGRAM THAT IS THE BASIS OF THE CLAIM.

CUSTOMER UNDERSTANDS THE USE AND POSSESSION OF THE EQUIPMENT BY CUSTOMER SHALL BE SUBJECT TO AND CONTROLLED BY THE TERMS OF ANY MANUFACTURER'S OR, IF APPROPRIATE, SUPPLIER'S WARRANTY, AND CUSTOMER AGREES TO LOOK TO THE MANUFACTURER OR, IF APPROPRIATE, SUPPLIER WITH RESPECT TO ALL MECHANICAL, SERVICE AND OTHER CLAIMS, AND THE RIGHT TO ENFORCE ALL WARRANTIES MADE BY SAID MANUFACTURER ARE HEREBY, TO THE EXTENT CIMS HAS THE RIGHT, ASSIGNED TO CUSTOMER.

THE WARRANTIES EXPRESSED IN THIS AGREEMENT AND ADDENDUM ARE THE EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ANY ORAL REPRESENTATION AND OTHER WARRANTIES AND DAMAGES, WHETHER EXPRESSED, IMPLIED, OR STATUTORY. CIMS HAS NOT MADE NOR DOES IT MAKE ANY OTHER WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

5. **LIMITATION OF LIABILITY.** IN NO EVENT WILL ANY PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF BUSINESS OR PROSPECTIVE BUSINESS OPPORTUNITIES, PROFITS, SAVINGS, INFORMATION OR USE OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF THE PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. **GOVERNING LAW; DISPUTE RESOLUTION.** THIS AGREEMENT IS MADE UNDER AND WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (EXCEPT THAT BODY OF LAW CONTROLLING CONFLICTS OF LAW) AND SPECIFICALLY EXCLUDING FROM APPLICATION TO THIS AGREEMENT THAT LAW KNOWN AS THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. THE PARTIES WILL ENDEAVOR TO SETTLE AMICABLY ANY DISPUTES, CLAIMS, OR ACTIONS WHATSOEVER RELATED TO THIS AGREEMENT. FAILING SUCH AMICABLE SETTLEMENT, ANY DISPUTE, CLAIM, OR ACTION ARISING UNDER OR RELATING TO THIS AGREEMENT, INCLUDING THE EXISTENCE, VALIDITY, INTERPRETATION, PERFORMANCE, TERMINATION OR BREACH THEREOF, THE PARTIES TO THIS AGREEMENT CONSENT TO JURISDICTION AND VENUE IN THE COURTS OF THE STATE OF TEXAS OR IN THE U.S. DISTRICT COURTS, ALL LOCATED IN THE COUNTY OF TARRANT, TEXAS.



MEMORANDUM

"SOLE SOURCE DECLARATION"

TO: Hidalgo County Commissioners' Court

FROM: Martha L. Salazar, CPPB
Hidalgo County Purchasing Agent

DATE: August 11, 2020

RE: "Sole Source Declaration"- Lodox eXero-dr Scanning System

Hidalgo County Forensic Center requires the purchase of a Lodox eXero-dr scanning system for use in performing autopsies. The Lodox eXero-dr design is forensic-driven, specifically molded to forensic pathology requirements, and is easily installed with minimal modifications. Lodox eXero-dr is patented and trademarked with the U.S. Patent and Trademark Office. The full-body, low-radiation format makes Lodox imaging safer (reduced x-ray scatter) and easier for use. The full-body scan eliminates the need for multiple localized scans, shortening the amount of time it takes to complete the task providing a seamless workflow in the pathology lab.

The Lodox eXero-dr imaging system is specifically designed to provide a high-speed, high resolution, digital X-ray that can produce an AP (Antero-Posterior) full-body X-ray image in thirteen (13) seconds with a complete image available within thirty (30) seconds. The automated gurney system allows better positioning and imaging of bodies eliminating manipulation by the Forensic Center staff. The system has comprehensive waterproofing and drainage to prevent the accumulation of fluids and particles and facilitates cleaning and disinfection, and requires minimal training for use. The full-body images present a comprehensive clinical picture for guidance in cause-of-death determination, in certain cases obviating the need for an autopsy. The eXero-dr will save the County costs in autopsy services, and allow for a more efficient, and effective Forensic Center.

The eXero-dr is available through select distributors and is not available for purchase through the manufacturer. Clinical Image Management Systems, LLC is the "Sole Reseller" for the Lodox eXero-dr Scanning System in Texas. Lodox has confirmed via email as attached herein, and further has advised that although they can sell directly, in the State of Texas they are prohibited due to the exclusive reseller agreement granted to CIMS.

Therefore, CIMS is the sole authorized reseller of the Lodox eXero-dr. Hidalgo County needs to purchase the Lodox System including, but not limited to, equipment and installation, future

upgrades, parts, and repairs and maintenance services to expand and increase forensic capabilities for the Autopsy Facility.

This sole source declaration to remain in effect unless revoked by Hidalgo County Commissioners Court.

S/N	Quantity	Description	Price
eXero-DR	1	<p>Standard Configuration Features:</p> <ul style="list-style-type: none"> ▶ Flexible-Format Digital Radiography (DR) Image Formation <ul style="list-style-type: none"> * Allows a wide variety of high resolution image acquisition, ranging from the size of a "Whole-Body", to the size of a "Hand". * Field of View is Adjustable from 100mm x 100mm to a maximum 680mm x 1800mm for full body. Images can be made of any body part without moving the patient. ▶ Compliance <ul style="list-style-type: none"> * FDA Approved: FDA (510k) No. K013999 Acc# 0310920 * ISO Approved: CE Mark, ISO 13485:2003 ISO 9001:2000 ▶ High Resolution Digital Imaging Performance <ul style="list-style-type: none"> * Contrast Resolution : >16000 grey levels (14 bits) - After log compression * Fundamental pixel size: 60 μm (1x1 binning) * Maximum Size single image:1800 mm * 680 mm (full body size, measured at lowest table height) * Base resolution mode : 1.04 lp/mm at 8x8 pixel binning. 0.48mm pixel size. Max 48000 grey levels. Maximum size = full body (image size 1536 x 8000 pixels) * Standard resolution mode : 1.4 lp/mm at 6x6 pixel binning. 0.36mm pixel size. Max 36000 grey levels. Maximum size = full body (image size 2048 x 8000 pixels) * High resolution mode : 2.1 lp/mm at 4x4 pixel binning. 0.24mm pixel size. Max 24000 grey levels. Maximum size = full body (image size 3070 x 8000 pixels) Very High resolution mode : 4.2 lp/mm at 2x2 pixel binning. 0.12mm pixel size. * Max 12000 grey levels. Maximum size = half of full body size (900mm x 680mm)(image size 6141 x 8000 pixels). Ultra high resolution mode : 5.0 lp/mm (Measured) - 8.33 lp/mm (Theoretical) at 1x1 pixel binning. Maximum size = 480mm (quarter & half speed only) (image size 12288 x 8000 pixels) Max 6000 grey levels. This mode is designed mainly for extremity imaging applications and less dense body area in general. ▶ System Throughput Performance <ul style="list-style-type: none"> * Linear scanning rate (3 settings): 35 mm/s, 70mm/s, and 140mm/s ± 5% * Instantaneous frame rate (The time taken for the X-ray beam to transverse any one point, or how long any point is exposed to X-rays): 11 - 80 milliseconds. * Time to complete a full field scan: <13 seconds Time from "end-of-scan" until a diagnostic image becomes available on the DVS * screen: <15 seconds (Normal resolution image on a stand-alone 100Mbps/s Ethernet Base-T network. * Best case time between two successive x-rays on the same patient: 28 seconds (Provided heat capacity of X-ray tube <20%) 	\$498,000.00

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		<p>* Patient Imaging & Positioning Flexibility</p> <p>0 to 90 degrees. The supine or prone patient can be X-rayed in any radial angle from AP (or PA) to beyond the Supine (or Prone) lateral positions. to 90 degrees. The supine or prone patient can be X-rayed in any radial angle from AP (or PA) to lateral positions. Integrated smart trolley elevates according</p> <p>► Environmental</p> <ul style="list-style-type: none"> * Temperature: +10 to + 25o Celsius * Humidity: 40% to 75% Non-Condensing * Atmospheric Pressure: 70kPa - 106kPa 	Included
TRL601	1	<p>► Bariatric SmartTrolley / Gurney (Imaging Table)</p> <p>The trolley /gurney top height can be adjusted vertically by 0 to 340mm via a foot operated switches, either end can be individually adjusting to allow Trendelenburg angles up to +/- 10 degrees.</p> <p>Trolley automatically raises and lowers to accommodate the</p> <ul style="list-style-type: none"> * rotary motion of the C-arm when moving AP-Lateral and back. * Dimensions: 2240 x 740 x 825 (L x W x H) * Patient X-ray Capacity: 300 kgs / 660 lbs. 	1 Included
CNS600	1	<p>► System Console (DVS and OC) Dual Purpose (Operator console and viewing station)</p> <p>(Includes MON021 & CMP030)</p> <ul style="list-style-type: none"> * eXero-dr User Interface: tab-based and simple operation. * Sets all X-ray technical parameters, via Preset Anatomical Programming or Manual Operation * Controls Linear and Rotary C-Arm Motion via on-screen control and easy-to-use joystick controller * Initiates and terminates X-ray exposures via easy-to-use joystick controller * Flexible Floor Mounted Cabinet Design can also house HV X-ray Generator 	Included
MON021	1	<p>Monitor</p> <ul style="list-style-type: none"> * A NEC P232W monitor or equivalent will be supplied * 23" (203" viewable image size) Colour LCD, active matrix, thin film transistor (TFT), liquid crystal display. * Resolution: 1920 x 1080 * 250 cd/m2 white luminance typical * 1000:1 contrast ratio - typical 	Included
CMP030	1	<p>Workstation Computer</p> <ul style="list-style-type: none"> * System Computer: Based on at least a dual core processor such as the Intel Pentium 4/D/Core 2 Duo and enhanced graphics engine. * Operating System: Windows 10 	Included

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		<ul style="list-style-type: none"> * User Interface: 2 Button + scroll Mouse Driven Windows Graphic Interface * High Speed Proprietary Image Processor/DVS software * Image Processing Features include: <ul style="list-style-type: none"> * Zoom/Pan/Rotate; Contrast / Brightness; Edge Enhancement; Histogram Equalization; Palette Function; Invert * Database Server Module * DICOM 3.0 Network Interface * Send / Receive / Print / Worklist Retrieve patient demographics only * DICOM 3.0 Input interface is required on the printer side. * Lodox eXero-dr Local Archive System * Lodox eXero-dr Data Management Software / DVD Recorder Package 	
		<p>X-ray System</p> <p>Radiation Type The eXero-dr emits ionized X-radiation by a precise narrow fan-beam scanning</p> <ul style="list-style-type: none"> * across the patient that progressively creates diagnostic quality images at very low dose rates. <p>Direct Absorbed Dose Maximum entrance dose for a full-body X-ray is 0.12 mGy (absorbed dose 99μSv).</p> <ul style="list-style-type: none"> * For typical procedures, approximately 25% (conservative), on average, of equivalent conventional system doses are emitted. <p>Leakage Radiation</p> <ul style="list-style-type: none"> * The maximum leakage radiation measured 1 meter from the X-ray focal spot in any direction is less than 20 uGy per hour @ 145kV 250mA. 	<i>Included</i>
GEN001	1	<p>X-Ray Generator</p> <ul style="list-style-type: none"> * Peak Power 64 KW * Voltage Range 50kVp - 145 kVp * Voltage Rise Time 2mS (10 to 90%) * Voltage Stability < 4% * Voltage Ripple 0.5% * Current Range 32mA to 400mA * Exposure Time 0.6s to 16s * Operating frequency 40kHz 	<i>Included</i>
TUB002	1	<p>X-ray Tube</p> <ul style="list-style-type: none"> * 3.5 Million HU, Rotating Anode CT type FDA/CE approved <p>Detector</p> <ul style="list-style-type: none"> * Proprietary Solid State Detector Technology (similar to spiral/helical CT scanner detector technology) <ul style="list-style-type: none"> X-ray to light conversion * Rarex Green Fast ("Gadox" = GdOS2:Tb) 	<i>Included</i>

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	1	System: Year One (1) - Twelve (12) Months Parts (tube pro-rata) and Labour. (See Lodox Terms & conditions below for further details)	Included
		<u>Standard Installation:</u>	Included
	1	System installation and commissioning Included. All site renovations are the responsibility of the Buyer. The provision of suitable site services including air-conditioning and electrical power are the responsibility of the buyer Clinical Engineering Training is included	
		<u>Standard Clinical Applications Training is included:</u>	Included
	1	Three (3) days Included.	
		<u>Estimated Delivery</u>	
		180 days from date of order	
	1	<u>EvoHealth PACS with 4TB Dell Server</u>	\$14,775.00
		Web-Based, Zero footprint, PACS provides instant access to current and prior radiology exams Zero Footprint Viewer for easy deployment and maintenance across all facility computers "Windows or Apple" Roaming user profiles and preferences follow users around Customized worklist per user Simple measurement tools for lengths, angles, Cobb, etc.. Document Management "scan and attach" Create exam CD's from any windows PC Integrates into customer website domain using SSL for encryption	
	1	<u>Dell Power Edge Server "Rack mount"</u>	included
		4 TB Server Dell Advanced Server Windows Server 2016 R2 Dual intel Xeon f5-2680 16 GB of Memory	
	1	<u>Diagnostic Workstation</u>	\$5,775.00
		Dell Inspiron 3470 Desktop PC Windows 10 Pro 1TB Radeon Graphics Card Dell 27 inch ultrasharp LED 4k UHD monitor 3840X2160	

2 additional years service and support

\$47,000.00

1 onsite PM and calibration per year
24/7 email and phone support
All parts covered "Xray Tube is prorated"